

TO: Mayor and Council  
CC 5-19-20  
Item 3.6 - Face coverings

FROM: Martha O'Connell

I strongly support the Jones/Jimenez memo recommending an emergency order mandating the wearing of fabric face coverings across San Jose.

Let me share with you just two of my personal experiences as a Senior with underlying medical conditions trying to protect myself from Covid 19. I have many many more.

On 5-7-20 I went to my regular ATM machines which are located in a Luckys Supermarket. They stand inches apart. One had been shut down to preserve social distancing. Unfortunately the sign removing the machine from use had been thrown away. I was first to enter the area that morning. I went to #1 machine and began my transaction. Within minutes a woman came literally within inches of me at #2 machine. I asked her to please wait, step back, and observe social distancing. By that time a line of patrons had formed behind us, failing to use social distancing. I asked the woman several times to step back. One of the Luckys checkers told the woman to ignore my request for social distancing and use #2 machine, inches from me. I had to yell for the manager to be able to protect myself.

As I walked home, a young unmasked man who had been in line passed me in his car. "Die of Covid" he yelled out the window, angry that his transaction had taken longer due to only one ATM being used while I was there.

On 4-5-20 a young couple entered the Dollar Tree on the Almaden when the store first opened. Despite signs asking that customers wear masks, and designating the first hour of each day as "Senior hour", the couple ignored the clerk's request to leave and come back later with masks. Another unmasked non Senior woman coughed and sneezed into the air. When I asked her to cover her mouth, she replied, "Mind your own business." I stated, "This is everyone's business."

Yes indeed: this is everyone's business.

Finally I am dismayed at statements I have heard that “the government” is forcing doctors to inflate the Covid 19 deaths and that “this is being blown out of proportion.” Loony conspiracy theorists abound on both the right and the left. One crackpot doctor’s video went viral on You Tube before it was taken down for making false claims. Her reckless claim: wearing masks is dangerous because it ‘literally activates your own virus.’ Once these conspiracy nut cases were just annoying and irrational or at best amusing. Now they are dangerous.

Pass the mandate requiring face coverings and protect the most vulnerable among us. That is the true function of government.

**From:** Chris Mizera

**Sent:** Thursday, May 14, 2020 4:17 PM

**To:** angel.ibanez@sanjose.gov; jim.reed@sanjose.gov; Hadnot, Rhonda <rhonda.hadnot@sanjoseca.gov>; Mossing, Mackenzie <Mackenzie.Mossing@sanjoseca.gov>; paul.pereira@sanjose.org

**Cc:** Chris Mizera

**Subject:** Facemasks and PPE

Please share this CDC study regarding PPE with Mayor Liccardo and all city council members. Might be worthwhile discussing prior to your next Tuesday city council meeting.

[https://wwwnc.cdc.gov/eid/article/26/5/19-0994\\_article](https://wwwnc.cdc.gov/eid/article/26/5/19-0994_article)

The screenshot shows a mobile browser interface with the URL [wwwnc.cdc.gov](https://wwwnc.cdc.gov/eid/article/26/5/19-0994_article). The page header includes the CDC logo and the journal title "EMERGING INFECTIOUS DISEASES" with ISSN 1080-6059. The article title is "Nonpharmaceutical Measures for Pandemic Influenza in Nonhealthcare Settings—Personal Protective and Environmental Measures". The authors listed are Jingyi Xiao, Eunice Y. C. Shiu, Huizhi Gao, Jessica Y. Wong, Min W. Fong, Sukhyun Ryu, and Benjamin J. Cowling. The abstract text is visible in a light green box, starting with "There were 3 influenza pandemics in the 20th century, and there has been 1 so far in the 21st century. Local, national, and international health authorities regularly update their plans for mitigating the next influenza pandemic in light of the latest available evidence on the effectiveness of various control measures in reducing transmission. Here, we review the evidence base on the effectiveness of nonpharmaceutical personal protective measures and environmental hygiene measures in nonhealthcare settings and discuss their potential inclusion in pandemic plans. Although mechanistic..." To the right of the abstract are navigation menus for "On This Page" (with links for Methods and Results, Discussion, and Cite This Article), "Figures" (with links for Figure 1 and Figure 2), "Tables" (with links for Table 1 and Table 2), and "Downloads".

Thank you.

Chris Mizera

### 3.6 CC 3-19-20 "save the world entire"

martha O'Connell  
Fri 5/15/2020 12:27 PM  
To:

Err on the side of saving lives.

Item 3.6 Face coverings

CC 3-19-20

Schindler's List "**Whoever saves one life saves the world entire**"

<https://masks4all.co/letter-over-100-prominent-health-experts-call-for-cloth-mask-requirements/>

#### **Over 100 Prominent Health Experts Call For Cloth Mask Requirements**

Scientific evidence is strong that mask use can help save lives, restore jobs, and slow the pandemic.

We have an urgent message about some critical new scientific research. It strongly suggests that requiring fabric mask use in public places could be amongst the most powerful tools to stop the community spread of COVID-19.

An international cross-disciplinary review of the scientific research by 19 experts and other recent research shows that:

- People are most infectious in the initial period of infection, when it is common to have few or no symptoms
- Cloth masks obstruct a high portion of the droplets from the mouth and nose that spread the virus
- Non-medical masks have been effective in reducing transmission of coronavirus
- Cloth masks can be washed in soapy water and re-used
- Places and time periods where mask usage is required or widespread have been shown to substantially lower community transmission
- Public mask wearing is most effective at stopping spread of the virus when the vast majority of the public uses masks
- Laws appear to be highly effective at increasing compliance and slowing or stopping the spread of COVID-19.
  - The preponderance of evidence, in both laboratory and clinical settings, indicates that mask wearing reduces the transmissibility per contact by reducing transmission of infected droplets. The decreased transmissibility

could substantially reduce the death toll, other harms to public health, job losses and economic losses. The cost of such masks is very low by comparison.

- Modeling suggests that widespread public mask use, in conjunction with other measures, could bring the effective reproduction number (R) beneath 1.0, thus halting the growth of the pandemic.
- Therefore, we ask that government officials *require* cloth masks to be worn in all public places, such as stores, transportation systems, and public buildings as soon as possible. This action will prevent people who are infectious from unknowingly spreading the disease.
- We also ask business leaders who offer products and services to the public to require their employees and customers to wear masks whether or not it is required by local law. This vital step will help protect workers and customers.
- Such requirements will greatly increase the rate of mask wearing. This should be done in conjunction with, not as a replacement for, hand hygiene, physical distancing, testing, and contact tracing strategies.
- This requirement should be introduced alongside clear guidelines for the production, use and sanitization or re-use of face masks. We urge you to also consider their distribution as shortages allow.
- There is no need to wait for availability of medical-grade masks; any face covering, including a piece of cloth, a scarf, bandana, t-shirt, or paper towel, appears to be effective.
- Sincerely,
- *Organizing Signatories*
- *Note: institutional affiliation is provided for identification purposes only and does not indicate or imply an endorsement of the views expressed in this letter by any institution.*
- **Jeremy Howard:** Distinguished research scientist, University of San Francisco, co-founder [fast.ai](https://fast.ai), member World Economic Forum Global AI Council
- **Dr Vincent Rajkumar:** Editor in Chief, Blood Cancer Journal
- *North American Signatories*
- **Dr Harold Varmus:** Nobel Prize-winning virologist; Professor, Weill Cornell
- Medicine; former Director, NIH and NCI
- **Dr Bengt Holmström:** Nobel Prize-winning economist; Professor, Economics, MIT
- **Dr Siddhartha Mukherjee:** Professor of Medicine, Columbia University Medical Center; Time 100 most influential people; Best-selling author
- **Dr Eric Topol:** Director, Scripps Research Translational Institute; Executive VP & Professor, Molecular Medicine, Scripps Research; Best-selling author
- **Dr Robert Wachter:** Professor, Medicine Chair, UCSF; Chair of Advisory Board, Healthcare Improvement Studies, Univ of Cambridge; Best-selling author



