

A special meeting of the Astoria Common Council was held at the above place at the hour of 12:00 pm.

Councilors Present: Brownson, Rocka, Herman, Hilton, and Mayor Jones.

Councilors Excused: None

Staff Present: City Manager Estes, Parks and Recreation Director Dart-McLean, Finance Director Brooks, and City Attorney Henningsgaard. The meeting was live streamed and recorded, and will be transcribed by ABC Transcription Services, LLC.

Mayor Jones read aloud several proclamations in recognition of the following:

- Juanita Baker Price's 100th Birthday
- Larry and Cheryl Lockett's 50th Wedding Anniversary
- Columbia Memorial Hospital Caregiver Appreciation Day

REGULAR AGENDA ITEMS

Item 3(a): Consideration of COVID-19 Vaccination Policy for Lil Sprouts Academy Child Care Professionals and Discussion of Policy Application to Employees City-Wide

On August 17, 2021, a Lil Sprouts Academy employee reported a positive test for COVID-19. This was the first positive case for Lil Sprouts which impacted operations and as a result the program was closed. Lil Sprouts reopens September 1st. With the recent increases in COVID cases due to the Delta Variant; the fact that recipients of child care services are unvaccinated due their age ineligibility and in most cases too young to wear masks; and as a result of Governor Brown's announcement that school personnel must get vaccinated, the City of Astoria is considering a policy for Lil Sprouts as well. Staff have worked with Labor Attorney Akin Blitz to update our Temporary COVID-19 Response Policy to include a vaccination requirement for child care providers. A copy of the draft policy will be posted once finalized. It is anticipated that Council will discuss the possibility of expansion of a vaccination policy for all City employees. Mr. Blitz will be participating in this meeting to provide legal guidance.

It is recommended that Council consider the COVID-19 vaccination policy for Lil Sprouts Academy child care providers and discuss a City wide policy for staff vaccination.

Mayor Jones reviewed a timeline of pandemic responses by local governments and agencies, the economic impacts of those responses, the pandemic's impact on healthcare services, and current statistics on COVID-19 cases and vaccination rates. He asked that all unvaccinated people consider getting vaccinated unless a doctor advises otherwise. The City is responsible for ensuring that everything reasonable is done to protect the health of the children in the City's child care program. Since one vaccine has been fully approved, he believed it was reasonable to consider whether vaccination should be required as a condition of employment for child care providers and other City Staff.

City Manager Estes described Staff's efforts to gather details about the issues and rules related to COVID-19 policies. The rules have changed as recently as last week, but the most current information available has been posted on the City's website, is available in the Agenda packet, and has been provided to each of the City Councilors in the form of an executive summary. Staff is asking the Council to consider a policy requiring Lil Sprouts child care providers and firefighters to be vaccinated. He explained that firefighters have been categorized as healthcare workers, which are required to be vaccinated under Governor Brown's Executive Order. The policy could be expanded to include other City departments.

Labor Attorney Akin Blitz presented a detailed overview of the Executive Summary of COVID-19 Pandemic Vaccination Requirements, which was included in the Agenda packet.

Councilor Rocka asked how the City would handle employees with a medical or religious exemption from the vaccination requirement.

Mr. Blitz explained that when an employee requests accommodation for medical reasons, the request must include medical documentation from an established healthcare provider. The ability of the City to accommodate the request will be different for each department, so each request must be considered on a case by case basis. The executive order includes a safe harbor for employees who can be reasonably accommodated without a direct threat to public safety. However, it would be difficult for the City to make any accommodation that did not threaten public safety. Accommodating religious beliefs would require a review of the First Amendment and related laws to determine whether the belief is a bonafide religious belief that is consistent with the teachings of a church. The employee would need to demonstrate a history of affiliation or membership with that church and the belief must be in opposition to all vaccines, not just the COVID vaccine.

Councilor Rocka said he wanted the City to do what it could to stop COVID, so he supported mandated vaccinations.

Councilor Brownson believed that every individual would either get vaccinated or get COVID. At this time, the City still had a codrey of employees that the City is unable to mandate vaccinations upon. He asked what the policy would be for those employees. He also wanted to know what percentage of employees were vaccinated.

City Manager Estes said Staff could estimate the percentage of vaccinated employees based on information voluntarily shared by employees.

Ms. Houston added that the City is not actively asking employees whether they are vaccinated, but there are instances in which that information was voluntarily provided. She had estimates broken down by department, but those estimates did not include the numbers of employees who had made no indications one way or the other as to being vaccinated. Her estimates were as follows:

Department	Percent Vaccinated
City Manager's Department	100 percent
Finance	100 percent
Community Development	80 percent
Fire (Staff and Resident Interns)	80 percent
Fire (Volunteers)	unknown
Police and Dispatch	81 percent
Library (Full Time Staff)	75 percent
Library (Part Time Staff)	unknown
Public Works	81 percent
Parks (Full Time Staff)	100 percent
Lil Sprouts (Part Time Staff)	68 percent
Parks Maintenance (Part Time Staff)	67 percent
Aquatics (Part Time Staff)	unknown

Mr. Blitz stated the City may not impose a vaccination requirement on police officers, as only the Governor may do so. He noted that in the beginning of the pandemic, the situation and public perceptions were very different than they are now, and the risk benefit analysis of vaccination requirements favored refraining from a vaccine mandate. However, the pandemic has evolved, even as recently as the last 14 days. Employers have always been allowed under the law to exercise their power to require vaccinations. The current risk benefit analysis now makes it clear that the proposed policy would address the specific concerns identified as predominate today, which are related to the welfare of children and other implications to the community if the Lil Sprouts program did not function.

