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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 REOPEN SAN DIEGO;
12 Plaintiff,
13 v.
14 CITY OF SAN DIEGO; and DOES 1–
15 50,
16 Defendants.
17

Case No. **'22CV208 W AHG**

COMPLAINT

JURY TRIAL DEMANDED

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1 **I. INTRODUCTION.**

2 1. Since March 2020, lives have been upended by the government’s extraordinary
3 response to stop the spread of the SARS-CoV-2 virus that causes COVID-19. At times the
4 government has myopically focused on an attempt to prevent the spread of the virus (which has
5 often proven to be an exercise in futility) at the expense of civil liberties. On November 29,
6 2021, the City of San Diego (“City”) took its response one step farther, interfering with its
7 citizens’ rights to participate in their own government unless they prove they have been fully
8 vaccinated for COVID-19, effective December 1, 2021.

9 2. Plaintiff ReOpen San Diego (“Plaintiff”) brings this lawsuit on behalf of its
10 many members who are citizens of the City that are now barred from serving their city and
11 fellow citizens as an elected official, a member of a commission or board, or even as a
12 volunteer, if they have chosen not to be vaccinated for COVID-19.

13 3. Plaintiff seeks redress of the City’s multiple violations of its citizens’ protected
14 rights, including the right to privacy under the United States Constitution and California
15 Constitution, the right to freedom of association and speech under the First Amendment of the
16 United States Constitution, the right to substantive and procedural due process, and the right to
17 equal protection. Additionally, the City is in violation of the Brown Act and its own Municipal
18 Charter.

19 **II. VENUE AND JURISDICTION.**

20 4. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
21 §§ 1331 and 1343 and is brought pursuant to 42 U.S.C. §§ 1983 and 1988 because the
22 Defendants are violating Plaintiff’s members’ civil rights and privileges and immunities secured
23 by the United States Constitution and federal law.

24 5. Supplemental jurisdiction of this court is invoked pursuant to 28 U.S.C § 1367
25 over the state law claims which are so related and intertwined to the federal claims in this action
26 that the form part of the same case or controversy under Article III of the United States
27 Constitution.

28 6. Venue is proper in this Court under 28 U.S.C § 1391(b)(1) because all

1 Defendants reside in this judicial district and 28 U.S.C. § 1391(b)(2) because a substantial part
2 of the events or omissions giving rise to the claim occurred in this judicial district.

3 7. This Court is authorized to grant declaratory relief under the Declaratory Relief
4 Act, 28 U.S.C. §§ 2201 and 2202, and implemented through the Federal Rules of Civil
5 Procedure, Rule 57.

6 8. This Court is authorized to grant Plaintiff's prayer for preliminary injunctive
7 relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

8 9. This Court has the authority to award attorneys' fees and costs associated with
9 this action pursuant to 42 U.S.C. §§ 1988 and 2000e-5(k), California Code of Civil Procedure §
10 1021.5.

11 **III. JURY DEMAND.**

12 10. Plaintiff demands a trial by jury on all claims so triable.

13 **IV. PARTIES.**

14 11. Plaintiff is a nonprofit organization that is committed to peacefully
15 opening, without encumbrance, every school, business, and house of worship in San Diego
16 County. Plaintiff is supported by the approximately 20,000 San Diego County residents who are
17 its members.

18 12. Plaintiff has standing to bring this action on behalf of its members who vote in
19 elections for City officials, intend to run for office to serve as an elected official, intend to apply
20 to serve as a member of a commission or board, intend to volunteer for the City, intend to speak
21 at a City meeting, or intend to enter into a City building and have not been "fully vaccinated"
22 for COVID-19 and/or choose not to share their private medical information including their
23 COVID-19 vaccination status with the City.

24 13. Defendant City is a public entity organized and existing under and by virtue of
25 the laws of the State of California. Defendant City is governed by eight councilmembers who
26 are elected by voters who reside in their individual district, along with the mayor, who is elected
27 by all voters in the City.

28

1 **V. FACTS.**

2 14. On February 19, 2020, the Board of Supervisors of the County of San Diego
3 ratified a declaration of local health emergency related to COVID-19.

4 15. On March 4, 2020, Governor Gavin Newsom declared a state of emergency in
5 response to COVID-19.

6 16. On March 12, 2020, the Mayor of the City of San Diego proclaimed a local
7 emergency related to COVID-19, which was ratified by the Council on March 17, 2020 by
8 Resolution No. R-312895.

9 17. To date, neither the Board of Supervisors, Governor nor Mayor have proclaimed
10 an end to the state of emergency. Thus, a state of emergency has been in effect throughout the
11 State of California and the County and City of San Diego for nearly two years. But “[s]ociety’s
12 interest in slowing the spread of COVID-19 cannot qualify as compelling forever, for if human
13 nature and history teach anything, it is that civil liberties face grave risks when governments
14 proclaim indefinite states of emergency.” *Doe v. Mills*, 142 S. Ct. 17, 21 (2021) (Gorsuch, J.,
15 dissenting).

16 18. Nearly two years after the initial declaration of the COVID-19 state of
17 emergency, and four months after Gov. Newsom proclaimed an end to closures that marked the
18 state’s “tiered” response to the COVID-19 pandemic, on October 18, 2021, the City of San
19 Diego City Council approved a 3-Stage Reopening Plan (“Plan”). The Plan has not yet been
20 fully implemented but contemplates the complete and indefinite bar of members of the public
21 who are not vaccinated for COVID-19 from access to government buildings and in-person
22 attendance at all city meetings.

23 19. On November 29, 2021, as part of its efforts to implement “Step 2” the Plan, the
24 City of San Diego City Council approved emergency Ordinance No. 2022-53, which requires all
25 elected officials, board members, commission members and volunteers who attend public
26 meetings to first prove they are “fully vaccinated” for COVID-19 (“Ordinance”).

27 20. The Ordinance was approved during a special meeting under the purported
28 authority of Article XV, § 295 of the City Charter, which provides a mechanism for the Council

1 to approve emergency measure ordinances.

2 21. The Ordinance “requires all current City employees (all
3 unclassified/unrepresented employees, classified/unrepresented employees, and employees
4 represented by a recognized employee organization), elected officials, members of boards and
5 commissions, and authorized volunteers to be fully vaccinated against COVID-19 and provide
6 proof of their full vaccination by December 1, 2021, as a condition of continued employment or
7 service with the City.”

8 22. The City Council received 262 written public comments and numerous speakers
9 called in during the meeting to express their opinion – the vast majority in opposition; only 8 of
10 the written comments expressed support.

11 23. Eight out of nine Councilmembers voted to approve the Ordinance. Consistent
12 with state and national policies related to COVID-19 mandates, the Ordinance received partisan
13 support, with only Councilmember Chris Cate – the sole Republican councilmember – voting
14 “no.”

15 24. The Ordinance and Plan together operate to exclude an entire category of
16 individuals from meaningful participation in city government – whether by serving as an elected
17 official, board member, volunteer, or even (eventually) attending a city meeting or engaging in
18 city business in a city building – due solely to a personal medical decision whether to be
19 vaccinated for COVID-19 (or an individual’s refusal to disclose their COVID-19 vaccine
20 status).

21 25. The Ordinance and Plan are also blatantly illegal, as they violate the U.S.
22 Constitution and state and local law and offend the foundational principles of democracy.

23 26. On December 15, 2021, Plaintiff formally demanded that Defendant rescind its
24 illegal Ordinance and Plan via correspondence to Mayor Todd Gloria and the members of the
25 City Council, with a copy to City Attorney Mara Elliott. Defendant did not respond to Plaintiff’s
26 demand.

27 27. As of January 26, 2022, 79.5% of San Diego County residents are “fully
28 vaccinated.” Therefore, the Ordinance and Plan together exclude 20.5% of San Diego County

1 residents from meaningful participation in city government.

2 28. According to official County of San Diego records summarizing COVID-19
3 cases between December 7, 2021 to January 5, 2022, as of January 18, 2022, there were 65,492
4 cases of COVID-19 among individuals who were fully vaccinated and 62,872 cases of COVID-
5 19 among individuals who were not fully vaccinated. Among fully vaccinated individuals,
6 91.6% reported symptoms, while 86.1% of individuals who were not fully vaccinated reported
7 symptoms.

8 29. According to a recent study by the CDC, survivors of a previous COVID-19
9 infection were better protected against a reinfection and related hospitalization than vaccinated
10 individuals who had not been previously infected. Leon, TM, et al., *COVID-19 Cases and*
11 *Hospitalizations by COVID-19 Vaccination Status and Previous COVID-19 Diagnosis –*
12 *California and New York, May – November 2021*, MMWR Morb. Mortal. Wkly. Rep. (ePub
13 Jan. 19, 2022).

14 **VI. CAUSES OF ACTION.**

15 **FIRST CAUSE OF ACTION**
16 **Violation of the Fourth and Fourteenth Amendments of the**
17 **United States Constitution – Substantive Due Process (42 U.S.C. § 1983)**

18 30. All the preceding paragraphs are hereby incorporated and realleged as if fully set
19 forth herein.

20 31. Defendant implemented and is enforcing the subject Ordinance and Plan by
21 excluding individuals, including Plaintiff's members, who are not fully vaccinated for COVID-
22 19 from holding elected office, serving on boards, commissions or as volunteers. Defendant
23 intends to implement its Plan by excluding all individuals, including Plaintiff's members, who
24 wish to attend city meetings or engage in city business inside any city building, unless they have
25 provided proof that they are fully vaccinated for COVID-19.

26 32. Defendant's current and prospective conduct and such implementation and
27 enforcement violates Plaintiff's members' constitutional rights and was not done under color of
28 law. Multiple protected rights are at issue.

33. Defendant did not and does not have an adequate reason for infringing upon

1 Plaintiff's members' liberty. When fundamental rights are at issue, the government will satisfy
2 substantive due process only if it can demonstrate that the Ordinance is necessary to achieve a
3 compelling government interest. The Ordinance must be narrowly tailored and by the least
4 restrictive means available.

5 34. The Fourteenth Amendment has been made applicable to states and their
6 governments through the Fourth Amendment to the United States Constitution.

7 35. 42 U.S.C., § 1983 expressly authorizes lawsuits to enforce federal constitutional
8 rights.

9 **A. Right to refuse unwanted medical treatment.**

10 36. The Fourth Amendment of the U.S. Constitution also protects a person's right to
11 refuse unwanted medical treatment. This right is deeply rooted in our nation's history, tradition,
12 and practice, so as to acquire special protection under the Fourteenth Amendment.

13 37. All individuals have a protected liberty interest in their right to bodily integrity.
14 *Rochin v. California*, 342 U.S. 165 (1952). The government can only invade this interest if it
15 satisfies the strict scrutiny standard.

16 38. The Ordinance and Plan, which require COVID-19 vaccination in order to serve
17 as an elected official, board member, volunteer, and even (eventually) citizens who wish to
18 attend a city meeting or engage in city business inside any city building, infringes upon the right
19 to bodily integrity.

20 39. The COVID-19 vaccine does not prevent infection or transmission, but it may
21 provide personal protection against severe illness and hospitalization. Thus, the COVID-19
22 vaccine does not confer a sufficient community benefit sufficient to justify the government's
23 interest in requiring that all elected officials, board members, volunteers, and citizens who wish
24 to attend city meetings or engage in city business inside any city building provide proof of
25 vaccination for COVID-19.

26 40. The Ordinance does not permit elected officials, board members, volunteers, and
27 citizens who wish to attend city meetings or engage in city business inside any city building to
28 submit proof of recovery from COVID-19, which provides more durable immunity than

1 vaccination.

2 41. The Ordinance does not provide the least restrictive means nor is it narrowly
3 tailored to achieve the government’s alleged compelling interest of preventing the spread of
4 COVID-19 throughout the community.

5 42. Plaintiff’s members have a Constitutional right to refuse unwanted medical
6 treatment. *Cruzan v. Director Mo. Dept. of Health*, 497 U.S. 261, 278–79 (1990) (“The forcible
7 injection of medication into a nonconsenting person’s body represents a substantial interference
8 with that person’s liberty.”). Receiving a vaccine is a personal decision, especially when the
9 required vaccine is newly developed, and many individuals have already been infected with and
10 have recovered from COVID-19 and therefore have durable and robust immunity.

11 43. While the Supreme Court in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905),
12 upheld the state’s right to require its citizens to submit to smallpox vaccination, it did so under
13 limited circumstances. In *Jacobson*, the Supreme Court held that the state could properly levy a
14 monetary fine against individuals who did not submit to the state’s smallpox vaccination
15 requirement. Importantly, however, individuals who did not submit to the smallpox vaccination
16 requirement did not lose any fundamental rights, including access to serve or petition their
17 government. Unvaccinated individuals were not barred from holding office, serving their
18 communities, attending government meetings, or conducting business in government offices, as
19 they are under the Ordinance and Plan.

20 44. The Ordinance and Plan require elected officials, board members and volunteers,
21 and even (eventually) citizens who wish to attend a city meeting or engage in city business
22 inside any city building, to be “fully vaccinated” for COVID-19. This requirement violates
23 Plaintiff’s members’ fundamental rights to refuse unwanted medical treatment. The government
24 cannot demonstrate that it has used the least restrictive means to achieve its alleged compelling
25 interest in preventing the spread of COVID-19 throughout the community.

26 45. The Ordinance and Plan infringe upon an individual’s fundamental liberties,
27 which are protected by the Fourteenth Amendment’s Due Process Clause and “extend to certain
28 personal choices central to individual dignity and autonomy, including intimate choices defining

1 personal identity and beliefs,” such as the decision whether to receive a vaccination. (*Obergefell*
2 *v. Hodges* (2015) 576 U.S. 644, 645.) The right of an individual to make such choices are so
3 fundamental that the state must accord them its respect. (*Id.*)

4 46. The Ordinance and Plan violate Plaintiff’s members’ right to refuse medical
5 treatment. This is a guaranteed right and can only be paused or disregarded under limited
6 circumstances which the government cannot establish.

7 **B. Right to privacy.**

8 47. Bodily autonomy is a critical component of the constitutional right to privacy.
9 *Griswold v. Connecticut*, 381 U.S. 479 (1965). The right to privacy is “no less important than
10 any other right carefully and particularly reserved to the people.” *Id.* at 485.

11 48. Plaintiff’s members have a constitutionally protected right to make decisions
12 concerning their bodies under the U.S. Constitution.

13 49. Plaintiff’s members have the right to make the decision whether to receive a
14 COVID-19 vaccine. Plaintiff’s members also have the right to decide not to disclose their
15 personal medical history (i.e., whether they have been “fully vaccinated” for COVID-19) if they
16 so choose.

17 50. Despite these rights, Defendant will force all individuals who wish to serve as
18 elected officials, board members, volunteers, and those who wish to attend city meetings or
19 engage in city business inside any city building to provide proof that they have been fully
20 vaccinated for COVID-19 as a condition of their service or attendance at city meetings or prior
21 to engaging in city business inside any city building. In doing so, Defendant is violating
22 Plaintiff’s members’ rights to privacy.

23 51. Defendant cannot demonstrate that it has narrowly tailored its Ordinance or Plan
24 in an effort to preserve an individual’s privacy, nor has it used the least restrictive means to
25 achieve its alleged compelling interest of preventing the spread of COVID-19 throughout the
26 community.

27 52. Plaintiff is entitled to a Declaration that the Ordinance and Plan violate
28 Plaintiff’s members’ substantive due process rights to bodily integrity.

1 due process through the Fourteenth Amendment. *Rochin v. California* 342 U.S. 165 (1952).

2 63. Plaintiff's members' right to refuse unwanted medical treatment is also protected
3 by procedural due process through the Fourteenth Amendment. *Cruzan v. Director, Mo. Dept.*
4 *of Health*, 497 U.S. 261, 278–79 (1990).

5 64. Plaintiff's members' rights to freedom of speech, freedom of association, and
6 freedom of petition are protected by procedural due process through the Fourteenth
7 Amendment.

8 65. Defendant has deprived Plaintiff's members of the right to bodily integrity,
9 privacy rights, the right to refuse medical treatment, and the right to freedom of speech,
10 association, and petition. All these deprivations have occurred or will occur without any due
11 process of law.

12 66. Plaintiff seeks a Declaration from this Court that Defendant has violated the
13 procedural due process clause of the U.S. Constitution by approval and implementation of the
14 Ordinance and Plan.

15 67. Plaintiff is entitled to a preliminary and permanent injunctive relief staying
16 application and enforcement of the Ordinance and Plan.

17 68. Plaintiff is entitled to recover its reasonable costs of suit and attorney fees. 42
18 U.S.C. § 1988; Cal. Code Civ. Proc. § 1021.5.

19 69. Plaintiff is entitled to such other relief the Court deems just and proper.

20 **THIRD CAUSE OF ACTION**

21 **Violation of the Fourteenth and First Amendments of the United States Constitution**

22 70. The First Amendment to the United States Constitution states: "Congress shall
23 make no law ... abridging the freedom of speech" This fundamental right to free speech
24 applies to the states through the Fourteenth Amendment's Due Process Clause. *Aguilar v. Avis*
25 *Rent A Car System, Inc.*, 21 Cal.4th 121, 133–34 (1999).

26 71. "The freedom of speech and of the press, which are secured by the First
27 Amendment against abridgment by the United States, are among the fundamental personal
28 rights and liberties which are secured to all persons by the Fourteenth Amendment against
abridgment by a State." *Thornhill v. Alabama*, 310 U.S. 88, 95 (1940).

1 72. The Ordinance’s requirement that all elected officials, committee members,
2 members of commissions and, eventually, members of the public who attend city meetings or
3 conduct city business in city buildings, must be vaccinated for COVID-19, effectively prohibits
4 individuals who have chosen not to be vaccinated for COVID-19 from running for elected
5 office, serving as representatives of all of the citizens of the City of San Diego (including
6 citizens who are vaccinated or unvaccinated for COVID-19) and/or seeking redress from their
7 government and thus violates an individual’s right to free speech.

8 73. “No right is more precious in a free country than that of having a voice in the
9 election of those who make the laws under which, as good citizens, we must live. Other rights,
10 even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no
11 room for classification of people in a way that unnecessarily abridges this right.” *Wesberry v.*
12 *Sanders*, 376 U.S. 1, 17–18 (1964).

13 74. There is no right more basic in our democracy than the right to participate in
14 electing our political leaders. Citizens can exercise that right in a variety of ways: They can run
15 for office themselves, vote, urge others to vote for a particular candidate, volunteer to work on a
16 campaign, and contribute to a candidate’s campaign. *McCutcheon v. FEC*, 572 U.S. 185, 191
17 (2014).

18 75. “[S]peech concerning public affairs is more than self-expression; it is the essence
19 of self-government.” *Garrison v. Louisiana*, 379 U.S. 64, 74–75 (1964).

20 76. The Ordinance and Plan infringe upon the First Amendment “right to vote freely
21 for the candidate of one's choice is of the essence of a democratic society, and any restrictions
22 on that right strike at the heart of representative government.” *Reynolds v. Sims*, 377 U.S. 533,
23 555 (1964).

24 77. The Ordinance and Plan also infringe upon an individual’s First Amendment
25 freedom of association, which means “not only that an individual voter has the right to associate
26 with the political party of her choice, but also that a political party has a right to identify the
27 people who constitute the association.” *Eu v. San Francisco County Democratic Cent. Comm.*,
28 489 U.S. 214, 224 (1989).

1 78. “It is beyond debate that freedom to engage in association for the advancement
2 of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause
3 of the Fourteenth Amendment, which embraces freedom of speech.” *Tashjian v. Republican*
4 *Party*, 479 U.S. 208, 214 (1986).

5 79. By removing an entire category of individuals from eligibility for elected office,
6 the Ordinance interferes with the fundamental freedom of association.

7 80. As evidenced by the Council’s strictly partisan vote to approve the Ordinance,
8 personal medical decisions whether to get vaccinated for COVID-19 and philosophical beliefs
9 whether one’s COVID-19 vaccination status should be shared with others or whether
10 individuals should be judged and/or ostracized based on that status, are particularly partisan.

11 81. Similarly, certain ethnic, racial, and socioeconomic groups are more resistant to
12 COVID-19 vaccination than others. For example, based upon current County of San Diego
13 Health and Human Services data, Black or African American and American Indian or Alaska
14 Native populations are significantly less vaccinated for COVID-19 as a group than Hispanic or
15 Latino, Asian, and White populations. Under the City’s Ordinance, the less vaccinated
16 populations will become more disenfranchised.

17 82. The Ordinance insidiously discriminates against individuals who are registered
18 as Republicans – and even more so against conservative Republicans, who are far less likely to
19 be vaccinated for COVID-19 than any Democrat and against racial and ethnic minorities – by
20 restricting access to elected office and narrowing the pool of candidates for voters and
21 restricting the right of citizens to serve as a member of a City board or commission, to
22 volunteer, and/or to attend City meetings and conduct City business in City buildings.

23 83. “[F]reedoms of speech and of press, of assembly, and of worship may not be
24 infringed on such slender grounds. They are susceptible of restriction only to prevent grave and
25 immediate danger to interests which the State may lawfully protect.” *West Virginia State Bd. of*
26 *Educ. v. Barnette*, 319 U.S. 624, 639 (1943).

27 84. Even if Defendant could satisfy its burden to show that a COVID-19 vaccination
28 mandate is necessary to protect the community from a virus that is now endemic, our

1 Constitution and decades of Supreme Court precedent firmly establish that the state and its
2 municipalities cannot engage in such invidious discrimination that so blatantly restricts the pool
3 of candidates for public office and chills its citizens' freedom of association and expression by
4 restricting the ability of unvaccinated individuals from participating in government activity
5 without violating both the First Amendment and the Fourteenth Amendment of the Constitution,
6 as Defendant has done here.

7 85. "No right is more precious in a free country than that of having a voice in the
8 election of those who make the laws under which, as good citizens, we must live. Other rights,
9 even the most basic, are illusory if the right to vote is undermined." *Williams v. Rhodes*, 393
10 U.S. 23, 31 (1968).

11 86. "The State has the responsibility to observe the limits established by the First
12 Amendment rights of the State's citizens, including the freedom of political association." (*Wash.*
13 *State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008).

14 87. "The loss of First Amendment freedoms, for even minimal periods of time,
15 unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

16 88. A highly paternalistic approach is generally suspect. *Eu v. San Francisco County*
17 *Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989).

18 89. As Chief Justice Warren wrote: "Our form of government is built on the premise
19 that every citizen shall have the right to engage in political expression and association. This
20 right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic
21 freedoms in America has traditionally been through the media of political associations. Any
22 interference with the freedom of a party is simultaneously an interference with the freedom of
23 its adherents. All political ideas cannot and should not be channeled into the programs of our
24 two major parties. History has amply proved the virtue of political activity by minority,
25 dissident groups, who innumerable times have been in the vanguard of democratic thought and
26 whose programs were ultimately accepted. Mere unorthodoxy or dissent from the prevailing
27 mores is not to be condemned. The absence of such voices would be a symptom of grave illness
28 in our society." *Sweezy v. New Hampshire*, 354 U.S. 234, 250–51 (1957).

1 96. Under the Fourteenth Amendment of the U.S. Constitution, “no person shall be
2 denied the equal protection of the laws.” If a law neither burdens a fundamental right nor targets
3 a suspect class, we will uphold the legislative classification so long as it bears a rational relation
4 to some legitimate end. *Romer v. Evans*, 517 U.S. 620, 631 (1996).

5 97. “A bare ... desire to harm a politically unpopular group cannot constitute a
6 *legitimate* governmental interest.” *United States Dep’t of Agric. v. Moreno*, 413 U.S. 528, 534
7 (1973).

8 98. “It is not within our constitutional tradition to enact laws of this sort. Central
9 both to the idea of the rule of law and to our own Constitution’s guarantee of equal protection is
10 the principle that government and each of its parts remain open on impartial terms to all who
11 seek its assistance.” *Romer v. Evans*, 517 U.S. 620, 633 (1996).

12 99. Defendant’s Ordinance and Plan treats people who are vaccinated for COVID-19
13 favorably by permitting them to hold elected office, serve on a board or commission, volunteer,
14 attend a city meeting or visit city government buildings, while excluding people who are not
15 vaccinated for COVID-19, including people who have recovered from COVID-19, from the
16 ability to hold elected office, serve on a board or commission, volunteer and, eventually, from
17 attending City meetings and entering City buildings. The Ordinance and Plan were enacted to
18 achieve the alleged government interest in preventing the spread of COVID-19 through the
19 community. However, people who are vaccinated for COVID-19 can and do become infected
20 with and spread COVID-19. In fact, people who are vaccinated for COVID-19 are more likely
21 to become infected with and spread COVID-19 than people who have recovered from COVID-
22 19. Moreover, people who are vaccinated for COVID-19 become infected with and spread
23 COVID-19 at a rate that is equal to or at least similar to those who are not vaccinated for
24 COVID-19.

25 100. Thus, the Ordinance and Plan are not rationally related to serving an alleged
26 legitimate government interest of preventing the community spread of COVID-19.

27 101. The Ordinance and Plan, on its face and as applied, has caused, is causing and
28 will continue to cause irreparable harm and actual and undue hardship to Plaintiff’s members.

1 Plaintiff's members have no adequate remedy at law to prevent the continuing violation of their
2 constitutional and statutory liberties.

3 102. Plaintiff is entitled to a Declaration that the Ordinance and Plan violates
4 Plaintiff's members' rights to freedom of association and expression, along with their right to
5 petition the government for redress of grievances.

6 103. Plaintiff is entitled to preliminary and permanent injunctive relief requiring
7 Defendant to allow Plaintiff to freely exercise its freedom of association and right to petition the
8 government for redress of grievances.

9 104. Plaintiff is entitled to recover its reasonable costs of suit and attorney fees. 42
10 U.S.C. § 1988; Cal. Code Civ. Proc. § 1021.5.

11 105. Plaintiff is entitled to such other relief the Court deems just and proper.

12 **FIFTH CAUSE OF ACTION**
13 **Violation of the California Constitution, art. I, § 1 (Right to Privacy)**

14 106. All the preceding paragraphs are hereby incorporated and realleged as if fully set
15 forth herein.

16 107. Under article I, section 1 of the California Constitution, "All people are by
17 nature free and independent and have inalienable rights. Among these are enjoying and
18 defending life and liberty, acquiring, possessing, and protecting property, and pursuing and
19 obtaining safety, happiness, and privacy."

20 108. The right to privacy is an inalienable right.

21 109. The California Constitution expressly grants Californians a right of privacy,
22 which extends to their medical records. *Grafilo v. Cohansohet*, 32 Cal.App.5th 428, 428
23 (2019).

24 110. Plaintiff's members have a constitutionally protected right to make decisions
25 concerning their bodies.

26 111. Plaintiff's members have the right to make the decision whether to receive a
27 COVID-19 vaccine. Plaintiff's members have a reasonable expectation that their personal
28 medical decisions, including the decision to be vaccinated for COVID-19, will be kept private.

112. Plaintiff's members also have the right to decide not to disclose their personal

1 medical history (i.e., whether they have been “fully vaccinated” for COVID-19) if they so
2 choose.

3 113. Despite these rights, Defendant will force all individuals who wish to serve as
4 elected officials, board members, volunteers, and those who wish to attend city meetings or
5 engage in city business inside any city building to provide proof that they have been fully
6 vaccinated for COVID-19 as a condition of their service or attendance at city meetings or prior
7 to engaging in city business inside any city building. In doing so, Defendant is violating
8 Plaintiff’s members’ rights to privacy.

9 114. Invasion of a privacy interest can only be justified by a legitimate competing
10 interest.

11 115. Defendant cannot demonstrate that it has narrowly tailored its Ordinance or Plan
12 in an effort to preserve an individual’s privacy, nor has it used the least restrictive means to
13 achieve its alleged compelling interest of preventing the spread of COVID-19 throughout the
14 community.

15 116. Plaintiff is entitled to a Declaration that the Ordinance and Plan violate
16 Plaintiff’s members’ rights to privacy under the Article 1, Section I of the California
17 Constitution.

18 117. Plaintiff is entitled to preliminary and permanent injunctive relief requiring
19 Defendant to cease from taking any further action to implement the Ordinance and Plan and
20 consequently violate Plaintiff’s members rights.

21 118. Plaintiff is entitled to recover its reasonable costs of suit and attorney fees. 42
22 U.S.C. § 1988; Cal. Code Civ. Proc. § 1021.5.

23 119. Plaintiff is entitled to such other relief the Court deems just and proper.

24 **SIXTH CAUSE OF ACTION**
25 **Violation of the Brown Act (Cal. Gov. Code § 54950 et seq.)**

26 120. All the preceding paragraphs are hereby incorporated and realleged as if fully set
27 forth herein.

28 121. Pursuant to the Brown Act, “All meetings of the legislative body of a local
agency shall be open and public, and all persons shall be permitted to attend any meeting of the

1 legislative body of a local agency in person, except as otherwise provided in this chapter. Local
2 agencies shall conduct meetings subject to this chapter consistent with applicable state and
3 federal civil rights laws, including, but not limited to, any applicable language access and other
4 nondiscrimination obligations.” Cal. Gov. Code § 54953(a).

5 122. The Ordinance and Plan violate the Brown Act by precluding members of the
6 public from attending any meeting of any legislative body of the City in person and unlawfully
7 discriminating against members of the public who are not vaccinated for COVID-19.

8 123. The Ordinance and Plan, on its face and as applied, has caused, is causing and
9 will continue to cause irreparable harm and actual and undue hardship to Plaintiff’s members.
10 Plaintiff’s members have no adequate remedy at law to prevent the City’s continuing violation
11 of the Brown Act.

12 124. Plaintiff is entitled to a Declaration that the Ordinance and Plan violates the
13 Brown Act.

14 125. Plaintiff is entitled to preliminary and permanent injunctive relief requiring
15 Defendant to allow Plaintiff to freely exercise its freedom of association and right to petition the
16 government for redress of grievances.

17 126. Plaintiff is entitled to recover its reasonable costs of suit and attorney fees. 42
18 U.S.C. § 1988; Cal. Code Civ. Proc. § 1021.5.

19 127. Plaintiff is entitled to such other relief the Court deems just and proper.

20 **SEVENTH CAUSE OF ACTION**
21 **Violation of Municipal Charter**

22 128. The Ordinance and the Plan also violate the City’s Charter by adding
23 requirements for individuals who choose to run for elective office, choose to serve the city on a
24 board or commission, and/or choose to petition the city government for redress of grievances.

25 129. Article II, section 7 of the Charter provides: “An elective officer of the City shall
26 be a resident and elector of the city. In addition, every Council-member shall be an actual
27 resident and elector of the district from which the Council-member is nominated.... The
28 Council shall establish by ordinance minimum length of residency requirements for candidacy
to elective office, whether by appointment or election.” Because the Charter does not authorize

1 the Council to establish any additional requirements for candidates who run for elective office
2 — such as a requirement that any elected official be fully vaccinated for COVID-19 — the
3 Ordinance is ultra vires and violates the Charter through the addition of a requirement that must
4 be satisfied by those candidates who ultimately win an election to assume an elected position.

5 130. Article XIV, section 211 of the Charter establishes minimum requirements for
6 every officer or member of a Committee, Board or Commission to take and subscribe to an oath
7 or affirmation as provided by the Constitution or General Law of the State. Notably, however,
8 this section does not require every officer or member to provide proof of vaccination for
9 COVID-19. Since the Ordinance adds an additional requirement for members of committees,
10 boards and commissions, i.e., vaccination for COVID-19, it is ultra vires and violates the
11 Charter.

12 131. Additionally, the Ordinance and the Plan violate article XIV, section 216.1 of the
13 Charter, which provides for broad and open access to the government, giving the people the
14 right to instruct their representatives, to petition the government for redress of grievances, and
15 to assemble freely to consult for the common good, as well as the right of open access to
16 meetings of public bodies.

17 132. By imposing a requirement that all individuals share their private medical
18 information as a condition that must be satisfied to gain access to city offices and meetings, the
19 Ordinance and the Council's Plan further violates section 216.1, which also guarantees the right
20 of privacy provided by section 1 of the California Constitution.

21 133. Because the Ordinance and Plan restrict broad and open access to the
22 government, to only those who provide proof of vaccination for COVID-19, it necessarily
23 violates both the letter and intent of the Charter.

24 134. Because the Ordinance and Plan infringe upon the right of all people to petition
25 the government and assemble freely, to petition the government for redress, and to participate in
26 its processes, to only those who provide proof of vaccination for COVID-19, it necessarily
27 violates both the letter and intent of the Charter.

28 135. The Ordinance and Plan, on its face and as applied, has caused, is causing and

1 will continue to cause irreparable harm and actual and undue hardship to Plaintiff's members.
2 Plaintiff's members have no adequate remedy at law to prevent the continuing violation of the
3 City's Charter.

4 136. Plaintiff is entitled to a Declaration that the Ordinance and Plan violates the
5 City's Charter.

6 137. Plaintiff is entitled to preliminary and permanent injunctive relief requiring
7 Defendant to allow Plaintiff to freely exercise its freedom of association and right to petition the
8 government for redress of grievances.

9 138. Plaintiff is entitled to recover its reasonable costs of suit and attorney fees. 42
10 U.S.C. 1988; Cal. Code Civ. Proc. 1021.5.

11 139. Plaintiff is entitled to such other relief the Court deems just and proper.

12 **VII. PRAYER FOR RELIEF.**

13 Wherefore, Plaintiff prays for relief as follows:

14 1. That the Court issue a preliminary injunction pending trial restraining and
15 enjoining Defendant and all its officers, agents, employees, attorneys,
representatives, and other individuals acting on its behalf from:

16 Enforcing the Ordinance as to elected officials, committee members,
17 board members, commissioners, and individuals who attend city meetings
or engage in city business in city buildings and implementing
18 discriminatory portions of the Plan (as specified above); and

19 Barring any individuals who are otherwise qualified from serving as an
elected official, committee member, board member, or commissioner;
20 attending city meetings; or engaging in city business in city buildings
because they have not provided proof that they are "fully vaccinated" for
21 COVID-19;

22 2. That the Court issue a permanent injunction upon judgment on the same terms as
set forth in paragraph 1, above;

23 3. That the Court enter a declaratory judgment in accordance with the requested
24 relief for each cause of action;

25 4. That the Court adjudge, decree, and declare the rights and other legal obligations
and relations within the subject matters here in controversy so that such
26 declaration shall have the same full force and effect of a final judgment;

27 5. That the Court award reasonable attorney fees and costs pursuant to 42 U.S.C
1988 and 2000e-5(k) and California Code of Civil Procedure § 1021.5; and

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6. For such other and further relief as this Court deems equitable and appropriate.

Dated: February 15, 2022

AANNESTAD ANDELIN & CORN LLP



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Arie L. Spangler

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