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7
8 **UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10
11 **SHAWN DOLLAR**, an individual; **JASON**
12 **WAYNE**, an individual; **RAYMUNDO**
13 **BARBOSA**, an individual; **VINCENT**
CERDA, an individual; and **DANIEL**
DURBIANO, an individual,

14 Plaintiffs,

15 vs.

16 **GOLETA WATER DISTRICT;**
17 **KATHLEEN WERNER**, in her official
18 capacity as the President of the Goleta Water
District Board of Directors; **FARFALLA**
19 **BORAH**, in her official capacity as the Vice
President of the Goleta Water District Board of
20 Directors; **BILL ROSEN**, in his official
capacity as a member of the Goleta Water
21 District Board of Directors; **LAUREN**
22 **HANSON**, in her official capacity as a member
of the Goleta Water District Board of Directors;
23 **DAVID MATSON**, in his official capacity as
the Assistant General Manager of the Goleta
24 Water District; and **JOHN MCINNES**, in his
official capacity as the General Manager for the
25 Goleta Water District;

26 Defendants.
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Case No.: 2:22-cv-03723

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF AND
DAMAGES**

1 Plaintiffs Shawn Dollar, Jason Wayne, Raymundo Barbosa, Vincent Cerda and
2 Daniel Durbiano (collectively “Plaintiffs”) hereby allege as follows:

3 **NATURE OF LAWSUIT**

4 1. During 2020, several experimental vaccines were developed to help limit
5 the effects of COVID-19. These vaccines were developed quickly to protect those who
6 are at highest risk of getting seriously ill from COVID-19, especially the elderly and
7 those with multiple co-morbidities. Government officials now admit the vaccinated can
8 contract and transmit COVID-19. Many fully vaccinated and boosted people have fallen
9 ill.

10 2. Nevertheless, on or around October 2021, the Goleta Water District
11 (“GWD”) ordered all employees to get the COVID-19 shot by November 2021. GWD
12 still enforces the policy even though Santa Barbara County and other surrounding
13 counties have lifted their vaccine mandates.

14 3. GWD has the authority to exempt employees from its vaccine policy or alter
15 its policy at any time.

16 4. Plaintiffs’ religious beliefs prevent them from taking the COVID-19
17 vaccine or booster. They have requested a religious accommodation, but instead of
18 engaging in good faith negotiations to determine a reasonable accommodation, GWD
19 has either relegated them to unpaid leave or penalized them by requiring they pay for bi-
20 weekly COVID-19 tests on their own personal time. No such requirements are enforced
21 on vaccinated employees, even though they, too, can infect others.

22 5. Accordingly, this action seeks injunctive and declaratory relief and damages
23 related to GWD’s vaccine policy, which has nullified California’s Fair Employment and
24 Housing Act (FEHA) and deprived employees of their rights to free exercise of religion
25 and equal protection of the law.

26 **PARTIES – PLAINTIFFS**

27 6. Plaintiff Shawn Dollar resides in Santa Barbara County and works for GWD
28 as a distribution system superintendent. Mr. Dollar requested a religious exemption from

1 COVID-19 vaccination on or around November 2021, and despite having an approved
2 religious exemption and previously contracting COVID-19, his employer required he
3 take a leave of absence or pay for bi-weekly COVID-19 tests. Mr. Dollar chose to
4 continue to work to provide for his family even though the bi-weekly tests take a
5 significant chunk of his paycheck.

6 7. Plaintiff Jason Wayne resides in Santa Barbara County and works for GWD
7 as a meter specialist II. Mr. Wayne received an approved religious exemption regarding
8 the COVID-19 vaccine, but he was forced to choose between paying for bi-weekly tests
9 on his own time or taking an unpaid leave of absence. He also has medical objections to
10 the vaccine and received a medical exemption. Mr. Wayne chose to pay for the testing
11 on his own time to provide for his family.

12 8. Plaintiff Raymundo Barbosa resides in Santa Barbara County and works for
13 GWD as a water treatment operator. He requested and received a religious exemption
14 around November 2020 because of his sincerely held religious beliefs that prevent him
15 from taking the COVID-19 vaccine. He chose to continue to work because he needed the
16 income. Mr. Barbosa's job allows him to work independently, but his employer still
17 required he pay for bi-weekly testing.

18 9. Plaintiff Vincent Cerda resides in Santa Barbara County and worked for
19 GWD as a water treatment operator. Mr. Cerda has sincerely held religious beliefs that
20 prevent him from taking the COVID-19 vaccine or swab. These beliefs are grounded in
21 John 14:15 and 1 Corinthians 3:16-17. He was forced to choose between either taking a
22 leave of absence or testing twice a week on his own time and with his own money. Mr.
23 Cerda expressed to his employer that the COVID-19 job violated his sincerely held
24 religious beliefs and that his job allowed him to work with little to no face-to-face
25 interaction with his co-workers. Nevertheless, his employer denied his accommodations,
26 so Mr. Cerda was forced to take a leave of absence. After his leave of absence expired,
27 GWD continued its policy, so Mr. Cerda sought a lower paying job elsewhere to provide
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1 for his family and pay his mortgage. He lost his CalPers pension plan that he invested
2 into for over 11 years.

