

CITY COUNCIL URGENCY ORDINANCE NO. 21-18

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRVINE, CALIFORNIA, ESTABLISHING REQUIREMENTS FOR VISITORS TO CITY FACILITIES TO WEAR FACE COVERINGS REQUIREMENTS FOR PROOF OF VACCINATION FOR PARTICIPATION IN IN-PERSON CONGREGATE MEAL PROGRAMS, EXTENSION OF LIMITATIONS ON THIRD PARTY FOOD DELIVERY, AND EXTENSION OF OUTDOOR DINING PROGRAM

WHEREAS, on January 30, 2020, the World Health Organization (WHO) declared the outbreak a “public health emergency of international concern” as a result of the introduction of the novel coronavirus (COVID-19), a novel communicable disease; and

WHEREAS, on January 31, 2020, then United States Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the United States to aid the nation’s healthcare community in responding to COVID-19; and

WHEREAS, on February 26, 2020, the Health Officer of Orange County and the Orange County Board of Supervisors determined that there was an imminent threat to the public health from the introduction of COVID-19 and declared a local health emergency; and

WHEREAS, on March 4, 2020, the Governor of the State of California declared a state of emergency in California due to the introduction and spread of COVID-19; and

WHEREAS, on March 17, 2020, the City Manager, acting as the Director of Emergency Services, issued a “Proclamation of the Existence of a Local Emergency” that was ratified by the City Council by the adoption of Resolution No. 20-28, on March 24, 2020; and

WHEREAS, the Proclamation of the Existence of a Local Emergency ordered that the local emergency shall be deemed to exist until its termination is declared by resolution of the City Council; and

WHEREAS, Resolution No. 20-28 resolved and ordered that the local emergency shall be deemed to exist until its termination is proclaimed by the City Council; and

WHEREAS, since March 17, 2020, the City Manager, acting as the Director of Emergency Services, issued various orders associated with the Proclamation of the Existence of a Local Emergency; and

WHEREAS, effective August 28, 2020, the California Department of Public Health issued the “Blueprint for a Safer Economy” framework; and

WHEREAS, on February 9, 2021 the City Council adopted an Ordinance 21-03, entitled “An Urgency Ordinance of the City Council of the City of Irvine, California, Establishing Limitations of Third-Party Food Delivery Fees,” which placed certain restrictions and limitations on third-party food delivery fees, and which was set to automatically expire at the expiration/termination of the Proclamation of Existence of a Local Emergency, unless extended by the City Council or the Emergency Services Director”; and

WHEREAS, in May, 2021, acting pursuant to the authority granted under the Proclamation of Existence of Local Emergency, the City established a program that allowed for expanded outdoor dining for City restaurants, which program was scheduled to expire at the earlier of the City Council decision to rescind the program or December 2022; and

WHEREAS, effective June 15, 2021, due to “significant progress in vaccinating individuals and reducing community transmission thanks to the steps taken by Californians,” the California Department of Public Health issued an Order superseding and replacing the Blueprint for a Safer Economy, effectively reopening the economy; and

WHEREAS, positive COVID-19 cases continue to trend down while vaccination rates increase; and

WHEREAS, pursuant to Government Code section 8630, the City Council, after reviewing the need for continuing the local emergency, has determined that conditions no longer warrant continuing the local emergency; and

WHEREAS, there continues to be a public health and safety concern related to COVID-19 transmission within the City of Irvine; and

WHEREAS, many of participants in senior citizen congregate meal programs are, by definition, high risk due to age and also often may possess one or more comorbidities and thus are subject to a higher than average risk from COVID-19 infection; and

WHEREAS, based on evidence of transmission of COVID-19, both within the City of Irvine and worldwide, scientific evidence regarding the most effective approach to slow transmission COVID-19, and best practices as currently known and available to protect the public from the risk of spread of or exposure to COVID-19, vaccination and proper use of face coverings are an effective means to reduce the transmission of and exposure to COVID-19; and

WHEREAS, the City Council has carefully reviewed and considered all of the evidence, including the staff report and any public comments presented; and

WHEREAS, this Ordinance is exempt from the requirements of the California Environmental Quality Act (“CEQA”) pursuant to State CEQA Guidelines, as it is not a “project” and has no potential to result in a direct or reasonably foreseeable indirect physical change to the environment because it is merely the formation of an organization. (14 Cal. Code Regs. § 15378(a).) Further, this ordinance is exempt from CEQA because there is no possibility that this ordinance or its implementation would have a significant negative effect

on the environment. (14 Cal. Code Regs. § 15061(b)(3).) The City Clerk shall cause a Notice of Exemption to be filed as authorized by CEQA and the State CEQA Guidelines.

NOW, THEREFORE, the City Council of the City of Irvine DOES HEREBY ORDAIN as follows:

SECTION 1. FINDINGS. That the findings and determinations reflected in the Recitals above are true and correct, and are incorporated herein by this reference.

SECTION 2. IN-PERSON CONGREGATE MEAL PROGRAM.

A. VACCINATION REQUIREMENT. Any person, otherwise qualified, who seeks to utilize the City of Irvine's In-Person Congregate Meal Program, as located in City of Irvine Senior Centers or other facilities of the City of Irvine, shall, as a condition of participation, provide to the City, or its designee, proof of full vaccination, including multiple doses if and as required by the vaccine manufacturer and completion of the recommended gestation period following the last dosage, in a manner as described below. Failure or refusal to provide proof of vaccination, as described below, shall preclude the person from participating in or utilizing the City of Irvine's In-Person Congregate Meal Program.

