

ORDINANCE NO.

AN UNCODIFIED URGENCY ORDINANCE OF THE CITY OF SAN JOSE TO REQUIRE EITHER (1) FULL COVID-19 VACCINATION AND UP-TO-DATE BOOSTERS OR (2) PROOF OF A NEGATIVE COVID-19 TEST FOR LARGE INDOOR EVENTS AT CITY-OWNED FACILITIES AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY; AND SUPERSEDING ORDINANCE NO. 30652

WHEREAS, on January 31, 2020, the United States Secretary of Health and Human Services declared a public health emergency based on the threat caused by COVID-19 (also known as the “Coronavirus Disease”), and the President of the United States issued a Proclamation Declaring a National Emergency Concerning COVID-19 beginning March 1, 2020; and

WHEREAS, on March 4, 2020, the Governor of California proclaimed a State of Emergency (Executive Order N-25-20) to exist in California based on the threats to public health caused by COVID-19; and

WHEREAS, on March 10, 2020, the Council of San José ratified the Director of Emergency Services’ Proclamation of Local Emergency finding that the existence and threat of COVID-19 in the community gives rise to conditions of extreme peril to the safety and health of persons within the City; and

WHEREAS, pursuant to Government Code Section 8630(c), the City Council has reviewed the need for continuing the local emergency at least once every sixty (60) days and has adopted resolutions to continue the Proclamation of Local Emergency; and

WHEREAS, on July 26, 2021, Governor Newsom announced that the State of California is implementing a first-in-the-nation standard to require all state workers and workers in

health care and high-risk congregate settings to either show proof of full vaccination or be tested at least once per week, and encouraged all local government and other employers to adopt a similar protocol; and

WHEREAS, on August 24, 2021, the San José City Council adopted an uncodified urgency ordinance (Ordinance No. 30652) requiring staff and attendees to provide proof of COVID-19 vaccination before entering events of 50 or more people at City-owned facilities; and

WHEREAS, according to information made available through the Santa Clara County Public Health Department there has been a recent significant increase in COVID-19 cases and hospitalizations in Santa Clara County, due primarily to the Omicron variant of SARS-CoV-2, the virus that causes COVID-19. Emerging evidence indicates that the Omicron variant is more transmissible than prior variants of the virus and that even fully vaccinated individuals can spread the virus to others. Vaccination remains the best and most effective tool in preventing COVID-19 and its harms; evidence shows that even against the Omicron variant, fully vaccinated individuals have substantial protection against severe illness, hospitalization, and death. In considering options to stem the rapid increase in COVID-19 transmission, a continued increase in the proportion of the population vaccinated is the best measure available. Additionally, even a small reduction in community transmission could make a major difference in the demand on the healthcare system; and

WHEREAS, in December 2021, the State of California revised guidance for indoor “Mega Events” to further reduce the threshold of a Mega Event from 1000 attendees to 500 attendees and revised the requirement for attendees to show proof of full vaccination or show more restrictive proof of a negative test; and

WHEREAS, the efforts required to prepare for, respond to, mitigate, and recover from the emergency conditions caused by COVID-19 have imposed and will continue to impose extraordinary requirements and expenses on the City; and

WHEREAS, given the extraordinary health threat caused by COVID-19 and the need to take extraordinary measures to limit its spread, the City Council is compelled to enact this urgency ordinance, which supersedes Ordinance No. 30652, and sets forth the requirements for (1) COVID-19 vaccination and up-to-date boosters or (2) proof of a negative COVID-19 test for large indoor events at facilities owned by the City of San José; and

WHEREAS, pursuant to section 605 of the City Charter, this urgency ordinance must be "adopted as and declared by the Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety, containing a statement of the facts constituting such urgency"; and

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (General Procedure and Policy Making resulting in no changes to the physical environment); and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Definitions

For purposes of this Ordinance, the following definitions shall apply:

- A. “Cal/OSHA” means the California Department of Industrial Relations, Division of Occupational Safety and Health, better known as Cal/OSHA.
- B. “CDC” means the United States Centers for Disease Control and Prevention.
- C. “COVID-19” means coronavirus disease 2019, the disease caused by the SARS-CoV-2 virus and that resulted in a global pandemic.
- D. “Fully Vaccinated” and “Full Vaccination” means it has been at least two weeks since the person has completed the entire recommended series of a COVID-19 vaccine (usually one or two doses) with a vaccine authorized to prevent COVID-19 by the United States Food and Drug Administration (FDA), including by way of an emergency use authorization, or by the World Health Organization (WHO). For example, as of the date of the adoption of this Ordinance, an individual would be fully vaccinated at least two weeks after receiving a second dose of the Pfizer or Moderna COVID-19 vaccine or two weeks after receiving the single dose Johnson & Johnson’s Janssen COVID-19 vaccine. If any state or federal agency uses a more restrictive definition of what it means to be Fully Vaccinated or to prove that status for specified purposes (such as Cal/OSHA rules for employers in workplaces), then that more restrictive definition controls for those purposes.
- E. “Up-to-date boosters” means that a person is not only Fully Vaccinated but has also obtained any booster doses of a COVID-19 vaccination for which they are

eligible as authorized or approved by the FDA, including by way of an emergency use authorization, or by the WHO.