3 10. Plaintiff Danny Durbiano resides in Santa Barbara County and works for
4 GWD as a distribution systems operator II. He is a father of three. Mr. Durbiano has
5 sincerely held religious beliefs that prevent him from taking the COVID-19 vaccine or
6 swab and received an approved religious exemption. He was also exposed and had
7 symptoms of COVID-19 after returning from his Spain trip in April of 2020. He was not
8 required to test. He has offered to take a spit test. Nevertheless, in November 2021, his
9 employer forced him to choose between paying for bi-weekly swab tests or unpaid leave.
10 He exercised option two because of his sincerely held beliefs and was required to take a
11 \$5.00 per hour pay cut with reduced benefits somewhere else.

12 **PARTIES – DEFENDANTS**

13 11. Defendant Kathleen Werner is the president of the “GWD Board of
14 Directors.” She approved and adopted the COVID-19 vaccine policy and is sued in her
15 official capacity.

16 12. Defendant Farfalla Borah is the vice president of the GWD Board of
17 Directors. She approved and adopted the COVID-19 vaccine policy and is sued in her
18 official capacity.

19 13. Defendant Bill Rosen is a member of the GWD Board of Directors. He
20 approved and adopted the COVID-19 vaccine policy and is sued in his official capacity.

21 14. Defendant Lauren Hanson is a member of the GWD Board of Directors. She
22 approved and adopted the COVID-19 vaccine policy and is sued in her official capacity.

23 15. Defendant David Matson is the assistant general manager of GWD. Mr.
24 Matson assists the general manager in enforcing the COVID-19 vaccine policy and is
25 sued in his official capacity.

26 16. Defendant John McInnes is the general manager for the GWD. Mr. McInnes
27 enforces the COVID-19 vaccine policy and is sued in his official capacity.
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1 17. Defendant Goleta Water District is a municipal organization formed under
2 the laws of the State of California. It is sued herein based on the actions of the individual
3 Defendants (collectively “Defendants”) as final policymakers.

4 **JURISDICTION AND VENUE**

5 18. This Court has subject matter jurisdiction over the federal claims pursuant
6 to 28 U.S.C. §§ 1331 and 1343.

7 19. This Court has supplemental jurisdiction over the state claim pursuant to 28
8 U.S.C. § 1367.

9 20. This Court has authority to grant the requested declaratory relief under the
10 Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, implemented through Rule 57
11 of the Federal Rules of Civil Procedure. This Court is also authorized to grant injunctive
12 relief and damages under 28 U.S.C. § 1343, pursuant to Rule 65 of the Federal Rules of
13 Civil Procedure, and reasonable attorney’s fees and costs under 42 U.S.C. § 1988.

14 21. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1)-(2) because all
15 Defendants are situated in this judicial district, and a substantial part of the events or
16 omissions giving rise to Plaintiffs’ claims occurred in this district.

17 **FACTUAL BACKGROUND**

18 **A. Goleta Water District’s Vaccine Policy**

19 22. Since March 2020, GWD implemented COVID-19 standard operating
20 procedures (SOPs), claiming they were effective and necessary to curb the spread of
21 COVID-19. The SOPs required employees working closer than six feet to wear either
22 disposable latex or surgical gloves and masks and to disinfect masks and gloves after
23 use. If a task exposed employees to a greater health risk, such as when cutting concrete
24 or dealing with silica, employees were required to wear a cloth mask over a N95 with a
25 one-way valve.

26 23. The SOPs identified high-risk areas, so GWD could control those areas and
27 maintain social distancing. The SOPs also required the common areas to be disinfected
28 after every shift change.

1 24. On October 13, 2021, Defendants John McInnes and David Matson
2 circulated a memorandum to the GWD employees, including Plaintiffs, informing them
3 that they were going to enforce a COVID-19 vaccine policy on November 26, 2021. A
4 true and correct copy of the memorandum is attached hereto as **Exhibit 1**.

5 25. The vaccine policy requires all employees receive a COVID-19 vaccine as
6 a condition of employment and even provides paid time off for employees to get
7 vaccinated. A true and correct copy of the COVID-19 vaccine policy is attached hereto
8 as **Exhibit 2**. The policy requires subsequent booster shots, but upon information and
9 belief, GWD does not consistently enforce booster shots or follow up with employees.

10 26. The vaccinated employees who failed to take a booster shot no longer have
11 effective anti-bodies to COVID-19.

12 27. The policy provides an individualized exemption process, where employees
13 can request a religious and/or medical exemption on a case-by-case basis.

14 28. Defendants have the authority to alter the policy, rescind their policy and
15 exempt anyone from their policy at any time.

16 29. Employees with approved religious exemptions, like Plaintiffs, are required
17 to take a leave of absence or pay a penalty to continue working in the form of forced
18 COVID-19 tests. A true and correct copy of GWD's "reasonable accommodations" are
19 attached hereto as **Exhibit 3**. Plaintiffs are required to wear an N95 mask and cannot
20 enter certain buildings whereas the vaccinated employees do not have to wear an N95
21 mask and are not restricted from buildings.