- **Dr Anne W. Rimoin:** Professor, Department of Epidemiology; Director, UCLA Center for Global and Immigrant Health; Director, UCLA-DRC Health Research and Training Program
- **Dr Erik Brynjolfsson:** Professor, MIT Sloan; Senior Fellow, Stanford Institute for Human-Centered AI & Stanford Institute for Economic Policy Research; Bestselling author.
- **Dr Diana Romero:** Chief Editor, Nature Reviews Clinical Oncology
- **Dr Sagar Lonial:** Chair and Professor, Department of Hematology and Medical Oncology; Anne and Bernard Gray Family Chair in Cancer; Chief Medical Officer, Winship Cancer Institute, Emory University School of Medicine.
- **Dr Albert Icksang Ko:** Professor, Epidemiology and Medicine, Chair, Epidemiology of Microbial Diseases, Yale School of Public Health
- **Dr Christina Ramirez:** Professor of Biostatistics, UCLA Fielding School of Public Health
- **Dr Carlo Brugnara:** Editor in Chief, American Journal of Hematology
- **Dr Michael Picard:** Editor in Chief, Journal of the American Society of Echocardiography
- **Dr Jeff Drazen:** Professor of Medicine, Harvard
- **Dr Monica Bertagnolli:** Chair, Board of Directors, American Society of Clinical Oncology; Group Chair, Alliance for Clinical Trials in Oncology
- **Dr Yann Le Cun:** Professor of Computer Science and Data Science, NYU; Chief AI Scientist, Facebook; Turing Laureate 2019

**Dr Edith Mitchell:** Past President, National Medical Association; Professor, Thomas Jefferson University  
**Dr Corey Cutler:** Medical Director, Stem Cell Transplantation, Harvard Medical School

**Dr De Kai:** Professor, Computer Science and Engineering, Hong Kong University of Science and Technology; Distinguished Research Scholar, Berkeley; Founding Fellow, Association for Computational Linguistics

**Dr Charles Ericsson:** Professor and Head of Infectious Diseases, McGovern Medical School, University of Texas

**Dr Ann Prestipin:** Senior Vice President, COVID response, Massachusetts General Hospital

- **Dr Noopur Raje:** Professor, Harvard Medical School; Director Center for Multiple Myeloma, Chair in Oncology, Massachusetts General Hospital Cancer Center
- **Dr Christopher Manning:** Professor of Linguistics and Computer Science, Stanford
- **Dr Ruvandhi Nathavitharana:** Vice Chair, TB Proof; Associate Professor, Division of Infectious Diseases Beth Israel Deaconess Medical Center Harvard Medical School
- **Dr Edward Nardell:** Professor, Harvard Medical School

- **Dr Gregg Gonsalves:** Assistant Professor, Epidemiology, Yale; Co-Director, Global Health Justice Partnership; Co-Director, Collaboration for Research Integrity and Transparency
- **Dr David McAdams:** Professor, Business Administration (Fuqua School of Business) and Economics, Duke University
- **Dr. Walt de Heer,** Regent's Professor of Physics, Georgia Institute of Technology
- **Dr Lin Chen:** Associate Professor, Harvard Medical School; Director of Travel Medicine Center, Mount Auburn Hospital
- **Dr Marc Suchard:** Professor of Human Genetics, Biostatistics and Biomathematics, UCLA David Geffen School of Medicine
- **Marietje Schaake:** International Director of Policy, Cyber Policy Center, Stanford; Member of the European Parliament (MEP) 2009-2019
- **Dr Michael Joyner:** Anesthesiologist and Lead Investigator, Convalescent Plasma Program for COVID
- **Dr Jagmeet Singh:** Professor, Harvard Medical School
- **Dr James Armitage:** Professor of Medicine, University of Nebraska Medical Center
- **Dr Eric Westman:** Professor, Duke University Medical Center, Past President, Obesity Medicine Association
- **Dr Chadi Nabhan:** Professor, Department of Clinical Pharmacy and Outcomes Sciences, University of South Carolina; Chairman, Caris Precision Oncology Alliance
- **Dr Ik-Kyung Jang:** Professor of Medicine, Harvard
- **Dr Anas Younes:** Professor of Medicine, Memorial Sloan Kettering Cancer Center
- **Dr James Januzzi:** Professor of Medicine, Harvard; Professor, Cardiology, Massachusetts General Hospital
- **Dr Vikas Sukhatme:** Dean, Emory School of Medicine; Chief Academic Officer, Emory Healthcare
- **Dr Barbara Murray:** Past President, Infectious Diseases Society of America; Professor of Medicine, University of Texas
- **Dr Michael Lin:** Associate Professor, Neurobiology and Bioengineering, Stanford; Member of Scientists to Stop Covid-19
- **Dr Priya Sampathkumar** Infection Control and Infectious Disease Specialist
- **Dr Mike Thompson:** Director, Early Phase Cancer Research, Aurora Health Care
- **Dr David Shlim:** Past President, International Society of Travel Medicine; Medical Director, Jackson Hole Travel and Tropical Medicine
- **Dr Daniel Morgan:** Professor of Epidemiology and Public Health and Medicine, University of Maryland
- **Dr Lee Ellis:** Professor of Surgery, Molecular and Cellular Oncology

- **Dr Dawd Siraj:** Professor, Infectious Diseases, University of Wisconsin Madison
- **Dr Michael Sauri:** Clinical Professor, Occupational Medicine, Johns Hopkins and USUHS Bethesda
- **Dr Amy Tan:** Associate Professor, Medicine, University of Calgary
- **Dr Ross Levine:** Professor, Economic Analysis and Policy, UC Berkeley
- **Dr Netanya Utay:** Assistant Professor, Medicine, University of Texas
- **Dr Avinash Sinha:** Assistant Professor, Anesthesia, McGill University
- **Dr Chip Lavie:** Editor in Chief, Progress Cardiovascular Diseases; Professor and Medical Director, John Ochsner Heart and Vascular Institute
- **Dr Lin Chen:** Associate Professor, Medicine, Harvard
- **Dr Katrina Armstrong:** Physician in Chief, Massachusetts General Hospital
- **Dr Carlos del Rio:** Professor of Medicine, Global Health & Epidemiology, Emory University
- **Dr Jordan Lake:** Associate Professor, Infectious Diseases, University of Texas
- **Anna Kaltenboeck:** Program Director, Center for Health Policy and Outcomes, Memorial Sloan Kettering Cancer Center
- **Dr Krishna Komanduri:** Chief, Division of Transplantation and Cellular Therapy; Professor of Medicine, Microbiology and Immunology, University of Miami
- **Dr Mark Harrington:** Executive Director, Treatment Action Group
- **Dr Vishal Sikka:** CEO, Vianai Systems. Board of Directors, Oracle and BMW; Former CEO, Infosys
- **Dr Joe Vipond:** Clinical Assistant Professor, Emergency Medicine, University of Calgary
- **Dr Jason Abaluck:** Associate Professor of Economics, Yale School of Management
- **Dr Miguel Perales:** Chief, Adult Bone Marrow Transplantation Service, Memorial Sloan Kettering Cancer Center
- **Dr Judith Chevalier:** Professor, Economics and Finance, Yale University
- **Dr Lawrence Greenblatt:** Professor, Department of Community and Family Medicine, Duke University
- **Dr Adriaan Bax:** Member, National Academy of Sciences
- **Dr Zeynep Tufekci:** Associate Professor, Information and Library Science, UNC; Adjunct Professor, Department of Sociology; Writer: The Atlantic and NY Times
- *European Signatories*
- **Dr Richard Horton:** Editor in Chief, The Lancet; Honorary Professor, London School of Hygiene & Tropical Medicine, University College London, and University of Oslo.
- **Dr Magdalena Skipper:** Editor in Chief, Nature



- **Dr Martin McKee CBE:** Past President, European Public Health Association; Professor, Public Health, London School of Hygiene & Tropical Medicine; Director, European Observatory
- **Dr Trish Greenhalgh OBE:** Professor, co-Director of Interdisciplinary Research In Health Sciences, Primary Health Care Sciences, University of Oxford
- **Dr Meletios-Athanasios Dimopoulos:** Rector, National and Kapodistrian University of Athens
- **Dr Jesus San-Miguel:** Director, Clinical & Translational Medicine, Universidad de Navarra

**Dr Vladimir Zdimal:** Head of Department of Aerosols Chemistry and Physics; Institute of Chemical Process Fundamentals of the Czech Academy of Science

**Dr Charles Tannock MBE:** Member of the European Parliament (MEP) 1999-2019; NHS Consultant

**Dr Keertan Dheda:** Professor, Infectious and Tropical Diseases, London School of Hygiene and Tropical Medicine; Director, Centre for Lung Infection and Immunity; Head: Division of Pulmonology, University of Cape Town; Professor of Medicine, Groote Schuur Hospital.

**Dr KK Cheng,** Director, Institute of Applied Health Research, University of Birmingham

**Dr Mario Boccardo:** Director, Hematology, University of Torino

**Dr Adrian Alegre:** Head Hematology Department, University Hospital La Princesa

**Dr David Wraith:** Director, Institute of Immunology and Immunotherapy, University of Birmingham

**Dr Anna Sureda:** Head, Clinical Hematology Department, Catalan Institute of Oncology; President, Spanish Group for stem Cell Transplantation and Cellular therapy

**Dr Miguel Sanz:** Researcher Emeritus, Instituto de Investigación Sanitaria La Fe; Honorary Professor, Medicine, University of Valencia

**Dr Carlos Solano:** Professor of Medicine, University of Valencia; Director, HSCT and Immune Therapy program, Hospital Clinico Universitario

**Dr Jürgen Kuball:** Chair, Department of Hematology, UMC Utrecht

**Dr Catherine Cordonnier:** Professor and Head of Haematology, Henri Mondor University Hospital

**Dr Javier Zulueta:** Director, Pulmonary Medicine, Clinica Universidad de Navarra

**Dr Anna Rotkirch:** Research Professor, Population Research Institute, Family Federation of Finland

**Dr Key Pousttchi:** Professor and past chair, Business Informatics and Digitalization, University of Potsdam

**Dr Chris Papadopoulos:** Public Health Director, University of Bedfordshire

**Dr Alexey Morgunov:** CEO, Manifold Research; Lecturer, University of Cambridge

**Dr Christophe Rapp:** President, French Society of Travel Medicine

**Dr Helene-Mari van der Westhuizen:** Oxford University; Co-founder TB Proof

**Dr Frederik Questier,** Professor, Vrije Universiteit Brussel

**Dr Lucica Ditiu:** Executive Director, Stop TB Partnership

### *African Signatories*

**Dr Anneke Hesselning**, Professor, Dept Pediatrics and Child Health, Stellenbosch University; Director of the Desmond Tutu TB Centre

**Dr Rodney Ehrlich**: Emeritus Professor, Senior Research Scholar, School of Public Health and Family Medicine, University of Cape Town

**Dr Shaheen Mehtar**, (retired) Professor, University of Stellenbosch, Chair of Infection Control Africa Network (ICAN)

**Dr Angela Dramowski**: Professor, Pediatric Infectious Diseases, Department of Pediatrics and Child Health, Stellenbosch University

**Dr Gavin Churchyard**: CEO, The Aurum Institute; Honorary Professor, University of Witwatersrand; Honorary Professor, London School of Hygiene and Tropical medicine

**Dr Arne von Delft**: University of Cape Town; Co-founder of TB Proof

### *South American Signatories*

**Dr Guillermo Ruiz-Arguelles**: Director General, Centro de Hematología y Medicina Interna de Puebla

**Dr Luis Lamb**: Professor, Computer Science and AI, Federal University of Rio Grande do Sul; Secretary of State for Innovation, Science and Technology

### *Asian Signatories*

**Dr Lalit Kumar**: Professor and Head of Medical Oncology, All India Institute of Medical Sciences

**Dr Lei-Han Tang**, Professor, Director, Institute of Computational and Theoretical Studies, Hong Kong Baptist University

**Dr Chi Chiu Leung**: Editor-in-Chief, International Journal of Tuberculosis and Lung Disease; Chairman, Advisory Committee on Communicable Diseases, Hong Kong Medical Association

**Dr Mammen Chandy**: Director, Tata Medical Center

**Dr Tai Hing Lam**: Chair Professor, Community Medicine, Professor in Public Health, University of Hong Kong

**Dr Mushfiq Mobarak**: Scientific Director, Innovations for Poverty Action, Bangladesh; Professor of Economics, Yale

**Dr Zhiyuan Li**: Professor, Center for Quantitative Biology, Peking University

**Dr Hisao Hayakawa**: Professor, Theoretical Physics, Kyoto University

### *Oceania Signatories*

**Dr James Brown**: Professor of Statistics, University of Technology Sydney

**Dr Ben Marais**: Associate Professor Paediatrics & Child Health, University of Sydney

**Dr Bart Willems**: Co-founder, TB Proof; Public Health Medicine Specialist, Nga Tai Ora, Public Health Northland

Don Gagliardi

████████████████████  
████████████████████  
May 17, 2020

***By Email***

Mayor Sam Liccardo  
San Jose City Councilmembers  
c/o City Clerk  
200 E. Santa Clara Street  
San Jose, CA 95113  
[City.clerk@sanjoseca.gov](mailto:City.clerk@sanjoseca.gov)

Re: Item 3.6 on May 19, 2020 City Council Agenda  
("Emergency Mandate of Fabric Face Coverings")

Dear Mayor Liccardo and San Jose City Councilmembers:

I write to oppose the proposed "Emergency Mandate of Fabric Face Coverings," Item 3.6 on the May 19, 2020 City Council Agenda.