- F. “Large Indoor Event” means an event with fifty (50) or more people attending indoors. A Large Indoor Event may be public or private, may have either assigned or unassigned seating, and may be either general admission or ticketed events. A Large Indoor Event can also include an event without seating or without tickets. It does not include the ordinary and customary provision of public services, such as, public meetings, vaccination events, food programs, or library programs. “Large Indoor Event” does not include venues such as museums or the airport that are open to public circulation as part of their regular operations, except to the extent that such venues host qualifying events.
- G. “Individual(s) Eligible” for a COVID-19 vaccine means a person for whom a COVID-19 vaccine is authorized for use by the FDA, including by way of an emergency use authorization or, in the case of a foreign visitor or traveler, a person for whom a COVID-19 vaccine is authorized by the WHO.

SECTION 2. Vaccination Requirements for Large Indoor Events at City-Owned Facilities

- A. Operators or hosts of Large Indoor Events at City-owned facilities shall require all Individuals Eligible for a COVID-19 vaccine entering the event to provide either (1) proof of full vaccination and up-to-date boosters or (2) proof of a negative COVID-19 test pursuant to City guidelines. This proof shall be provided prior to entry into the facility. This requirement includes, without limitation, attendees, staff, employees, players, performers, or any other person entering the event area.

- B. Pursuant to the terms of their operating agreements, operators or hosts of Large Indoor Events at City-owned facilities may impose more restrictive requirements to prevent the spread of COVID-19 than those provided in this Ordinance.

SECTION 3. Proof of Full Vaccination and Up-To-Date Booster(s)

- A. The following are acceptable as proof of Full Vaccination and up-to-date boosters:
1. A CDC vaccination card, which includes name of person vaccinated, type of vaccine provided, and date last dose administered, or similar documentation issued by another foreign governmental jurisdiction (e.g. WHO Yellow Card);
 2. A photo of a vaccination card as a separate document;
 3. A photo of the vaccination card stored on a phone or electronic device;
 4. Documentation of vaccination from a healthcare provider;
 5. A personal digital COVID-19 vaccine record that includes a QR code that when scanned by a SMART Health Card reader displays to the reader client name, date of birth, vaccine dates and vaccine type; or
 6. Documentation of vaccination from other contracted employers who follow these vaccination records guidelines and standards.
- B. To the extent Cal/OSHA approves an alternate means of documenting whether Staff is Fully Vaccinated with up-to-date boosters, even if less restrictive than the

definition contained here, employers may use the Cal/OSHA standard to document their staff's vaccination status.

- C. In the absence of knowledge to the contrary, an operator or host may accept the documentation presented as valid.
- D. Operators or hosts must have a means for tracking verification of attendee and Staff vaccination status. Records of such verification of vaccination with up-to-date boosters must be made available, upon request, to the local health jurisdiction for purposes of case investigation.

SECTION 4. Proof of Negative COVID-19 Test

Proof of negative COVID-19 test means a printed document, email or text message displayed on a phone, from a test provider or a laboratory that shows results of a polymerase chain reaction (PCR) or an antigen COVID-19 test that either has Emergency Use Authorization (EUA) by the FDA or is operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services, that was conducted before entry into a large indoor event at a City-owned facility. The test must be performed and results received within the timeline recommended by the California Department of Public Health or the Local Public Health Official, whichever is more restrictive. The printed document, email, or text message must include the person's name, type of test performed, date of the test, and negative test result.

SECTION 5. Obligation to Follow Stricter Requirements of Public Health Orders

Where a conflict exists between this Ordinance and any county, state or federal public health order related to the COVID-19 pandemic, the most restrictive provision (i.e., the more protective of public health) controls.

SECTION 6. Enforcement

The City Manager, or designee, is authorized to implement and enforce this Ordinance in the same manner as, and consistent with, the provisions of the San José Municipal Code.

SECTION 7. The City Council of the City of San José hereby finds that there is a current and immediate threat to the public health, safety and/or welfare and a need for immediate preservation of the public peace, health, or safety that warrants this urgency measure, which finding is based upon the facts stated above and in the memorandum from Mayor Liccardo to the City Council dated December 21, 2021, as well as any oral or written testimony at the January 11, 2022 City Council meeting.

SECTION 8. This Ordinance is declared by the City Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety. The facts constituting such urgency are all of those certain facts set forth in Section 7 of this Ordinance.

SECTION 9. This Ordinance supersedes Ordinance No. 30652 and shall become effective immediately upon its adoption pursuant to Section 605 of the Charter of the City of San José and shall remain effective until the effective date of a duly adopted superseding ordinance, or upon the termination of the City's Proclamation of Local Emergency related to COVID-19, whichever occurs first.

ADOPTED this _____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk