



AGENDA REPORT

TO: Honorable Mayor and Members of the
City Council

FROM: Edward D. Reiskin
City Administrator

SUBJECT: Proof Of Vaccination Emergency
Ordinance-Supplemental Report

DATE: December 16, 2021

RECOMMENDATION

Staff Recommends That The City Council Receive a Supplemental Report Related to An Emergency Ordinance Adding Oakland Municipal Code Chapter 8.68 To Require Proof Of A Covid-19 Vaccination For Patrons At Various Indoor Public Locations.

EXECUTIVE SUMMARY

While broadly supporting efforts to increase vaccination in the community, the Administration has some significant concerns with the City undertaking this proposed public health regulation, particularly as broadly drafted. Staff recommends that the Council engage with County health officials to achieve the laudable ends intended by this proposal, instead of legislating at the City level. If the Council desires to proceed with the Ordinance, staff recommends providing resources for implementation/enforcement, removing City facilities from those covered by the ordinance, and removing the proof of identify requirement.

REASON FOR SUPPLEMENTAL

The Emergency Ordinance, as it appeared in the December 10, 2021 City Council agenda packet, raises a number of concerns staff is bringing to the attention of the City Council as it considers this item.

BACKGROUND / LEGISLATIVE HISTORY

On November 18, 2021, the Rules Committee scheduled this emergency ordinance to the December 21, 2021 City Council meeting. The report and proposed legislation were included in the December 10, 2021 City Council agenda packet.

ANALYSIS AND POLICY ALTERNATIVES

Vaccination has proven itself to be the single most effect means of reducing the effects of the pandemic. People who are fully vaccinated, and especially those who have received booster shots, are significantly less likely to become seriously ill or die as a result of contracting the virus.

Alameda County serves as the public health authority for the city of Oakland and the rest of the cities in the county, except for the city of Berkeley. Throughout the pandemic, the City of Oakland has deferred to and followed the public health guidance provided by the County's Health Officer and Department. The County has led vaccination efforts, and has achieved a nearly 80 percent vaccination rate countywide, albeit with some levels of geographic and demographic disparities. To date, the County has not issued mandates for vaccination along the lines of what this proposed City ordinance would do.

Other cities in California and elsewhere in the country have imposed vaccination mandates for various sectors, though few as broadly applicable as this proposed ordinance. Many of these cities have their own public health authorities, as well as more robust resources for implementation than Oakland has.

While fully supporting efforts to increase vaccination in the community generally, staff has identified a number of concerns that the Council may want to consider as it contemplates this proposed ordinance.

1. Restriction of access to public facilities and services

The proposed ordinance, unlike many other such local laws, includes a number of public facilities in its definition of places that would be covered by this ordinance. Those facilities include City Hall (though exempting those attending a public meeting), libraries, senior centers, and recreation centers. Unlike private facilities, such as restaurants and bars, which are commercial facilities people visit as a matter of choice, buildings like libraries provide public services that are meant to be available to everyone and that are unavailable elsewhere.

Vaccines are free and widely available, but not everyone is vaccinated, which means members of the public will not have access to certain City facilities under the proposed ordinance. According to [data](#) provided publicly by Alameda County, as of the writing of this report, 75.5 percent of Oaklanders are fully vaccinated, which while better than the national average, means nearly one in four Oaklanders are not vaccinated. For Black and Latinx Oaklanders, the percentage fully vaccinated is roughly 62 percent, which means nearly two out of every five Black and Latinx Oaklanders are not vaccinated.

Beyond proof of vaccination, the proposed ordinance requires proof of identity, which may be another barrier to access City services and facilities, as not all people have such identification.

Restricting access to public services and facilities for that large a proportion of Oaklanders should be weighed against public health benefits. Unlike in bars and

restaurants, people accessing government services are generally not congregating in densely populated indoor spaces and are not eating or drinking, thus are remaining masked. While vaccination is certainly the most effective means of confronting the pandemic, masks have proven to be very effective in limiting transmission, according to public health experts.