22 30. Defendants have not offered any reason, much less a compelling one, that
23 explains why they offer to pay for employees to receive a COVID-19 vaccine but not a
24 COVID-19 test. Further, Defendants have no compelling reason to require the
25 unvaccinated to wear an N95 mask but not the vaccinated.

26 31. Defendants do not consistently apply their COVID-19 vaccine policy. For
27 instance, upon information and belief, GWD employs unvaccinated contractors who
28 interact with employees on site.

1 32. Upon information and belief, the contractors are not required to pay for bi-
2 weekly COVID-19 tests.

3 33. GWD did not engage in good faith negotiations with Plaintiffs to determine
4 if other, less restrictive measures, were available, such as working a modified shift,
5 remote work, limiting social interaction or just wearing an N95 mask, a requirement
6 GWD vigorously enforced during most the pandemic.

7 34. GWD provided the employees with the policy on a take-it-or-leave-it basis.
8 There was no good faith negotiation, and GWD did not explain why they could not
9 provide less restrictive measures or simply follow the SOPs enforced during most the
10 pandemic.

11 35. GWD also does not consider whether an employee previously contracted
12 COVID-19 and therefore has antibodies.

13 36. Plaintiffs filed complaints with the Department of Fair Employment and
14 Housing (DFEH) and received “Right to Sue” letters.

15 **B. Defendants’ Vaccine Policy Is Not Congruent With Their Interest In Slowing**
16 **The Spread Of COVID-19**

17 37. The CDC has conceded that the COVID-19 vaccines do not prevent
18 transmission or infection.

19 38. The vaccinated can infect the unvaccinated, the unvaccinated can infect the
20 vaccinated and both the vaccinated and the unvaccinated can infect each other. Indeed,
21 the CDC has recommended that fully vaccinated Americans wear masks indoors if they
22 are in an area of substantial or high coronavirus transmission because of the
23 overwhelming evidence that fully vaccinated individuals can still transmit COVID-19.

24 39. Further, the CDC has also informed the public that it is not aware of how
25 long protection lasts for those who are vaccinated.

26 40. However, those who recover from COVID-19 infection possess immunity
27 as robust and durable (or more) as that acquired through vaccination. The existing clinical
28 literature overwhelmingly indicates that the protection afforded to the community from

1 natural immunity is at least as effective and durable as the efficacy levels of the most
2 effective vaccines to date.

3 41. Any policy regarding vaccination that does not recognize natural immunity
4 is irrational, arbitrary, and counterproductive to community health. This is certainly true
5 of GWD’s vaccination policy, which does not provide for an exemption for naturally
6 immune individuals.

7 42. Now that every American adult, teenager, and child ages five and above has
8 free access to the vaccines, the case for a vaccine mandate is weaker than it once was.
9 Since the successful vaccination campaign already protects the vulnerable population,
10 the unvaccinated—especially recovered COVID-19 patients – pose a small threat to the
11 vaccinated because the vaccine reduces the likelihood of hospitalization or death after
12 infections to near zero. At the same time, natural immunity provides benefits that are
13 equal to, if not stronger than, the protection provided by vaccines.

14 **FIRST CAUSE OF ACTION**

15 **Violation of the Free Exercise Clause of the**
16 **First Amendment to the United States Constitution**

17 **(42 U.S.C. § 1983)**

18 43. Plaintiffs re-allege and incorporate by reference the allegations in the
19 preceding paragraphs 1 through 42, as if fully set forth herein.

20 44. The First Amendment’s Free Exercise Clause provides that “Congress shall
21 make no law respecting an establishment of religion or prohibiting the free exercise
22 thereof.”

23 45. Defendants’ vaccine policy, on its face and as applied, violates Plaintiffs’
24 First Amendment rights by interfering with Plaintiffs’ free exercise of religion.

25 46. Defendants’ vaccine policy, on its face and as applied, is not applicable
26 because as the Supreme Court recently reaffirmed, a policy that provides a “mechanism
27 for individualized exemptions” is not generally applicable. *Fulton v. City of*
28 *Philadelphia*, 141 S. Ct. 1868, 1877 (2021).

1 47. Here, Defendants’ vaccine orders and policies provide medical and
2 religious exemptions on an individualized basis, and the Defendants maintain the right
3 to extend exemptions in whole or in part or change their vaccine policy at any time. For
4 this reason, the policies are not applicable. And as a result, the policy must survive strict
5 scrutiny. *Id.* at 1881.

6 48. Defendants’ vaccine policy is not operationally neutral because it allows
7 contractors to work without COVID-19 vaccination.

8 49. Defendants’ policy also violates the First Amendment because it denies a
9 benefit or penalizes an employee for exercising a constitutional right. *See Koontz v. St.*
10 *Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013).

11 50. Defendants’ vaccine policy fails strict scrutiny because it is not narrowly
12 tailored to meet any compelling government interest.

13 51. As a direct and proximate result of Defendants’ violation of the First
14 Amendment, Plaintiffs have suffered, and will suffer, irreparable harm, including the loss
15 of their fundamental constitutional rights, entitling them to declaratory and injunctive
16 relief. Additionally, Plaintiffs are entitled to nominal damages, compensatory damages
17 in an amount to be proven at trial and attorneys’ fees under 42 U.S.C. § 1988.

18 SECOND CAUSE OF ACTION

19 Violation of California’s Fair Employment and Housing Act

20 (Cal. Gov’t Code § 12940)

21 52. Plaintiffs re-allege and incorporate by reference the allegations in the
22 preceding paragraphs 1 through 51, as if fully set forth herein.

23 53. FEHA makes it unlawful “[f]or an employer, because of the . . . religious
24 creed . . . of any person, to refuse to hire or employ the person or to refuse to select the
25 person for a training program leading to employment, or to bar or to discharge the person
26 from employment or from a training program leading to employment, or to discriminate
27 against the person in compensation or in terms, conditions, or privileges of employment.”
28 Cal. Gov’t Code § 12940(a).

1 54. FEHA requires employers to reasonably accommodate an employee's
2 religious beliefs and practices.

3 55. Defendants subjected Plaintiffs to religious discrimination by failing to act
4 in good faith before relegating them to unpaid leave and/or imposing a financial penalty
5 by forcing them to pay for COVID-19 tests.

6 56. Defendants failed to engage in reasonable negotiations and consider
7 previous COVID-19 contraction or whether Plaintiffs could limit their social
8 interactions.

9 57. As a direct and proximate result of Defendants' violation of FEHA,
10 Plaintiffs have suffered, and will suffer financial harm, entitling them to declaratory and
11 injunctive relief and damages.

12 **THIRD CAUSE OF ACTION**

13 **Violation of the Free Exercise Clause of the California Constitution**

14 **(Article 1, Section 4)**

15 58. Plaintiffs re-allege and incorporate by reference the allegations in the
16 preceding paragraphs 1 through 57, as if fully set forth herein.

17 59. Article I, Section 4 of the California Constitution states, "Free exercise and
18 enjoyment of religion without discrimination or preference are guaranteed."

19 60. "[T]he religion clauses of the California Constitution are read more broadly
20 than their counterparts in the federal Constitution." *Carpenter v. City and County of San*
21 *Francisco*, 93 F.3d 627, 629 (1996).

22 61. The vaccine policy imposes a substantial burden on Plaintiffs' free exercise
23 of religion by forcing them to take a religiously objectionable vaccine or face
24 punishment.

25 62. As a direct and proximate result of Defendants' violation of the California
26 Constitution, Plaintiffs have suffered, and will suffer, irreparable harm, including the loss
27 of their fundamental constitutional rights, entitling them to declaratory and injunctive
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1 relief and damages. Plaintiffs are entitled to recover their costs and attorneys' fees under
2 California Code of Civil Procedure section 1021.5.

3 **FOURTH CAUSE OF ACTION**

4 **Violation of the Equal Protection Clause of the**
5 **Fourteenth Amendment to the United States Constitution**
6 **(42 U.S.C. § 1983)**

7 63. Plaintiffs re-allege and incorporate by reference the allegations in the
8 preceding paragraphs 1 through 62, as if fully set forth herein.

9 64. The Fourteenth Amendment to the United States Constitution guarantees
10 Plaintiffs' right to equal protection of the law.

11 65. Defendants' vaccine policy, on its face and as applied, is an unconstitutional
12 abridgement of Plaintiffs' right to equal protection.

13 66. Defendants' vaccine policy discriminates against religion. The policy
14 requires Plaintiffs to wear an N95 mask and take bi-weekly tests because they have a
15 religious exemption. The employees are also restricted from entering certain buildings.

16 67. The policy also treats contractors more favorably than Plaintiffs.

17 68. The government may not treat Plaintiffs differently because of their
18 religion. Such discrimination is subject to strict scrutiny.

19 69. Defendants have no rational, much less compelling, reason to discriminate
20 against Plaintiffs.

21 70. As a direct and proximate result of Defendants' violation of the Fourteenth
22 Amendment, Plaintiffs have suffered, and will suffer, irreparable harm, including the loss
23 of their fundamental constitutional rights, entitling them to declaratory and injunctive
24 relief. Additionally, Plaintiffs are entitled to nominal damages, compensatory damages
25 in an amount to be proven at trial and attorneys' fees under 42 U.S.C. § 1988.

1 **FIFTH CAUSE OF ACTION**

2 **Deprivation of Civil Rights Under 42 U.S.C. § 1983 (*Monell*)**

3 71. Plaintiffs re-allege and incorporate by reference the allegations in the
4 preceding paragraphs 1 through 70, as if fully set forth herein.

5 72. The unlawful actions, as alleged in the First through Fourth Causes of
6 Action, were carried out by individuals who sit at the top of their departments within
7 GWD and who qualify as final policymakers under *Monell v. Department of Social*
8 *Services*. The GWD Board of Supervisors ratified the COVID-19 vaccine policy.

9 73. Furthermore, other departments within GWD, such as human resources,
10 were directed to deny Plaintiffs' requested accommodations. Therefore, GWD is liable
11 for any damages that may be awarded against Defendants for their unlawful actions.

12 74. Plaintiffs are also entitled to recover their costs and attorneys' fees under 42
13 U.S.C. § 1988.

14 **PRAYER FOR RELIEF**

15 **WHEREFORE**, Plaintiffs pray for relief as follows:

- 16 1. Nominal damages for violation of their civil rights;
 - 17 2. For damages in an amount to be proven at trial;
 - 18 3. For a declaratory judgement that GWD's vaccine policy is unconstitutional;
 - 19 4. For a declaratory judgement that GWD's vaccine policy violates the FEHA;
 - 20 5. For temporary, preliminary, and permanent injunctive relief enjoining
21 Defendants from enforcing GWD's vaccine policy and taking any adverse employment
22 action against the Plaintiffs based upon their refusal to take the COVID-19 vaccine or
23 booster;
 - 24 6. For costs, attorneys' fees, and interest, as allowed by law; and
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1 7. For such other relief the Court determines is proper.
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3 Respectfully submitted,
4 ADVOCATES FOR FAITH & FREEDOM

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6 Dated: June 1, 2022

7 /s/ Mariah Gondeiro, Esq. _____
8 Mariah Gondeiro
9 Attorney for Plaintiffs
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EXHIBIT “1”

MEMORANDUM



Date: October 13, 2021

To: All Staff

From: John McInnes, General Manager
David Matson, Assistant General Manager

Handwritten signatures in blue ink. The first signature is "JMc" and the second is a stylized signature of "DM".

Subject: COVID-19 Vaccine Policy Update

As you may be aware, a draft COVID-19 vaccine policy that was designed to support the District's continued ability to fulfill its obligation to deliver essential lifeline water service to the community was discussed, considered, and adopted by the Board of Directors last night. Attached is the new policy and the Board's Resolution.

The adopted policy requires staff, contractors, and vendors to be fully vaccinated against COVID-19 by Friday, November 26, 2021. Employees not yet vaccinated will be paid for time off to obtain each dose of the vaccine; please notify your manager in advance of any related scheduled appointments. Further, please be aware that the policy does allow employees to request a religious or medical exception or qualifying deferral within the next 30 days. Please contact Maricela Plascencia in Human Resources should you have any questions or wish to request such an exception or qualifying deferral.

Thank you for the essential work you do every day. Your continued dedication and commitment to fulfilling the District's mission to ensure a safe and reliable water supply to the Goleta Valley, especially during this trying and unprecedented period in history, is certainly recognized and appreciated.

EXHIBIT “ ”

RESOLUTION NO. 2021-24

Introduced by the Administration Committee

**A RESOLUTION OF THE GOLETA WATER DISTRICT BOARD
OF DIRECTORS ADOPTING A VACCINE POLICY**

WHEREAS, the Goleta Water District (“District”) is an essential service provider with a duty to provide and maintain a safe workplace; and

WHEREAS, protecting the health and safety of District employees has been critical to maintaining essential lifeline water service to the Goleta Valley during the pandemic, and all employees are classified as disaster service workers under the California Constitution;

WHEREAS, studies have found that unvaccinated individuals are significantly more likely to become infected, hospitalized, or die from the virus;

WHEREAS, this policy is designed to safeguard the health of District employees, customers, and visitors; and to further the District's role in protecting the community at large from infectious diseases, such as COVID-19, that may be reduced by vaccinations;

NOW THEREFORE BE IT FOUND, DETERMINED AND RESOLVED by the Board of Directors of the Goleta Water District as follows:

1. Adopts a vaccine policy to take effect on November 26, 2021.

PASSED AND ADOPTED by the Board of Directors of the Goleta Water District this 12th day of October, 2021 by the following roll call vote:

AYE: Borah, Hanson, Rosen, Werner

NAY: Evans

ABSENT:

ABSTAIN:

ATTEST:



JOHN D. MCINNES
DISTRICT SECRETARY



KATHLEEN WERNER, PRESIDENT
BOARD OF DIRECTORS

Goleta Water District Vaccine Policy

Policy Summary

Purpose

In accordance with the Goleta Water District's status as an essential service provider; its duty to provide and maintain a safe workplace; and its duty to comply with local, state, and federal public health guidance and direction, the District has adopted the following COVID-19 Vaccination Program policy. This policy is designed to safeguard the health of District employees, customers, and visitors; and to further the District's role in protecting the community at large from infectious diseases, such as COVID-19, that may be reduced by vaccinations. This policy will comply with all applicable laws and is based on guidance from the Centers for Disease Control and Prevention and state and local health authorities, as applicable.

Scope

The District encourages all Covered Individuals to get the COVID-19 vaccine as soon as they are eligible. Paid time off is provided for Covered Individuals to get vaccinated. In addition, this policy provides for a COVID-19 Vaccination Program under which any Covered Individual is required, subject to limited deferrals, exceptions, and associated use of personal protective equipment (PPE) and other non-pharmaceutical interventions, to be fully vaccinated against COVID-19 within 45 days of policy adoption. Within 45 days of adoption, the District will require all Covered Individuals to either submit proof of vaccination or formally request an Exception or Deferral. All Covered Individuals will be required to be fully vaccinated, and obtain subsequent booster shots as set forth herein, unless a previous Exception or Deferral has been approved. Individuals not in compliance with this policy will not be allowed to physically access District facilities or vehicles, will be required to use their accrued leave, if any, and may then be placed on unpaid leave pending compliance with this policy. Full vaccination, unless an Exception or Deferral has been approved, is a requirement to maintain employment with the District.

This policy was provided to SEIU Local 620 for review, prior to its adoption, consistent with the provisions of the current Memorandum of Understanding. Implementation is subject to the meet and confer process with SEIU.

Definitions

Covered Individuals: Covered Individuals are all current and future District employees, temporary employees, probationary workers, and all regularly assigned workers provided by vendors or contractors. A person accessing a District facility as a member of the public is not a Covered Individual.

COVID-19 Vaccination Policy: District policy and procedure intended to reduce the incidence of SARS-CoV-2 infection, its variant forms, and resultant COVID-19 disease and its possible effects.

Deferrals: An approved delay of applicability of vaccination requirements based on pregnancy. Pregnancy Deferral will extend throughout the term of the pregnancy and until the Covered Individual returns to work, as applicable.

Disability: A physical or mental disorder or condition that limits a major life activity, and any other condition recognized as a disability under applicable law. "Disability" includes but is not limited to pregnancy or a related medical condition for which reasonable accommodation may be requested consistent with employee rights and District obligations under the law.

Exceptions: An approved exception to COVID-19 Vaccination Policy following the reasonable accommodation process, from the District's COVID-19 vaccination requirements based on a Disability or Religious Objection. For purposes of this policy, a person who is pregnant is not eligible on that basis alone for an Exception, but is eligible for a Deferral for the duration of pregnancy.

Fully Vaccinated: A person is considered "fully vaccinated" when two weeks have passed since they completed a COVID-19 Vaccine series (for example one (1) dose of the Janssen/J&J vaccine, or two (2) doses within no more than 12 weeks of the Moderna or Pfizer vaccine); as well as any boosters consistent with manufacturer instructions and applicable agency approval, authorization, or listing.

Reasonable Accommodations: Following the interactive process, an adjustment made by the District to the requirements of the COVID-19 Vaccination Program for a Covered Individual who has received an approved Exception or Deferral to allow them to physically access District facilities without impairing the health and safety objectives of this policy. Covered Individuals may be granted Exceptions or Deferrals on a case-by-case basis. Determination of whether there

is a reasonable accommodation is an individualized, interactive process which depends upon the circumstances of each case.

Religious Objection: A Covered Individual's objection to receiving the COVID-19 vaccine based on that person's sincerely held religious belief, practice, or observance.

Vaccine: Vaccines must be FDA approved, or have an emergency use authorization from the FDA.

Policy Text

This policy supplements, and does not replace, policies or guidelines requiring District personnel, vendors, and members of the public to observe non-pharmaceutical interventions, as further described below and in previous communications.

COVID-19 Vaccination Program

All Covered Individuals must participate in the COVID-19 Vaccination Program by providing proof they are Fully Vaccinated within 45 days or, where qualified and applicable, submitting a request for Exception or Deferral no later than 30 days after policy adoption.

Procedures

Covered Individuals will be notified by the Human Resources division as to the type of vaccination(s) covered by this policy and the timeframe(s) for having the vaccine(s) administered. For those who are unvaccinated or partially vaccinated, the Goleta Water District will provide a list of locations to assist Covered Individuals in obtaining the vaccine on their own.

Goleta Water District will cover the cost of vaccines for all unvaccinated and partially vaccinated Covered Individuals. Vaccinations should be run through employees' health insurance where applicable and otherwise be submitted for reimbursement.

All Covered Individuals not already fully vaccinated will be paid for time taken to obtain each dose of the vaccine. Individuals are to notify their managers in advance and work with their managers to schedule appropriate time to comply with this policy.

Before the stated deadlines to be vaccinated have expired, Covered Individuals will be required to provide either proof of vaccination or an approved reasonable accommodation to be exempted from the requirements.

Request for Exception/Deferral or Reasonable Accommodation

Covered Individuals qualified for and in need of an exemption from this policy due to a medical reason or because of a sincerely held religious belief must submit a completed Request for Accommodation form to the Human Resources department to begin the interactive process as soon as possible after vaccination deadlines have been announced, but no later than 30 days after policy adoption.

If an Exception or Deferral is granted, Human Resources will notify the Covered Individual of the approval and the associated expiration date, if any, within 10 days.

If a request for Exception or Deferral is denied, the Covered Individual will be notified within 10 days, and will have 7 days from the denial to begin the vaccination process by getting a first dose before the District takes personnel action, and is expected to promptly become Fully Vaccinated.

Proof of Vaccination

Covered Individuals must submit proof of their vaccination or a District approved Exception or Deferral to Human Resources, by providing: (i) in the case of one who has been Fully Vaccinated, a copy of their CDC vaccination card; official documentation issued by a State vaccine registry; or an official medical record; or (ii) in the case of one who has received an Exception or Deferral, documentation that the Exception or Deferral has been granted.

Proof of vaccination may be subject to audit.

Non Pharmaceutical Interventions Remain in Effect

Irrespective of vaccine status, the District continues to require masking indoors at all District facilities and in District vehicles except when eating or drinking, in a private non-shared office with the door closed, or when alone in a vehicle. There are exceptions for Covered Individuals who cannot wear face coverings due to a medical or mental health condition or disability, or for specific tasks which cannot feasibly be performed with a face covering.

Superseding Public Health Directives.

A federal, state, or local public health agency with jurisdiction may impose a COVID-19 vaccination requirement that lawfully supersedes this policy.

Please direct any questions regarding this policy to your department manager or the Human Resources division.

EXHIBIT “ ”



4699 HOLLISTER AVENUE
GOLETA, CALIFORNIA 93110-1999
TELEPHONE 805/964-6761
FAX 805/964-7002

November 19, 2021

VIA HAND DELIVERY, EMAIL, & US MAIL

Jason Wayne
5149 San Lorenzo
Santa Barbara, CA 93111
Via Email: jwayne@goletawater.com

Re: Vaccine Policy: Reasonable Accommodation

Dear Mr. Wayne:

This is in response to your request for an exemption from the District's Vaccine Policy adopted on October 12, 2021, and to follow up on our communications regarding the same, including our in-person meetings.

Exemption/Accommodation Request and Discussion Held

You submitted your exemption requests in writing on October 18 and November 9, 2021. You requested exemptions on the bases of a verification from a health care practitioner describing a medical concern with your being vaccinated, and on your sincerely held religious beliefs. We held meetings on November 8 and November 16, 2021, and discussed both your exemption requests and the accommodations you sought in relation to your current employment with the Goleta Water District as a Meter Specialist II, in order to be relieved from the obligation to be vaccinated against Covid-19 under the Vaccine Policy. Present during these meetings were yourself, Maricela Plascencia, and Francis Chan.

At the meetings we discussed your seeking these exemptions. You stated that you were seeking the accommodation of working 100% remotely in order not to interact with others who do not want to be exposed to unvaccinated employees.

We understand that your sincerely-held religious belief currently precludes you from receiving the Covid-19 vaccine as required by the District's Vaccine Policy, and we do not question the verification from your health care practitioner describing a medical concern with your being vaccinated. However, although qualifying for these exemptions, your proposed accommodation must be reasonable and not present an undue hardship for the District's enforcement of its Vaccine Policy.

The District has determined that your requested accommodation is not a reasonable accommodation. First, working remotely is not reasonable for your position as a Meter Specialist II. The essential functions of your position as a Meter Reader II require presence at District facilities as well as accessing private residences, businesses, and other customer premises; and interacting with colleagues and the public. In addition, working 100% remotely as you request would require a wholesale reworking of your job duties,

Jason Wayne

Vaccine Policy: Reasonable Accommodation

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as well as additional ongoing efforts and expense for the duration of the Vaccine Policy. For these reasons, remote work is not reasonable and would present an undue hardship to the District in its implementation of the Vaccine Policy.

The objective of the Vaccine Policy is to provide and maintain a safe workplace and put in place the most effective safeguard for the health of our employees and the public we serve from the hazard of Covid-19. Vaccination is a vital tool to reduce the presence and severity of Covid-19 cases in the workplace and the community. Employees are required by the Vaccine Policy to become fully vaccinated against Covid-19. Employees not complying with this policy are at greater risk of contracting the virus and exposing staff and the public to the Covid-19 virus. Covid-19 poses serious and potentially life-threatening risks to those who contract the virus, as is well-documented by public health authorities. It is the District's responsibility to implement measures to protect the safety and well-being of our staff and the public we serve, to reasonably prevent unsafe conditions which could both threaten lives and cause significant disruptions to our day-to-day operations through outbreaks and quarantining. The risk to employee and public health and safety that would be continued by your requested accommodation of maintaining the current status quo of non-pharmaceutical interventions is inconsistent with the purpose and intended effect of the Vaccine Policy.

Offer of Reasonable Accommodations

To accommodate your request for exemption from the Vaccine Policy, the District offers you the following reasonable accommodations, in the alternative:

I. Testing and heightened precautions. The District offers to continue you as an employee in good standing as long as you adhere to the following conditions and protocols for Covid-19 testing and other heightened precautions:

A. **Testing requirements.** As an unvaccinated employee, you must undertake Covid-19 testing to maximize the health and safety of others in the workplace, as follows:

- 1) Accepted Type of Test:
 - a) Antigen Test (Rapid Test) – with results to be provided within an hour.
 - b) Nucleic acid amplification tests (NAATS/PCR Test) cannot be accepted unless the results are available within an hour.
- 2) Testing facilities
 - a) Third party clinic or local/state public health agency.
 - b) Results must be provided to the District (either via hand-delivery to HR or emailed directly to hr@goletawater.com) within an hour of the results being received, and prior to reporting to work for that day.
 - c) No “home or self” test allowed.

Jason Wayne

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3) Testing frequency

- a) Need to complete a test every Monday and Wednesday. In the event the assigned testing day is a holiday, the test should be conducted the next day.
- b) Testing must be conducted with no shorter than 3 days or longer than 4 days between testing days.

4) If test "positive:"

- a) Need to isolate (stay at home) in accordance to guidelines set by the Santa Barbara County Public Health Department.
- b) If the Rapid Test was initially utilized, employees, at their own option, may subsequently take the PCR Test. The results of the PCR Test will supersede the results from the Rapid Test.
- c) District HR will initiate the contact tracing process to determine if other District employees are impacted.

5) Time used for testing

- a) Testing is to be done on the employee's own time.
- b) If testing is during scheduled work hours, prior approval is needed from the employee's Supervisor/Manager to take the time off.
- c) If testing is so approved to occur during scheduled work hours, employees may use paid time off (sick, vacation, or CTO) or be in unpaid status.

6) Cost of testing

The cost of the test, if any, will be the responsibility of the employee.

Testing Sites in Santa Barbara County include, but are not limited to:

Sansum Urgent Care Center at 215 Pesetas Lane provides rapid testing with results available within 20 minutes (currently, at a cost of \$100 per test).

QuickCovidTest.org provides 30 minute rapid antigen testing and 1 hour PCR testing (currently, starting at \$125 and \$275 per their website).

Employees are responsible for verifying that the information provided above is accurate, and selecting testing that meets the requirements set forth in this policy.

B. Heightened precautions.

1) Masking

- a) You must wear an N-95 mask at all times while working.
- b) These masks will be provided by the District.
- c) Exception is when eating or drinking, or when you are alone in a vehicle.

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2) Entry into District buildings and facilities

You may not come into the District Administration Building without prior authorization.

3) Isolation protocols

a) You may only meet directly with colleagues or the public when outside of a building or vehicle, unless pre-authorized, and so long as required PPE is worn and proper physical distancing is maintained.

b) During any such meetings you must wear required PPE and maintain physical distancing from others at all times.

C. Termination of this accommodation

1) Any failure to comply with the requirements of this accommodation of testing and heightened precautions will subject you to written warning.

2) Any repeated failure after receipt of a written warning may subject you to termination of this accommodation, depending upon the circumstances.

3) If this accommodation is terminated, the District will meet with you again to discuss your status, and at a minimum will provide you the option to transition to the leave of absence accommodation as described below, or the opportunity to come under full compliance with the Vaccine Policy.

4) Additionally, the District reserves the right to temporarily suspend the reasonable accommodation of testing and heightened precautions, which will be accompanied by a discussion with you in advance, in the event:

a) There is a work-related COVID-19 case;

b) Guidance provided by local, State or Federal public health officials supersede the provisions provided in the reasonable accommodation.

5) This accommodation will be terminated if the Vaccine Policy is discontinued by the District Board of Directors.

II. Leave of absence. Alternatively, the District offers to continue you as an employee in good standing, on leave, during the effective period of the Vaccine Policy up to one year.

1) The District will guarantee your return to active status in your current classification and assignment for up to 90 (ninety) days from the beginning of your leave. If during this 90 days, you become fully-vaccinated, you may immediately return to active employment in your current classification.

2) After this 90 day period, as soon as you become fully-vaccinated you will be eligible for any current open positions where you meet the minimum job qualifications and requirements, and will also be placed on a priority list for consideration for any future job openings where you meet the minimum job qualifications and requirements.

3) This leave will be unpaid unless you determine to use any paid time off accruals you may have (sick leave, vacation leave, and/or CTO). If you do decide to use your accruals to remain in paid status, you may use accruals from your accrual bank(s) in any order you wish.

4) If the Vaccine Policy is still in effect one year from the beginning of your leave, you may request a continuation of this accommodation.

5) The District offers this leave to you to commence November 27, 2021.

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- 6) This accommodation will be terminated if the Vaccine Policy is discontinued by the District Board of Directors.

We realize that circumstances may change for both you and the District. It is important to ensure that this accommodation continues to be effective and not pose an undue hardship on the District; therefore the need to continue or modify the accommodations will be monitored on an ongoing basis. Should circumstances change, you will be notified and offered to meet with the District to discuss possible changes to the accommodation agreement. Similarly, if your circumstances change during any accommodation you agree to as set forth herein, including if you become fully vaccinated or if you accept employment elsewhere, please contact the District immediately.

Please respond in writing by November 26, 2021 (in other words, one week from today) by emailing the District at hr@golewater.com whether you accept or reject this offer. If you accept an offered accommodation, please indicate which of the two, alternative accommodations you accept. If you reject both of these offered accommodations, you will have seven calendar days from the date of your rejection to begin the vaccination process. If you reject both accommodations, or if you do not respond, the District will initiate unpaid leave for you effective your next scheduled working day after November 26, pending your request to utilize your existing accrued paid time off from any bank you wish.

If you accept the accommodation of a leave of absence, we will be in touch with additional information regarding the potential use of your accrued paid time off and how an unpaid leave affects healthcare benefits.

If you have any questions about the accommodation being offered to you, please do not hesitate to contact me at fchan@golewater.com or (805) 879-4615.

Sincerely,



Francis Chan

Attachments:

District Vaccine Policy and accompanying Board Resolution (Memo to Employees 10/13/21)
Exemption Request Form