I believe the proposed ordinance is likely unconstitutional because (1) it does not further a current compelling interest of the City of San Jose, and (2) a mask-mandate is not the least restrictive means of achieving its asserted purpose of "flattening the curve and slowing the spread" of COVID-19, which has already been amply achieved in Santa Clara County. Additionally, (3) even if a mask-mandate is otherwise lawful, the City of San Jose is legally preempted from mandating the wearing of face masks in contradiction of the State of California and of Santa Clara County Health Director, both of whom have expressly made wearing face masks optional, even while they have achieved a remarkable flattening of the curve of COVID-19 within Santa Clara County, including San Jose.

I am informed by Vice Mayor Chappie Jones that, although the City Attorney is in the process of or will be drafting the proposed ordinance, the City Attorney has *not*, at least as of May 14, 2020, rendered a formal legal opinion on the constitutionality of such an ordinance. I believe that the City Council should not act on the proposed ordinance in the absence of a formal written legal opinion – annotated with case law and other pertinent authorities as well as stating in full the facts justifying an emergency municipal ordinance mandating the wearing of masks – from the City Attorney advising of its lawfulness. The absence of a written legal opinion warrants postponing action on the proposed emergency ordinance until legal guidance is received and considered. Each member of the City Council has sworn an oath to uphold the Constitution, and the oath cannot be adhered to under the circumstances in the absence of affirmative advice of counsel that a mask-mandate is both constitutional and not preempted by the decisions of the State of California and of the Santa Clara County Health Director, under delegated authority from the State, that mask-wearing in public is not required, but merely recommended.

I am an attorney with some familiarity, but no purported expertise, in constitutional law. I first became informed of Item 3.6, by reading about it on *San Jose Inside* only a few days ago, on Thursday afternoon, March 14, 2020. *San Jose Inside* reports that the justification for the proposed mask-mandate is:

“Considering the city of San Jose is the most populous city in the region with a population of over 1 million and 66 percent of the county’s confirmed COVID-19 cases, adherence to this proposed mandate could have significant influence in *further flattening the curve and reducing the spread of COVID-19.*”

(*Emphasis added; quoting memo of Vice Mayor Chappie Jones and Councilmember Sergio Jimenez in support of the proposal (“Jones-Jimenez memo”).*)

<https://www.sanjoseinside.com/news/san-jose-leaders-propose-mandatory-face-masks/>

Indisputably, “flattening the curve and reducing the spread of COVID-19” has *already been accomplished* over the past two months in San Jose and Santa Clara County, *without any county-wide mask-mandate*. “We’ve certainly flattened the curve,” California Governor Gavin Newsom said, a month ago, on April 18, 2020, as reported by the *San Francisco Chronicle*.

<https://www.sfgate.com/bayarea/article/Coronavirus-updates-Bay-Area-COVID-cases-deaths-15210029.php> On April 20, KRON-4 reported: “Medical experts are saying that steps taken in California, specifically the Bay Area, have done more than just flatten the curve . . . Virologist

Dr. Warner Green with San Francisco’s Gladstone Institute says as a result of early decision making, California and most notably the Bay Area has done more than flatten the curve when it comes to the coronavirus. ‘We crushed it and California in general has crushed it,’ Green said.”

<https://www.kron4.com/news/bay-area/crushed-the-curve-researcher-says-steps-taken-in-california-have-done-more-than-flatten-the-curve/> Under such circumstances, there is scant justification for a municipal measure to onerously curtail civil rights and liberties in order to improve upon a solution that has already seen spectacular success.

Set forth below are my personal, preliminary thoughts about the constitutionality of the proposed mask-mandate to achieve its asserted objective. I am not your counsel and these thoughts are not intended to substitute for a formal written legal opinion from the City Attorney. They are intended, however, to give you pause before embarking on a significant and onerous infringement of the civil rights and liberties of San Jose residents, and every other person who happens to enter San Jose during the indefinite duration of the proposed infringement of the ordinary ability to wear – or not to wear – what we choose while in public settings.

The City of San Jose is not the first municipality to consider mandating face masks in light of the COVID-19 pandemic. As the Jones-Jimenez memo in support of the proposed ordinance, and “Attachment A” thereto, observes, five Bay Area counties – but, *crucially, not Santa Clara County* –, as well as the nearby cities of Cupertino and Milpitas, and Palo Alto (on May 11,

2020), have initiated such a mandate. None of these edicts, apparently, have *yet* been legally challenged, perhaps because they have yet to be (and may never be) vigorously enforced.

Palo Alto's recent ordinance appears to have been adopted on its consent calendar, without any consideration of its legality in the staff memorandum recommending its adoption contained in the May 11 agenda packet. I uncovered no other indication of anyone deliberating legalities in the meeting agenda packet. I did uncover one constituent email on the matter in the agenda packet, from a resident opposed to the measure, who wrote: ". . . I highly doubt that the local police will be forcing these people [already social distancing in a park] to put on masks if the ordinance is enacted because it's clear the mask is unnecessary except when entering businesses. Palo Alto City Council *grandstanding once again* . . ." (*Emphasis added*).

<https://www.cityofpaloalto.org/civicaX/filebank/blobload.aspx?t=51971.26&BlobID=76547>

Beyond the Bay Area, there are ongoing legal challenges nationwide to COVID-19-inspired mask-mandates: in Connecticut, Florida, Texas, and in (San Bernardino County) California. A lawsuit has also been threatened in Illinois, and there may be other lawsuits not immediately found with a casual Google search.

<https://patch.com/connecticut/across-ct/lamont-sued-over-mask-order-its-unconstitutional-suit-claims>

<https://drive.google.com/file/d/1S-xO8yg-u1DJ5LEp8ldp1tuEkGcfsVgy/view>

<https://www.firstcoastnews.com/article/news/health/coronavirus/as-florida-reopens-lawsuit-filed-over-required-use-of-face-mask-by-business-owners/77-df005909-4ec8-49d3-bb4c-6d88a2be0ae8>

[https://www.redlandscommunitynews.com/news/public\\_safety/county-sued-over-mask-requirement-and-ban-on-in-person-religious-gatherings/article\\_5a622218-7b47-11ea-9b5f-73baa3163bf4.html](https://www.redlandscommunitynews.com/news/public_safety/county-sued-over-mask-requirement-and-ban-on-in-person-religious-gatherings/article_5a622218-7b47-11ea-9b5f-73baa3163bf4.html)

<https://www.chicagotribune.com/coronavirus/ct-coronavirus-illinois-jb-pritzker-wilson-lawsuit-threat-20200512-aavgivf5qrbtpbjc364eovccq-story.html>

In response to the Harris County, Texas mask-mandate, now under legal challenge, a Galveston County official has publicly opined he believes mask-mandates are unconstitutional:

"There will be no orders mandating people wear masks in Galveston County, according to County Judge Mark Henry. Citing 'individual liberty and freedom,' Henry said in a Facebook post Wednesday that he believes such orders are unconstitutional.

"His remarks came after news surfaced that Judge Lina Hidalgo, in neighboring Harris County, is expected to issue an order that will require all residents to wear a mask or face covering when out in public for the next month. The order is expected to take effect Monday.

"'It's important now more than ever that we stress personal responsibility,' Henry wrote in the Facebook post. Henry said *he encourages all residents to observe*



*recommendations by national and local health authorities, which call for people to wear face coverings when out in public. However, he will stop short of mandating them.”*

“Just as critical as getting our economy back up and running, *it is important that elected officials uphold their oaths to defend the Constitution* and ensure individual freedoms remain intact during and after this pandemic,’ Henry wrote.”

(*Emphasis added*). <https://www.click2houston.com/news/local/2020/04/22/galveston-county-judge-says-he-believes-mask-orders-are-unconstitutional/>

Similarly, Alabama’s attorney general – the state’s top law enforcement officer – has publicly described Birmingham’s mask-mandate as unconstitutional. He “calls the mask ordinance ‘excessive in relation to the recommendation given by the Centers for Disease Control (‘CDC’), on which the ordinance purports to rely.’”

<https://www.al.com/news/2020/04/alabama-ag-calls-birmingham-mask-ordinance-excessive-threatens-suit.html>

Ongoing lawsuits challenging already-enacted similar ordinances elsewhere should be studied by the San Jose City Attorney in evaluating the potential pitfalls of an emergency mask-mandate in San Jose. It is recklessly insufficient to simply observe that Cupertino, for example, has done this without backlash, so San Jose may safely do so, as well. The City of San Jose should expect a legal challenge to the constitutionality of any mask-mandate it may adopt, especially if the City actually attempts to enforce the ordinance and impose criminal penalties for non-compliance.

If and when the City is sued, the legality of the mask-mandate will be evaluated by whether it serves a *compelling municipal interest* and whether it is *the least restrictive means* of serving that interest. A mask-mandate appears to me to fail both tests, for reasons discussed below.

The seminal case on the scope of government authority to impose mandatory public health measures is *Jacobson v. Massachusetts*, 187 U.S. 11 (1905), allowing enforced vaccinations in upholding the use of government police powers to protect the public welfare. However, the police power is far from absolute, but instead endorses only “reasonable regulations” that do not “contravene the Constitution of the United States, or with any right which that instrument gives or secures.” *Jacobson*, 187 U.S. at 27-28. The U.S. Supreme Court has since reaffirmed the limitations of governmental authority in times of crisis:

“The existence of a *substantial government interest* is not enough to satisfy substantive due process, however, unless the State utilizes the *least restrictive means* available to advance that interest.

“Even [when] the governmental purpose [is] legitimate and substantial, that purpose *cannot be pursued by means that broadly stifle fundamental personal liberties when*

***the end can be more narrowly achieved.*** The breadth of legislative abridgement must be viewed in the light of ***less drastic means*** for achieving the same basic purpose.”

*Shelton v. Tucker*, 364 U.S. 479, 488 (1960) (*emphasis added*). As recently as this past Saturday (some 72 hours ago as of the City Council’s May 19 meeting), a federal district court, acknowledged that the 115-year-old decision in *Jacobson* “remains the lodestar in striking the balance between constitutional rights and public safety.” The district court observed: “***There is no pandemic exception to the Constitution of the United States . . .***” *Berean Baptist Church v. Gov. Roy Cooper*, Case No. 4:20-CV-81-D, at pp.2 & 10-11 (E.D.N.C. May 16, 2020) (issuing temporary restraining order against pandemic-related ban on indoor church services, as violating Free Exercise clause of First Amendment) (*emphasis added*).  
<file:///C:/Users/Don/Downloads/2020-05-16-RETURN-AMERICA-ET-AL-v-ROY-COOPER-TRO.pdf>

The legal analytic framework I have outlined above cannot be controversial. In February 2020, ***before*** the lockdown orders and other pandemic-related countermeasures enacted across the country, Harvard Law Professor Noah Feldman wrote an op-ed for *Bloomberg*, stating:

“. . . Supreme Court doctrine directs that essentially ***all our individual liberties can be suspended if the government has a compelling interest to do so and if its measures are narrowly tailored to achieving that end . . .***

“If days or weeks pass and Covid-19 hasn’t hit an area where people have been staying home, most would likely feel a powerful impulse to get out of the house and start moving around again. ***The question would then arise of what powers the government has to restrict our movements. If some noninfected people are arrested for leaving their homes, I would expect the courts to get involved again — and the outcomes to be uncertain.***”

(*Emphasis added*).

<https://finance.yahoo.com/news/coronavirus-come-u-lawsuits-won-163016610.html>

In short, ***despite great judicial deference to public health officials, “they cannot justify their orders simply by stating that the order will prevent the transmission of the disease. They must show that they could not have controlled the spread of the disease with different public health measures that did not have such a significant impact on individual liberty.”*** Ernst B. Abbott, “Law, Federalism, the Constitution, and the Control of Pandemic Flu,” 9 *Asian-Pacific Law & Policy Journal* 185, 202 (2008) (*emphasis added*); *see also*, Lindsey Wiley & Steve Vladeck, “COVID-19 Reinforces the Argument for “Regular” Judicial Review – Not Suspension of Civil Liberties – In Times of Crisis,” *Harvard Law Review Blog*, April 9, 2020 (“if [the government’s] compelling interest *can* be reasonably vindicated through less restrictive measures that are equally available to the government at the same time, it hardly undermines the government’s response to require it to pursue them”) (italics in original).

<https://blog.harvardlawreview.org/covid-19-reinforces-the-argument-for-regular-judicial-review-not-suspension-of-civil-liberties-in-times-of-crisis/>

California courts apply the same constitutional analysis. Indeed, they have done so with relation to rules regulating mask-wearing in public, albeit in obverse circumstances. *See, Ghafari v. Municipal Court for City & County of San Francisco*, 87 Cal. App. 3d 258, 260 (1978) (invalidating penal code prohibiting mask-wearing in public on First Amendment grounds) (“Appellants contend that the statute is overbroad on its face because it flatly prohibits anonymity under circumstances where these protected activities may be involved and because ***the restriction is not required by a compelling state interest nor is it implemented in the least restrictive manner possible. We agree.***”) (*emphasis added*).

The Jones-Jimenez memo simply does ***not*** address the constitutional issues posed by the mask-mandate proposal. The memo merely states, without any evidence whatsoever, and dubiously (as discussed below), that the proposed mask-mandate will be effective in further slowing the spread of COVID-19. No effort is made by the emergency ordinance’s proponents – who are not themselves public health officials – to establish that the objective is compelling under present circumstances or that other, less-restrictive alternatives are available which better preserve the public’s civil rights and liberties. The case has not been made that the proposed ordinance is constitutional, and I don’t believe the case can be made. If I am right, you each risk violating the oath you swore upon assuming office.

#### **A. Compelling Governmental Interest**

“Slowing the spread” of COVID-19 ***was*** a compelling governmental interest ***two months ago***, when it was feared that local hospitals would be overwhelmed with COVID-19 patients. *See, County of Santa Clara News*, “County of Santa Clara’s Non-Essential Services to Close Starting Monday, March 16, to Slow the Spread of COVID-19” (“We’re at a critical moment. We need to act swiftly to flatten the curve of COVID-19 in order to keep our healthcare delivery system from becoming overwhelmed,” said Dr. Sara Cody, Santa Clara County Health Officer.”) <https://www.sccgov.org/sites/opa/newsroom/Pages/covid-19-nonessential-services-close.aspx>,

However, it is inconceivably any longer a compelling San Jose ***municipal*** interest ***today***, in mid-May 2020, when containing the spread of the virus to ensure hospital capacity to meet the outbreak has ***already*** been effectively, indeed spectacularly, accomplished by State and County officials – ***without mandating mask-wearing in public***. According to the Santa Clara County Health Department COVID-19 online dashboard, as of Saturday, May 16, 2020, two months after the onset of a lockdown order by the county health department on March 16, 2020, expressly in order to “flatten the curve” of the COVID-19 virus here, there were only 91 hospitalizations county-wide attributed to the virus, with an availability of 862 acute hospital beds, and 157 intensive care unit beds (altogether, ***more than 10 available hospital beds for every existing COVID-19 patient***). Additionally, there were 782 ventilators available, almost 90

percent of the total County capacity (896).

