

RESOLUTION NO. 2672

Establishing Mandatory Covid-19 Vaccination for Employees and Volunteers.

WHEREAS, the coronavirus disease 2019 (COVID-19) and its variants are caused by a virus that spreads easily from person to person which may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic; and

WHEREAS, on February 29, 2020, Governor Inslee issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout the state of Washington as a result of COVID-19 outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington state; and

WHEREAS, on March 13, 2020, the President of the United States issued a presidential proclamation declaring that the COVID-19 pandemic a national emergency in the United States; and

WHEREAS, on March 19, 2020, the Town Council adopted Resolution 2544, adopting emergency procedures as a result of the COVID-19 pandemic; and

WHEREAS, COVID-19 continues to spread throughout Washington State and is present in San Juan County, significantly threatening the life and health of persons in San Juan County and the Town of Friday Harbor; and

WHEREAS, although COVID-19 continues as an ongoing and present threat, life-saving vaccines have made a difference and have altered the course of the pandemic in fundamental ways; and

WHEREAS, COVID-19 vaccines are effective in reducing infection and serious disease, widespread vaccination is the primary means we have as a county to protect everyone, including persons who cannot be vaccinated for medical reasons, youth who are not eligible to receive a vaccine, immunocompromised individuals, and other vulnerable persons; and

WHEREAS, COVID-19 vaccinations have been available in San Juan County from January 2021 to the present, and since April 15, 2021, all Washingtonians over the age of 16 have been eligible to receive free COVID-19 vaccinations from county providers, medical clinics and local pharmacies; and

WHEREAS, COVID-19 vaccines were evaluated and found to be safe and effective in clinical trials involving tens of thousands of participants and met the U.S. Food & Drug Administration's rigorous scientific standards for safety, effectiveness, and manufacturing quality needed to support emergency use authorization; and, to date, more than 356 million doses of COVID-19 vaccines have been given in the United States with approximately 13,200 of those doses administered in San Juan County, and serious safety problems and long-term side effects are rare; and

WHEREAS, the Pfizer-BioNTech vaccine, which originally received emergency use authorization from the FDA, has now been granted full approval effective August 23, 2021 for individuals 16 years of age and older; and

WHEREAS, the Town Council believes that it is the duty of every employer to protect the health and safety of employees by establishing and maintaining a healthy and safe work environment and by requiring all employees to comply with health and safety measures; and

WHEREAS, on July 6, 2021, the Office of Legal Counsel of the United State Department of Justice issued a legal opinion stating that governments were not prohibited by federal law from imposing vaccination mandates, even those vaccines authorized under U.S. Food and Drug Administration Emergency Use Authorizations; and

WHEREAS, COVID-19 continues to spread, is currently infecting increasing numbers of people in San Juan County, and is a particular threat to those who remain unvaccinated;

NOW, THEREFORE, BE IT RESOLVED by the Town Council, based on the foregoing recitals and the continued existence of a State of Emergency in San Juan County as described in Resolution 08-2020, which remains in effect, as follows:

1. Prohibitions. This resolution prohibits any employee or volunteer from engaging in work for the Town of Friday Harbor after December 7, 2021 if the employee or volunteer has not been fully vaccinated against COVID-19 and provided proof thereof to the Town. Employees who are not vaccinated by December 7, 2021, may be suspended without pay or terminated from employment with the Town, unless granted a medical and/or religious exemption as provided in Section 2 below.
2. Exemptions from Vaccine Requirement.
 - a. Employees and volunteers of the Town are not required to get vaccinated against COVID-19 if they are entitled under the Americans With Disabilities Act (ADA), Title VII of the Civil Rights Act of 1964 (Title VII), the Washington Law Against Discrimination (WLAD), or any other applicable law to a disability-related reasonable accommodation or a sincerely held religious belief accommodation to the requirements of this resolution. As provided in the ADA, Title VII, and the WLAD, the Town is not required to provide such accommodations if they would cause undue hardship.
 - b. To the extent permitted by law, before the Town will provide a disability-related reasonable accommodation to the requirements of this resolution, any employee or volunteer requesting the accommodation must provide documentation from an appropriate health care or rehabilitation professional authorized to practice in the State of Washington stating that the individual has a disability that necessitates an accommodation and the probable duration of the need for the accommodation, on a form provided by the Town.
 - c. To the extent permitted by law, before the Town will provide a sincerely held religious belief accommodation to the requirements of this resolution, any employee or volunteer requesting such accommodation must document that the request for an accommodation has been made and the document must include a statement regarding the way in which the requirements of this resolution conflict with the religious observance, practice, or belief of the individual.

d. A policy for Religious Exemption, an Application for Religious Exemption, and an Application for Medical Exemption are attached to this Resolution as exhibits A, B, and C, respectively.

3. Acceptable Proof of Full Vaccination Against COVID-19: Where required above, Town employees and volunteers must provide proof of full vaccination against COVID-19 by providing one of the following: (a) a CDC COVID-19 Vaccination Record Card or clearly legible photo of the card; (b) Documentation of vaccination from a health care provider or electronic health record; or (c) State immunization information system record. Personal attestation is not an acceptable form of verification of COVID-19 vaccination.

4. Availability of vaccines: Town employees and volunteers may choose to seek vaccinations from the San Juan County Health Department or other providers and as of the date of this resolution, those vaccines are provided free of charge. In the unlikely event the employee incurs a charge, the employee may submit a request to Human Resources for reimbursement. Employees needing time off to acquire the vaccine shall be granted a day off for each required dose and this time off shall not reduce that employee's sick or vacation leave accrued.

5. Severability. The specific prohibitions in this resolution are severable and do not apply to the extent that compliance with a prohibition would violate (a) any U.S. or Washington constitutional provision; (b) federal statutes or regulations; (c) any conditions that apply to the county's receipt of federal funding; (d) state statutes; or (e) applicable orders from any court of competent jurisdiction.

ADOPTED this 7th day of October 2021.

TOWN OF FRIDAY HARBOR



Farhad Ghatan, Mayor

SEAL of the
Town of Friday Harbor

ATTEST:



Amy E. Taylor, Town Clerk



MEDICAL EXEMPTION REQUEST FORM

The Town of Friday Harbor is committed to building an inclusive and welcoming work environment.

The Town will provide reasonable accommodations to qualified applicants and employees with an underlying medical condition and/or disability, unless providing such accommodations would pose an undue hardship.

Employee Name: _____

Employee Job Title: _____

FOR THE HEALTHCARE PROVIDER

Dear Healthcare Provider

Your patient is employed with the Town of Friday Harbor and has disclosed they have a medical condition or disability which may prevent them from receiving an authorized COVID-19 vaccine.

We are requesting you complete the following form to help us to understand whether your patient has a medical condition or disability which prevents them from receiving an authorized COVID-19 vaccine.

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. "Genetic information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services. 29 CFR § 1635.8(b)(1)(i)(B).

1. Are you licensed to practice in the state of Washington

___ YES ___ NO

2. Describe your professional experience and/or educational background that qualify you to respond to questions about your patient's request for a medical exemption from the COVID-19 vaccination requirement.

3. Your patient has disclosed they have a medical condition or disability that may prevent them from receiving an authorized COVID-19 vaccine. Does your patient suffer from such a condition?

___ YES ___ NO

4. If you responded yes to question 3, what is the anticipated duration of the medical condition or disability which prevents your patient from receiving an authorized COVID-19 vaccination?

Permanent Temporary

5. If temporary, provide a timeline indicating when we can expect your patient to be able to receive an authorized COVID-19 vaccination.

6. In your medical opinion, would a leave of absence be effective in allowing your patient to recover prior to receiving an authorized COVID-19 vaccine so they may return to the full duties of their position at the conclusion of the leave?

YES NO

7. In your medical opinion, if a leave of absence is indicated, what is the anticipated duration of leave required that would permit your patient to be able to receive an authorized COVID-19 vaccine?

I, Dr. _____, declare that, in my professional opinion, the above responses are true and accurate to the best of my knowledge and ability.

Physician Signature: _____ Date: _____

Printed Physician Name: _____

Please send your response via your patient. We would very much appreciate your response **as soon as possible**. Town of Friday Harbor employees are required to be fully vaccinated with one of the authorized COVID-19 vaccines by November 1, 2021, or have an accommodation in place by November 1, 2021. To avoid delay, if agreeable to you and your patient, your responses may be emailed to duncanw@fridayharbor.org. If you have any questions, please do not hesitate to contact us at the same email address. Employees may contact Town Human Resources with any questions.



RELIGIOUS EXEMPTION REQUEST FORM

The Town of Friday Harbor is committed to building an inclusive and welcoming work environment. The Town will reasonably accommodate religious practices of its employees and prospective employees in compliance with federal and state law. However, the Town is not obligated to grant an accommodation specifically requested by an employee or prospective employee in every circumstance.

Please complete and return to duncanw@fridayharbor.org. If you prefer not to complete this form, please contact Human Resources to schedule a phone or virtual meeting to make your accommodation request and engage in interactive dialogue.

Employee Name: _____ Employee Job Title: _____

1. Describe the religious belief, practice, or observance that is the basis for your request for a religious accommodation.

2. Does your religious belief, practice, or observance lead you to object to:
 - a. All medical treatment – Yes / No
 - b. All vaccinations – Yes / No
 - c. Only the COVID-19 vaccination – Yes / No

3. Briefly explain how your sincerely held religious belief, practice, or observance conflicts with the COVID-19 vaccination requirement.

4. Briefly describe the accommodation you are requesting.

5. If the request for accommodation is temporary, please identify the anticipated date the accommodation will no longer be needed: _____

I certify that I have read and understood the information provided in this request, and that I have truthfully completed it based on my knowledge, information, and belief. I understand that this form will be stored separately from my personnel file.

Employee Signature

Date

Human Resources Review	
Reviewed by: _____	Approved / Denied (circle one)
Date: _____	

COVID-19 Vaccination Requirement Guidance on Evaluating Religious Accommodation Requests

This document is based on guidance developed by the Office of Superintendent of Public Instruction in consultation with the Washington State Attorney General's Office.

Background

An employee who has a sincerely held religious belief that prevents them from being vaccinated against COVID-19 may request an accommodation by notifying the Human Resources office. The employee must actively participate in the interactive accommodation process and provide all information reasonably needed to evaluate the request. The employee shall provide the religious accommodation request in writing. Written documentation of the request and interactive process is required.

Defining religion when assessing a request for religious accommodation

Under federal and state law, "religion" is broadly defined. It includes traditional, organized religions such as Christianity, Judaism, Islam, Hinduism, and Buddhism. A religious belief may be individualistic. It includes religious beliefs that are new, uncommon, not part of a formal church or sect, or only held by a small number of people. Moral or ethical beliefs about what is right and wrong that are sincerely held with the strength of traditional religious views may meet the definition of a sincerely held religious belief. However, social, political, or economic philosophies or personal preferences are not "religious" beliefs under the law. The religious accommodation request form asks about the employee's religious beliefs, observances, or practices.

Questions about an employee's request for religious accommodation

Federal guidance on religious accommodation encourages employers to presume that an employee's request is based on a sincere belief in a religion, unless the employer has a valid, objective reason to question the employee. The employer should review the request on its own merits, initiate discussion with the employee about possible accommodation, and assess whether accommodation is possible. Employees have an obligation to actively participate in the accommodation process and must cooperate with an employer's attempt to accommodate

their needs. In addition, the employee must show that the proposed accommodation would enable the employee to perform the essential functions of their position and is practical for the employer.

The definition of religion is broad and protects beliefs, observances, and practices with which the employer may be unfamiliar. According to the U.S. Equal Opportunity Employment Commission's (EEOC) guidance on religious discrimination, the employer should ordinarily assume that an employee's request for religious accommodation is based on a sincerely held religious belief. However, if an employee requests accommodation and an employer has an objective basis for questioning either the religious nature or the sincerity of a particular belief, observance, or practice, the employer would be justified in seeking additional supporting information.

In determining whether an employee's religious belief is sincerely held, a limited initial inquiry could include objective, general questions without delving too far into an employee's reasons for a particular belief and without requiring input from an outside source such as a formal religious leader. Such inquiries might include asking how long the employee has followed the professed belief or what constitutes the basic tenets of the religion. The employer does not have to accept a high-level statement of religious observance that provides no details; an employer can ask about the specific belief, tenet, or observance that conflicts with the vaccination requirement. The religious accommodation request form includes a question about the conflict presented.

If employers have doubts as to the sincerely held religious belief, they should proceed with caution and obtain legal advice before seeking additional supporting information including third-party verification (e.g., requesting verification from the employee's pastor, rabbi, church elder, etc.).

In evaluating a request for accommodation, employers are not required to only consider the accommodation that the employee believes is the best one. However, if an employer is not willing or able to accept the accommodation proposed by the employee, the employer must offer a reasonable alternative. A reasonable accommodation can be determined only by analyzing the specific facts surrounding a particular request. Generally, an accommodation is unreasonable if it (1) does not remove the conflict between the workplace and the employee's need for accommodation, (2) discriminates against the employee, or (3) compromises the employee's access to the terms, conditions, and privileges of employment. Federal guidance recommends that if more than one accommodation is possible, the employer should offer the accommodation that will least disadvantage the employee's opportunities in the workplace.

Determining if a religious accommodation imposes more than a minimal burden on operation of the business (“undue hardship”)

To establish “undue hardship,” the employer must demonstrate that the accommodation would require the employer to bear more than a *de minimis* cost. It is incumbent upon the employer to establish that an accommodation is an undue hardship. An employer cannot rely on hypothetical hardship when faced with an employee’s religious obligation that conflicts with scheduled work but should rely on objective data.

Considerations of an undue hardship may include

- Type of workplace
- Nature of employee’s duties
- Actual work disruption
- A request that is unduly difficult, substantial, or disruptive to implement
- A request that causes a lack of staffing
- Cost of the accommodation and number of employees needing the accommodation
- Number of employees impacted by permitting the requested accommodation including seniority systems and collectively bargained rights, e.g., other employees had CBA seniority right to choose their preferred jobs and shifts, and accommodation in this case would interfere with those rights
- Size and operating costs of the business impact of the accommodation on the Town as a whole, not just the impact on a specific work group or site
- Safety concerns and security considerations

Seek legal advice from your legal counsel if you need assistance.

Resources

U.S. Equal Employment Opportunity Commission (EEOC) Section 12, Religious Discrimination (updated January 15, 2021):
<https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination>

EEOC Technical Guidance, “What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws” (updated May 28, 2021):
<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#K.6>

Washington Human Rights Commission, “Guide to Religion and Washington State Nondiscrimination Laws” (updated July 2015):
https://www.hum.wa.gov/sites/default/files/public/99_Religion%20and%20non-discrimination.pdf

Title VII of the Civil Rights Act of 1964:
<https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964>

Revised Code of Washington 49.60, Washington Law Against Discrimination:
<https://app.leg.wa.gov/rcw/default.aspx?cite=49.60>