Most public facilities that would be impacted by this ordinance as proposed cannot provide alternative accommodations for individuals that would be barred from the facilities.

2. Challenges with enforcement

There are two broad levels of enforcement that would pose challenges: (1) front-line enforcement by those reviewing vaccination and identification credentials and (2) City enforcement against establishments reported to not be complying with the ordinance.

With regard to front-line enforcement, City staff, as well as private sector staff, would be put in a position of asking for and reviewing documents it's not accustomed to reviewing, and potentially denying entry. Unlike a private establishment, where there is generally a commercial relationship between staff and customer, City staff members' dynamic relative to the public is purely service-oriented. Public services exist to serve the public, and those such as libraries and recreation centers are meant to provide functions that are not available elsewhere and that the public is explicitly welcomed to enjoy. Changing the role of staff from welcoming to potentially excluding would represent a significant and uncomfortable departure from the spirit of public service.

The proposed ordinance has various exemptions, age definitions, and other requirements that would be extremely difficult for front-line staff to manage. Asking librarians to determine someone's age or the validity of a religious or medical exemption is not reasonable nor consistent with their job duties. Nor is refusing entry to someone lacking identification. Additionally, denial of entry/access is likely to generate some level of confrontation, which most staff are not trained to manage.

With regard to City enforcement, current levels of Code Enforcement staff is insufficient to meet daily demands. Adding additional enforcement demand without adding additional resources leaves the City's Code Enforcement function with the choice of either not enforcing the added law or delaying enforcement of all other laws within its purview. Further, Code Enforcement staff have no training, experience, nor mechanisms to actually enforce this law. Unlike cities and counties that have Health Inspectors, Oakland does not. Oakland's Code Enforcement Inspectors would have limited means of determining compliance upon receipt of a complaint, even if they had adequate resources to investigate, which they do not.

3. Inconsistency with County Public Health Guidance

As noted above, throughout the pandemic the City has followed the guidance of public health officials, specifically Alameda County, with regard to public health related requirements. Reliance on and consistency with the County has enabled City staff and

leaders to clearly articulate and respond to public inquiries relative to public health measures by reference to public health professionals. This consistency is helpful to those who live, work, and play in Oakland, and helpful to City staff helping the public navigate through what has nationally been a patchwork of public health regulations.

In light of these concerns, staff recommends the following:

1. Consider engaging with County Health authorities with the goal of their establishing a limited, countywide approach, in lieu of a broad, City-specific ordinance.
2. If a City ordinance is approved
 - a. provide resources for implementation/enforcement
 - b. exclude City facilities
 - c. eliminate proof of identify requirement

FISCAL IMPACT

There is no fiscal impact associated with this supplemental report. The proposed ordinance, as drafted, would require some level of staff expenditure associated with education and enforcement, which is not budgeted.

PUBLIC OUTREACH / INTEREST

There was no public outreach associated with this supplemental report, however, there will likely be significant interest in this proposal and its implementation, if approved.

COORDINATION

The City Administrator's Office engaged with numerous City departments in the review of the proposed ordinance and the development of this supplemental report.

SUSTAINABLE OPPORTUNITIES

Economic: No economic opportunities have been identified in association with this supplemental report, though some commercial businesses may have concerns about the impact of the proposed ordinance on their businesses.

Environmental: There are no environmental opportunities identified with respect to this report and ordinance.

Race & Equity: There are two areas of concern with regard to race and equity. One is that disproportionate impact that denial of entry to public and private facilities will have on Black and Latinx Oaklanders and visitors based on the current disparate levels of vaccination. The second is that confrontations resulting from denials of access/entry, as well as inconsistencies of front-line enforcement, may result in disparate outcomes.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Receive a Supplemental Report Related to An Emergency Ordinance Adding Oakland Municipal Code Chapter 8.68 To Require Proof Of A Covid-19 Vaccination For Patrons At Various Indoor Public Locations

For questions regarding this report, please contact Ed Reiskin, City Administrator.

Respectfully submitted,



EDWARD D. REISKIN
City Administrator