<https://www.sccgov.org/sites/covid19/Pages/dashboard.aspx>

Indeed, on April 6, 2020, California Governor Gavin Newsom loaned 500 ventilators to other states, strongly suggesting by his action that there was, even then (six weeks ago), no compelling need to preserve the availability of ventilators here for COVID-19 patients.

<https://www.usnews.com/news/health-news/articles/2020-04-06/california-to-loan-500-ventilators-to-national-stockpile>

Santa Clara County's ventilator capacity, like its bed capacity, has dramatically improved since then; coincidentally, on April 6, the same day Governor Newsom was loaning ventilators to other states, County Supervisor Cindy Chavez emailed me (among other constituents), stating: "Currently, there are a total of 435 ventilators available in Santa Clara County's 11 hospitals, and as of April 5 only 217 of them were in use." I retain her email, which evidences that county ventilator capacity has nearly doubled since (from 435 to 782) and ventilator usage has been halved (from 217 to 114). Thus, the implied contention that the City of San Jose currently has a compelling interest in curtailing civil liberties due the beleaguered condition of local hospitals is false. We're far better off than two months ago, despite the absence of a mask-mandate in San Jose during the entire intervening period. The perceived hospital capacity crisis for which the solution of flattening the curve was intended to address is over, even assuming that perception was two months ago aligned with reality.

Significantly, when Santa Clara County Health Director, Dr. Cody, issued her shelter-in-place order on March 16, and when a few days later, on March 19, Governor Newsom issued his statewide shelter-in-place order, Executive Order N-33-20, each based on the compelling State interest of flattening the curve and slowing the spread of the virus to prevent a hospital capacity crisis, the U.S. Surgeon, Dr. Jerome Adams, was at the time urging Americans *not* to wear face masks. See, *February 29, 2020 Tweet of U.S. Surgeon General* ("Seriously people – STOP BUYING MASKS! They are NOT effective in preventing general public from catching #Coronavirus"). [https://twitter.com/surgeon\\_general/status/1233725785283932160?lang=en](https://twitter.com/surgeon_general/status/1233725785283932160?lang=en). Although Dr. Adams has since retracted his admonition, the federal government has *not* mandated wearing masks. Nor, in the ensuing two months has the State of California or Santa Clara County mandated mask-wearing, despite extensions of their respective COVID-19 pandemic emergency orders.

Yet, in the absence of a state-wide or county-wide mask-mandate to slow the virus, nevertheless and undeniably, the virus in Santa Clara County and in San Jose has been dramatically slowed and the curve flattened – precisely as Santa Clara County Health Director Cody sought to achieve back in mid-March. Therefore, taking into consideration the present state of information, after what we have all experienced in the past two months, there currently is no compelling interest for the City of San Jose in mandating masks to "further" achieve something that has already been achieved in the absence of a mask-mandate.

## **B. Least Restrictive Means to Achieve the Compelling Interest**

Because the experience of the past two months has proven that the curve can be flattened and the spread of COVID-19 can be slowed *without* a mask-mandate, *necessarily* a requirement that everyone wear masks while in public is *not* the least restrictive means to achieve the expressly asserted objective of the proposed City of San Jose mask-mandate.

The Jones-Jimenez memo asserts that, “[a]ccording to the CDC, the use of fabric face coverings, *along with* proper social distancing and other evidence-based health measures, *has been shown to slow the spread of COVID-19* and prevent asymptomatic transmission.” (Emphasis added). However, no citation is provided to evidence, from the Centers for Disease Control (“CDC”) or otherwise, that face masks are effective in slowing the spread of the virus. CDC’s recommendation – not a requirement – for wearing face masks is found on the CDC’s website, link here. <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html>. As can be seen, there is no evidentiary showing on CDC’s website that masks slow the spread of the virus. The only studies linked by the CDC are those showing “a significant portion of individuals with coronavirus lack symptoms (‘asymptomatic’) and that even those who eventually develop symptoms (‘pre-symptomatic’) can transmit the virus to others before showing symptoms.” In other words, the CDC suggests it seems logical that masks should help, “along with proper social distancing and other evidence-based health measures,” and in any event presumably do not harm, but contrary to the Jones-Jimenez memo, there is no actual evidence supplied by the CDC of the effectiveness of masks in slowing the spread of the virus. No other evidence in support of the mask mandate is offered by Jones-Jimenez memo.

Evidence of the effectiveness of cloth masks to slow the spread of COVID-19 is difficult to find elsewhere, as well. For example, in an April 1, 2020 commentary from Dr. Lisa Brousseau, a purported expert on respiratory and infectious diseases, and retired professor at the University of Chicago, entitled, “Masks-for-all for COVID-19 not based on sound data,” Dr. Brousseau writes, based on a detailed surveying of the literature, that “[t]here is no scientific evidence” that “*cloth or surgical masks*” are “*effective in reducing the risks*” of COVID-19, and asserts unequivocally in her conclusion, “*they are ineffective.*” (Emphasis added). <https://www.cidrap.umn.edu/news-perspective/2020/04/commentary-masks-all-covid-19-not-based-sound-data>

Solano County Health Director, Dr. Bela Matyas, who has not mandated mask-wearing, is on record as stating there is a “*lack of evidence that wearing masks reduces the transmission of the virus.* ‘*From a public health standpoint, I don’t feel like there’s any reason to implement it, based on the absence of evidence that it provides usefulness,*’ he said.” (Emphasis added). <https://www.thereporter.com/2020/04/23/coronavirus-masks-remain-a-recommendation-in-solano-county-not-a-requirement/>

The World Health Organization (“WHO”), in its April 6, 2020 “Interim Guidance: Advice on the use of masks in the context of COVID-19,” discounts the effectiveness of mask-mandates:



“Wearing a medical mask is one of the prevention measures that can limit the spread of certain respiratory viral diseases, including COVID-19. **However, the use of a mask alone is insufficient to provide an adequate level of protection, and other measures should also be adopted . . .**

*“ . . . There is limited evidence that wearing a medical mask by healthy individuals in the households or among contacts of a sick patient, or among attendees of mass gatherings may be beneficial as a preventive measure. However, there is currently no evidence that wearing a mask (whether medical or other types) by healthy persons in the wider community setting, including universal community masking, can prevent them from infection with respiratory viruses, including COVID-19. **Medical masks should be reserved for health care workers.** The use of medical masks in the community may create a false sense of security, with neglect of other essential measures such as hand hygiene practices and physical distancing, and may lead to touching the face under the masks and under the eyes, result in unnecessary costs, and take masks away from those in health care who need them most, especially when masks are in short supply.*

*. . . As described above, the wide use of masks by healthy people in the community setting is not supported by current evidence and carries uncertainties and critical risks.*

“\* \* \* \* \*

#### “Type of Mask

“WHO stresses that it is critical that medical masks and respirators be prioritized for health care workers.

*“The use of masks made of other materials (e.g., cotton fabric), also known as nonmedical masks, in the community setting has not been well evaluated. There is no current evidence to make a recommendation for or against their use in this setting.*

“WHO is collaborating with research and development partners to better understand the effectiveness and efficiency of nonmedical masks. WHO is also strongly encouraging countries that issue recommendations for the use of masks in healthy people in the community to conduct research on this critical topic. WHO will update its guidance when new evidence becomes available.”

(*Bolding in original; underlining and italics added.*)

[file:///C:/Users/Don/Downloads/WHO-2019-nCov-IPC\\_Masks-2020.3-eng.pdf](file:///C:/Users/Don/Downloads/WHO-2019-nCov-IPC_Masks-2020.3-eng.pdf)

An expressly non-peer-reviewed paper, “Face Masks Against COVID-19: An Evidence Review,” dated May 12, 2020, has been submitted to the City Council by Martha O’Connell,

which argues for mask-mandates. However, the paper does not dispel the WHO conclusion of a lack of scientific evidence concerning the efficacy of mask-mandates. The May 12 paper is not, of itself, new evidence. It merely purports to “synthesize the relevant literature,” and its recommendation, it appears, is largely based on modeling rather than experiential data; “Modelling suggests that population level compliance with public mask wearing of 70% **combined with contact tracing** would be critical to halt epidemic growth.” (*Emphasis added*). The May 12 paper reinforces CDC’s concession, and WHO’s express admonition, that “**the use of a mask alone is insufficient to provide an adequate level of protection, and other measures should also be adopted**” (*emphasis added*), by stating:

“**When used in conjunction with** [1] widespread testing, [2] contact tracing, [3] quarantining of anyone that may be infected, [4] hand washing, and [5] physical distancing, [6] face masks are a valuable tool to reduce community transmission.”

(*Emphasis and bracketed enumeration added*). In other words, the May 12 paper admits masks may be ineffective unless combined with five other things, some of which – like widespread testing and contact tracing – we do not yet have widely available to us. Contact tracing, especially, is assertedly key to the modelling. Also, the article oddly relies heavily on an extended discussion of “sociological considerations.”

<file:///C:/Users/Don/Downloads/preprints202004.0203.v2.pdf>

Indeed, the May 12 paper projects at times a peculiar tone for a survey of scientific data – *e.g.*, “Mask-wearing, and even mask-making or distribution, can provide feelings of empowerment and self-efficacy.” This is dubious, to say the least. Removing choice on whether to wear a mask is the opposite of empowering. The paper may not withstand peer review, let alone events, which have already disproved so many of the pandemic-related “scientific” models.

<https://www.cnbc.com/2020/04/17/influential-covid-19-model-uses-flawed-methods-and-shouldnt-guide-us-policies-critics-say.html>

Again, the World Health Organization has itself distilled the relevant data: **mask mandates are “not supported by the current evidence . . . There is no current evidence to make a recommendation for or against their use . . .”** (*Emphasis added*).

[file:///C:/Users/Don/Downloads/WHO-2019-nCov-IPC\\_Masks-2020.3-eng.pdf](file:///C:/Users/Don/Downloads/WHO-2019-nCov-IPC_Masks-2020.3-eng.pdf)

If the non-peer-reviewed May 12 paper really encapsulates game-changing “new evidence” militating for mask-mandates, we should expect the WHO to shortly update its guidance as a result. The same goes for the CDC.

I am not a health expert (nor, I believe, are any of you), but this City Council needs to evaluate the underlying scientific evidence, and especially the WHO guidance, if it hopes to have its proposed mask-mandate ordinance upheld against a constitutional challenge in a court of law. No serious effort is undertaken to do so in the Jones-Jimenez memo. (An easily-followed suggested rule of thumb: if Dr. Cody is not persuaded to impose a mask-mandate, you should not be, either. More on that subject below.)

## Costs of Implementing a Mask-Mandate

The Jones-Jimenez memo is silent on the costs of the proposed mask-mandate, and who will pay them, but “unnecessary costs” of mask-mandates is alluded to in the WHO guidance, quoted above. It is worth considering these costs, which are varied and significant.

There is obviously the cost to each member of the public in acquiring a mask, not only the cost of the mask itself but the transaction cost associated with acquiring it, including transportation to a store which sells masks or access to the internet to shop online. Many San Jose residents simply cannot afford the extra cost associated with purchasing a mask, or don’t have reliable transportation, or cannot access the internet, or both. As you know, a shocking number of San Jose residents are homeless – reportedly over 6,000 in 2019, before the pandemic.

<https://destinationhomesv.org/2019/05/san-jose-42-percent-spike-in-homeless-population/> Many more have applied for unemployment benefits – reportedly over 10,000 in Santa Clara County during a single week in March alone.

<https://sanjosespotlight.com/surviving-the-pandemic-how-to-apply-for-unemployment-benefits/> Statewide, California’s unemployment rate now approaches an astronomical 25 percent.

<https://www.nbcbayarea.com/news/california/california-unemployment-rate-approaches-25/2290642/>

The jobless – as many as one in four of us – can scarcely afford an extra expense to pay for facial garments, even if they can still afford transportation or the internet. Masks are hard to find, and expensive. Indeed, there is pending a federal lawsuit in San Jose against eBay for alleged price-gouging on face masks. <https://portal.clubrunner.ca/3794/Speakers/219bcc9-8c89-4096-bed4-6213aae6bd>

Although the Jones-Jimenez memo provides several exceptions to a mask-mandate – for certain outdoor activities, for children under 6, for those with trouble breathing or incapacitated, on advice of a medical professional, or if a mask presents a safety hazard – there is no exception for lack of ability to pay. ***It is simply cruel to compel people to do what they cannot afford.***

Notably, the threatened federal lawsuit in Illinois to a statewide mask-mandate would seek to compel the state to pay for masks for the indigent.

<https://www.chicagotribune.com/coronavirus/ct-coronavirus-illinois-jb-pritzker-wilson-lawsuit-threat-20200512-aavgivf5qrtpbjc364eovccq-story.html>

Similarly, Solano County’s Health Director, Dr. Matyas, says, “if Solano were to require face coverings, it would be ***obliged to provide them to residents who are unable to afford or obtain them.*** ‘*We can’t, in good conscience, be asking people to do something that they can’t do and then enforce it,*’ he said.” (*Emphasis added*).

<https://www.thereporter.com/2020/04/23/coronavirus-masks-remain-a-recommendation-in-solano-county-not-a-requirement/>

There are the costs to the City of San Jose Police Department (“SJPD”) of enforcing a mask-mandate, despite SJPD already lacking resources to adequately enforce innumerable other laws.

<https://www.nbcbayarea.com/news/local/lack-of-san-jose-police-resources-prompt-family-to-search-for-stolen-truck/1972264/>

As you are certainly aware, owing to restrictions on local commerce due to the pandemic, the City of San Jose has a looming budget deficit. See, *Mercury News*, “Worse than the Great Recession: San Jose releases new budget proposal with \$71.6 million deficit,” dated May 13, 2020. <https://www.mercurynews.com/2020/05/13/worse-than-the-great-recession-san-jose-releases-new-budget-proposal-with-71-6-million-deficit/>

Therefore, it is highly unlikely that SJPD will be given extra resources (which do not exist and have not been earmarked) to enforce a mask-mandate. Per *San Jose Inside*, “City Manager Dave Sykes said he had discussed the matter with San Jose police Chief Eddie Garcia and said the department was unsure of the proposed law’s ‘practicality.’”