B. PROVISION OF ALTERNATIVE MEALS. Any person, otherwise qualified, who does not provide proof of vaccination in a manner as described below, for any reason, shall receive an alternative "take-out" meal, in a manner and form as determined by the City, as accommodation for and in lieu of participation in the City of Irvine's In-Person Congregate Meal Program. Proof of vaccination, as described below, is not a requirement for receipt of the alternative "take out" meal as described herein.

C. PROOF OF VACCINATION. Any person seeking to establish proof of vaccination shall provide a form of picture identification to establish identity. Any form of picture identification issued by any level of government, any school or educational institution, retail establishment, or such other identification as determined credible and reliable by the City Manager, or designee, shall suffice. In addition to a form of picture identification, the person shall provide one of the following: (1) vaccination record card issued by the provider of the vaccine; (2) digital proof of vaccination; (3) Digital COVID-19 Vaccine Record; (5) written document of medical provider; or (5) any other form of written or digital proof as determined credible and reliable by the City Manager, or designee.

D. GOVERNMENT BENEFIT. If, and to the extent, this Ordinance concerns any protected government benefit or property interest, nothing here conditions, or should be interpreted to condition, the receipt of a protected government benefit or property interest upon proof of vaccination.

E. COLLECTION, STORAGE, AND DISSEMINATION OF INFORMATION. Any and all information, medical or otherwise, collected, stored, and disseminated pursuant to this Ordinance shall be collected, stored, and disseminated only in compliance with any and all federal, state and local privacy requirements, including any applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

SECTION 3. PUBLIC USE OF PUBLIC BUILDINGS. While at any indoor portion of any City facility, all visitors must wear a “face covering” approved by Cal/OSHA, which means a surgical mask, a medical procedure mask, a respirator worn voluntarily, or a tightly woven fabric or non-woven material of at least two layers. The face covering must have no visible holes or openings and must cover the nose and mouth. A face covering does not include a scarf, ski mask, balaclava, bandana, turtleneck, collar, or single layer of fabric. Notwithstanding the foregoing, members of the public may temporarily remove their face covering while at an indoor portion of a City facility when they are actively eating or drinking, provided that they are seated or positioned at a stationary location.

SECTION 4. EXTENSION OF LIMITATIONS ON THIRD PARTY FOOD DELIVERY FEES. Section 2.E of Ordinance 21-03 entitled “An Urgency Ordinance of the City Council of the City of Irvine, California, Establishing Limitations of Third-Party Food Delivery Fees” is hereby replaced and amended to read in its entirety as follows: This ordinance shall automatically sunset on April 1, 2022.

SECTION 5. The City’s outdoor dining program, originally enacted during the COVID-19 pandemic pursuant to the Proclamation of Existence of Local Emergency shall continue in operation until the earlier of (1) the adoption of a permanent program for outdoor dining, or (2) December, 2022.

SECTION 6. VIOLATION. Violation of this Ordinance, including the provision of false or inaccurate proof of vaccination, is a crime and may also be pursued as an administrative fine, an infraction, or a misdemeanor, in the City of Irvine’s sole and absolute discretion. (Penal Code section 19.) Each act taken in violation of this Ordinance may constitute a separate violation.

SECTION 7. SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is held for any reason to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 8. URGENCY. This Ordinance is declared to be an Urgency Ordinance by authority conferred on the City Council by Government Code sections 8634, 36934, and 36937, and shall be in full force and effect immediately upon its adoption by a four-fifths vote of the City Council. Facts supporting the urgency include:

A. Many of participants in senior citizen congregate meal programs are, by definition, high risk due to age and also often may possess one or more comorbidities and thus are subject to a higher than average risk from COVID-19 infection.

B. Based on evidence of transmission of COVID-19, both within the City of Irvine and worldwide, scientific evidence regarding the most effective approach to slow transmission COVID-19, and best practices as currently known and available to protect the public from the risk of spread of or exposure to COVID-19, vaccination and proper use of face coverings are an effective means to reduce the transmission of and exposure to COVID-19.

SECTION 9. CERTIFICATION AND PUBLICATION. The City Clerk shall certify as to the adoption of this Ordinance and this Ordinance shall be published as required by law. The City Clerk, or designee, shall post this Ordinance in a prominent place on the City of Irvine's website.

SECTION 10.EFFECTIVE DATE. This Ordinance, as an urgency ordinance for the immediate preservation of the public peace, health, or safety, shall take effect immediately upon its passage and adoption by not less than a four-fifths vote pursuant to California Government Code Section 36937(b).

PASSED AND ADOPTED by the City Council of the City of Irvine at a regular meeting held on the 23rd day of November, 2021.

  
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MAYOR OF THE CITY OF IRVINE

ATTEST:

  
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CITY CLERK OF THE CITY OF IRVINE

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) SS  
CITY OF IRVINE )

I, CARL PETERSEN, City Clerk of the City of Irvine, HEREBY DO CERTIFY that the foregoing Ordinance was duly adopted at a regular meeting of the City Council of the City of Irvine, held on the 23<sup>rd</sup> day of November, 2021, and becomes effective immediately.

AYES: 5 COUNCILMEMBERS: Agran, Carroll, Kim, Kuo, and Khan

NOES: 0 COUNCILMEMBERS: None

ABSENT: 0 COUNCILMEMBERS: None

ABSTAIN: 0 COUNCILMEMBERS: None



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CITY CLERK OF THE CITY OF IRVINE