City Manager Estes requested that the Council consider the possibility of employees choosing not to get vaccinated and the potential impacts that would have to service delivery and the budget.

Councilor Brownson said that when Staff deals with exemptions, they will need to be clear about what a "bonafide" healthcare provider or religious belief actually is. The bar for approving exemptions should be set high.

Mayor Jones stated that during this meeting, the Governor just announced new outdoor mask requirements that take effect on Friday. The requirements are more strict and are in response to the Delta variant of the virus. He asked what the City's policy timeline would be, if implemented.

City Manager Estes responded that the Governor has required fire fighters to be fully vaccinated by September 30th. Staff has requested that the City's policy correspond with the State's guidelines. Lil Sprouts employees will need to be fully vaccinated by October 18th.

Mayor Jones noted that the City must adopt the policy implementing the Governor's order, which impacts the Fire Department. Therefore, the Council must decide whether to mandate vaccines for all City employees.

Councilor Hilton said in the 1990 Supreme Court case of *Employment Division versus Smith*, Justice Scalia wrote the opinion that laws that require vaccination are the epitome of neutral law and that no one has a constitutional right to endanger others. Another Supreme Court decision was made in 1977 that did not grant religious expression over the constitutional rights of others. He believed everyone should get vaccinated.

Councilor Herman said she supported vaccinating Lil Sprouts Staff, especially since young children cannot be vaccinated. However, she was concerned about mandating vaccinations City-wide because she did not want to get the City involved in law suits.

Councilor Rocka stated he supported mandating vaccines for all employees.

Councilor Brownson agreed and said the policy would be good for the public's welfare, particularly those who are unable to get vaccinated.

Mayor Jones noted that this decision was about balancing the rights of individuals with the Council's responsibility to prevent harm to others, protect the community, and reducing the burden on healthcare services. [1:37:48]

City Council Action: Motion made by Mayor Jones, seconded by Councilor Brownson, to approve revisions to the Temporary COVID-19 Response Policy, specifically finding:

1. Exigent circumstances dictate immediate decision making and action to update the City's Temporary COVID-19 Response Policy due to the very serious nature of the COVID-19 pandemic and direct threats, which the Governor has recognized by declaring a public health emergency.
2. The circumstances call for swift and deliberate action.
3. City policy is adopted to safeguard public health and wellbeing of City employees and children enrolled in Lil Sprouts programs, to mitigate the spread of COVID-19 and to establish policy and procedures for City compliance with Oregon law, OHA public health temporary rules, and executive orders issued by the Governor. The Council finds that to do so is necessary based on COVID-19 infection and death rates, economic lockdowns, and other adverse consequences require to combat the ongoing public health crisis and permit sustained Lil Sprouts programs and child care services deemed essential to parents who must work to sustain family and community services that they perform.
4. Delay negotiating about impacts of policy revision with an interested union will jeopardize public health or impede compliance with law and time to do so does not exist. The Council does not intend that this should excuse bargaining obligations if an interested employee union representative seeks to bargain concerning impacts of changes if bargaining is required. Such negotiations can occur on an expedited basis within the time allowed by the governor to achieve full compliance with COVID-19 related executive orders and OHA COVID-19 public health related rules.
5. An emergency is declared to exist. The revision to the City's Temporary COVID-19 Response Policy, which the Council adopts this 24th day of August 2021 is effective immediately upon adoption by the City Council. [1:38:28]

Mayor Jones called for public comments.

City Manager Estes noted the policy would apply to all City employees except those who are exempt under State law, specifically police officers.

Mr. Blitz added that for medical exemptions, the policy states, "an employee must provide documentation from their established healthcare provider regarding the nature of any impairments, the duration of the need for accommodation, and the extent to which impairments conflict with the vaccination requirement." The term "established healthcare provider" refers to a medical practitioner. He also noted that the City could not reasonably characterize the Police Department's facilities as a healthcare center just because it is in the same building as and adjacent to the Fire Station.

Judith Niland thanked the Council and Staff for being so professional and adopting a good policy that takes care of everyone.

Mayor Jones called for a roll call vote. Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, Hilton, and Mayor Jones; Nays: None.

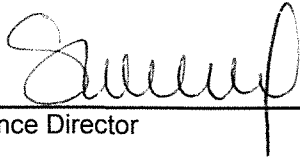
NEW BUSINESS & MISCELLANEOUS, PUBLIC COMMENTS (NON-AGENDA)

There was none.

ADJOURNMENT

There being no further business, the meeting was adjourned at 1:47 pm.

ATTEST:



Finance Director

APPROVED:



City Manager