

**INTERCITY TRANSIT
RESOLUTION NO. 03-2021
UNIVERSAL VACCINATION REQUIREMENT**

WHEREAS, on February 29, 2020, the Governor of the State of Washington issued Proclamation 20-05, and subsequent amendments, proclaiming a State of Emergency for all counties throughout Washington State as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

WHEREAS, on March 12, 2020, the Thurston County Board of County Commissioners adopted a resolution proclaiming a state of emergency within Thurston County due to COVID-19, and adopted subsequent resolutions extending the emergency until October 31, 2021; and

WHEREAS, on December 14, 2020, the Federal Drug Administration issued an Emergency Use Authorization for the use of the Pfizer COVID-19 vaccine, and subsequent authorizations for Moderna and Johnson & Johnson vaccines; and

WHEREAS, COVID-19 vaccines are effective in reducing infection, hospitalizations, and deaths, widespread vaccination is the primary means to reduce the emergence of variants and protect everyone's health including vulnerable individuals who cannot be vaccinated for medical reasons, youth who are not yet eligible to receive a vaccine, immunocompromised individuals, our elders and persons in health care facilities, long-term care facilities and other congregate care facilities from COVID-19 infections; and

WHEREAS, on July 6, 2021, the Office of Legal Counsel of the United States Department of Justice issued a legal opinion stating that federal and state governments were not prohibited by federal law from imposing vaccination mandates, even when the only vaccines available are those authorized under the United States Food and Drug Administration Emergency Use Authorization; and

WHEREAS, on August 23, 2021, the United States Food and Drug Administration approved the Pfizer COVID-19 Vaccine for the prevention of COVID-19 disease in individuals 16 years of age and older moving it from Emergency Use Authorization to fully approved status; and

WHEREAS, after months of improving COVID-19 epidemiological conditions in Washington State, the emergence of highly contagious COVID-19 variants, including the “delta variant” that is at least twice as transmissible as the virus that emerged in late 2019, coupled with the continued significant numbers of unvaccinated people, have caused COVID-19 cases and hospitalizations to rise sharply among unvaccinated populations and have resulted in breakthrough infections in some fully vaccinated individuals; and

WHEREAS, the Washington State Department of Health defines low disease activity by having 25 cases per 100,000 population in the prior two weeks, and in the last two weeks prior to August 16, 2021, Thurston County had 360.1 cases per 100,000 population, which is considered high disease activity, with a test positivity rate of 13.4%, the highest since the beginning of the pandemic; and

WHEREAS, COVID-19 vaccinations have been available in Washington State from December 2020 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 a wide variety of providers at many locations; and

WHEREAS, as of August 4, 2021, nearly 4.4 million Washingtonians, about 70% of those eligible and 58% of the total population, had initiated their vaccine series, leaving 2.1 million eligible Washingtonians who were unvaccinated; and

WHEREAS, as of August 11, 2021, the vaccination rate in Thurston County was only 50.6% of the overall population with 53.3% having initiated at least one dose; and

WHEREAS, as of August 27, 2021, only 64.6% of Intercity Transit’s workers have been vaccinated; and

WHEREAS, on August 12, 2021, due to the increasing number of COVID-19 cases and the rapid spread of new cases due to the Delta variant, the Thurston County Health Officer issued a directive mandating the use of masks for both vaccinated and unvaccinated persons in indoor public spaces; and

WHEREAS, the worldwide COVID-19 pandemic and its persistence in Washington State continues to threaten the life and health of Washingtonians as well as the economy of Washington State, and remains a public disaster affecting life, health, property and the public peace; and

WHEREAS, on August 9, 2021, the Governor issued Proclamation No. 21-14 prohibiting any worker from engaging in work for a State Agency after October 18, 2021, if the worker has not been fully vaccinated against COVID-19 and encouraging local governments to do the same; and

WHEREAS, on August 20, 2021, the Governor issued Proclamation No. 21-14.1 extending the vaccination requirements of Proclamation No. 21-14 to workers in educational settings, including employees in all public and private universities, colleges, community colleges, and technical colleges and private career/vocational schools; public and private schools; and early learning and childcare programs, and which provided additional guidance relating to the vaccination requirements; and

WHEREAS, Intercity Transit workers face COVID-19 exposures, both at work from contact with co-workers, volunteers and members of the public and away from work due to contacts with persons in the community at-large; and

WHEREAS, 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 and volunteers to comply with health and safety measures; and

WHEREAS, individuals throughout the public transportation benefit area rely on Intercity Transit to provide timely and available transit services throughout the community to reach worksites and locations where essential services, including healthcare services, access to food and basic human needs; and

WHEREAS, Intercity Transit has a commitment to work with its labor organizations to meet collective bargaining obligations; and

WHEREAS, the Collective Bargaining Agreement between Intercity Transit and the Amalgamated Transit Union, Local 1765 AFL-CIO ("ATU") provides the right of Intercity Transit as an employer to establish, revise, and implement standards for hiring, classifications, promotion, quality of work, safety, materials, equipment, uniforms, appearance, methods and procedures. It is jointly recognized that the Employer must retain broad authority to fulfill and implement its responsibilities and may do so by oral or written work rule, existing or future; and

WHEREAS, the Collective Bargaining Agreement between Intercity Transit and the International Association of Machinists And Aerospace Workers District Lodge 160 ("IAM") provides the right of Intercity Transit as an employer to establish rules and

regulations as may be deemed necessary by the Employer for the management of the affairs of the Employer, and the Union has agreed that the employees shall be bound by and obey such rules and regulations insofar as they do not conflict with the terms of the Agreement; and

WHEREAS, Intercity Transit has determined that a universal vaccination requirement for its employees is essential to prevent the spread of COVID-19 and variants to protect worker safety and health and assure availability of sufficient staff to provide service to the public.

NOW, THEREFORE, to further our individual and collective duty to reduce the spread of COVID-19 in our community, the Intercity Transit Authority, the governing body of a public transportation benefit area established pursuant to Ch. 36.57A RCW, hereby resolves as follows:

1. Consistent with this Resolution, the General Manager is directed to establish work rules and policies providing for and implementing a universal vaccination requirement for all employees and volunteers of Intercity Transit.
2. All Intercity Transit employees and volunteers must be fully vaccinated no later than Friday, October 29, 2021, as a condition of employment or participation.
3. "Fully vaccinated" means you have received both doses of either the Moderna or Pfizer vaccine, or the single dose Johnson & Johnson no later than Friday, October 15, 2021, to allow for the two-week period in which the vaccines achieve their full effectiveness. This requirement applies to individuals who are working remotely, new employees, temporary employees, as well as volunteers.
4. Verification of vaccination must be received no later than 4 p.m., October 18, 2021. Employees who have not submitted their official federal or state proof of vaccination, or have an approved accommodation by 4 p.m., October 18, 2021, will be placed on unpaid leave. An administrative hearing will be scheduled for the employee to be separated from service as a non-disciplinary separation for failing to meet the qualifications of the job.
5. This requirement to obtain vaccination is a condition of employment and will include any recommended COVID-19 booster vaccines.
6. Exemptions from Vaccine Requirement.

a. Workers for Intercity Transit 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 for a disability-related reasonable accommodation or a sincerely held religious belief accommodation to the requirements of this Resolution. Nothing herein precludes Intercity Transit from providing disability-related reasonable accommodations and religious accommodations to the requirements of this order as required by the laws noted above. As provided in the ADA, Title VII, and the WLAD, Intercity Transit is not required to provide such accommodations if they would cause undue hardship.

b. To the extent permitted by law, before providing a disability-related reasonable accommodation to the requirements of this Resolution, Intercity Transit shall obtain from the individual requesting the accommodation 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.

c. To the extent permitted by law, before providing a sincerely held religious belief accommodation to the requirements of this Resolution, Intercity Transit shall document that the request for an accommodation has been made and such documentation must include a statement regarding the way in which the requirements of this order conflict with the religious observance, practice, or belief of the individual.

d. Any persons exempted from the vaccination requirement established by this resolution shall be subject to frequent testing for COVID-19, as determined by the General Manager, as a condition for the accommodation provided.

e. Individuals who are too young to receive any COVID-19 vaccine, as authorized for emergency use, licensed, or otherwise approved by the FDA, are exempt from this Resolution. Any individual who becomes old enough to receive any COVID-19 vaccine, as authorized for emergency use, licensed, or otherwise approved by the FDA, while this Resolution is in effect must come into compliance with the requirements of this Resolution within 60 days of the day they became eligible.

ADDITIONALLY, the specific prohibitions in this Resolution are severable and do not apply to the extent that compliance with a prohibition would violate (1) any U.S. or

Washington constitutional provision; (2) federal statutes or regulations; (3) any conditions that apply to the state's receipt of federal funding; (4) state statutes; or (5) applicable orders from any court of competent jurisdiction.

ADDITIONALLY, nothing in this Resolution limits otherwise applicable requirements related to personal protective equipment, personnel training, and infection control policies and procedures.

This Resolution shall become effective immediately.

ADOPTED: This 1st day of September 2021.

INTERCITY TRANSIT AUTHORITY

Carolyn Cox

Carolyn Cox, Chair

ATTEST:

Patricia Messmer

Pat Messmer
Executive Assistant/Clerk of the Board

APPROVED AS TO FORM:

Jeff Myers

Jeffrey S. Myers
Legal Counsel