<https://www.sanjoseinside.com/news/san-jose-leaders-propose-mandatory-face-masks/>

On the other hand, there will be a cost, in continually-eroding public respect for law-and-order, if SJPD does *not* enforce the mask-mandate, relying instead on a complaint-based system, as with ordinary code enforcement. Some laws can be surreptitiously circumvented, but flaunting a mask requirement will be, by its nature, open and obvious. And the ordinance will be flaunted. This risks social unrest and disorder among constituents, some of whom will be motivated to snitch on their neighbors to settle old scores, thereby fraying community bonds, as currently occurs with code enforcement. A warning from Canada:

“. . . Snitching may work, but *the downsides to citizen-policing are grim*—to say nothing of the historical antecedents. Firstly, ‘you can play havoc with somebody just by snitching on them with an anonymous snitch line,’ noted Sharon Polsky, the president of the Privacy and Access Council of Canada. In addition to *the risk of malicious reports*, if people of colour aren’t disproportionately subject to snitching, I’d be shocked. *Totalitarian states turned neighbour against neighbour and family against family, in order to maintain the illusion of social cohesion. Authoritarians use this tactic because there are never enough police or soldiers to force compliance upon an entire population, not unless everyone consents to become an agent of his or her own mutual oppression. . . . Snitch lines are an evil tool in a time of crisis because they damage the trust that we need to create resiliency in our communities . . .*”

(*Emphasis added*). <https://www.macleans.ca/opinion/dont-let-coronavirus-turn-us-into-a-nation-of-snitches/> The ugly social corrosion created by citizen-snitches can be understood, as well, in the “Karen” memes the COVID-19 pandemic has engendered. Per the *Atlantic*:

*“Karens have gained notoriety in this crisis in part because the joke can be bitingly funny, but also because no meme better captures the fraught feelings of the moment.* With inconsistent guidance from political leaders and conflicting social-distancing mandates among states, *Americans are navigating how and when to police one another’s behavior.* Mocking Karens has given people on platforms such as Twitter, Reddit, and Facebook a shared language to encourage measures that benefit the public.

But it can be problematic, too—and not just because of its crudeness. Many people now tossing around the meme seem unaware of its roots as a pointed critique of structural inequalities, even as black Americans are overrepresented in county- and state-level coronavirus infection and death reports. ‘Karen began as a Black meme used to describe white women who tattle on Black kids’ lemonade stands,’ the community organizer Gwen Snyder tweeted last week. “‘White boys stole it and turned it into code for “bitch.”””

(*Emphasis added*). <https://www.theatlantic.com/technology/archive/2020/05/coronavirus-karen-memes-reddit-twitter-carolyn-goodman/611104/> The reported rationale for Palo Alto’s new mask-mandate appears to be to promote this sort of toxicity, by empowering Karen, the busybody next-door: “Even without strict enforcement, *the law will allow community members to tell others, ‘This is the law. You need to obey it,’* [Palo Alto City Manager Ed] Shikada said. ‘*The social pressure is what will make this most effective,*’ Shikada said.” (*Emphasis added*). <https://www.paloaltoonline.com/news/2020/05/12/once-a-recommendation-face-masks-are-now-a-requirement-in-palo-alto> Enforcement-by-social-pressure is not cost-free, however. In Michigan last week, a Family Dollar store private security guard – not a policeman – was shot and killed in an altercation while trying to enforce the state’s mask-mandate. “‘This is senseless. Over a mask. Over a mask?’, the victim’s distraught cousin reportedly said.” <https://www.cnn.com/2020/05/04/us/michigan-security-guard-mask-killing-trnd/index.html>

Why set neighbor-against-neighbor – possibly violently – during a time of panic and fear with a City *rule* carrying criminal penalties, when a County *recommendation* will do, and, indeed, has already been proven to do, the trick in flattening the curve and slowing the spread of COVID-19?

As mentioned, the other Bay Area municipalities with mask mandates are likely simply quietly foregoing enforcement, thereby sending a tacit, and lawless, message to the community that local ordinances may appropriately be ignored. Mere “grandstanding” as a Palo Alto resident astutely put it. In Texas, where a municipal mask-mandate is being legally challenged (as mentioned above), the Houston Police Officers’ Union has gone further, issuing a tweet expressly refusing to enforce the decree, publicly decrying it as “idiotic” as well as unconstitutional.

<https://twitter.com/SaraGonzalesTX/status/1253011119859531776/photo/1>

The Governor of Texas has also announced that Houston’s mask-mandate is unenforceable:

“‘We strongly recommend that everyone wear a mask,’ [Governor Mark] Abbott said at a press conference where he announced his plans for reopening Texas. ‘However, it’s not a mandate. And we make clear that no jurisdiction can impose any type of penalty or fine. My executive order, it supersedes local orders, with regard to any type of fine or penalty for anyone not wearing a mask,’ he added.”

<https://www.texastribune.org/2020/04/27/harris-face-masks-fine-texas-coronavirus/>



Whether or not Governor Newsom makes a similar public statement, his emergency orders likewise supersede any City of San Jose mask-mandate, as discussed below.

If, on the other hand, SJPD seeks to vigorously enforce a mask-mandate, there is the serious cost of potentially abusive enforcement, as has been videotaped and widely publicized elsewhere. In Philadelphia, for example, in early April 2020, seven police officers reportedly dragged a passenger off a city bus for not wearing a face mask, and following this incident, a city spokesperson said the rule would no longer be enforced, all within a single day of the mask-mandate's adoption. The video can be seen here:

<https://www.buzzfeednews.com/article/emmanuelfelton/philadelphia-face-mask-man-dragged-off-bus>

In New York City, a May 4, 2020 *Gothamist* article reports:

“In a video recorded on Saturday, a plainclothes officer can be seen punching and tackling Donni Wright, a groundskeeper with NYCHA, while ***shouting the n-word, brandishing a taser, and subsequently kneeling on Wright's head.*** The ***confrontation began after officers, some of whom were not wearing face coverings, spotted "a number of people not wearing masks"*** at the corner of Avenue D and 9th Street, NYPD Commissioner Dermot Shea said on Monday.”

(*Emphasis added*). Again, the article includes the video.

<https://gothamist.com/news/nypd-officer-seen-beating-man-social-distancing-arrest-has-history-alleged-brutality>

Vice Mayor Jones has suggested, instead of no enforcement (like Houston) or vigorous enforcement (as in Philadelphia and New York), San Jose pursue selective enforcement of only “egregious” offenses. As reported in *San Jose Inside*:

“‘Often times we make laws to keep honest people honest,’ Jones said in defense [of his proposal]. ‘***The vast majority of the people that know it's a mandate will do the right thing anyway.*** And then if you have a situation where you have ***an egregious offense, say you have somebody without a mask that's in the face of grandma, then that might be an opportunity for the police to intervene. It would be situational.***’”

(*Emphasis added*).

<https://www.sanjoseinside.com/news/san-jose-leaders-propose-mandatory-face-masks/>

However, if the ordinance is actually only intended to keep people away from “grandma,” as Vice Mayor Jones concedes, a (constitutionally-required) ***less-restrictive means*** is simply to ***recommend*** to seniors to stay at home for the duration – which is already recommended as the essence of shelter-in-place. Seniors venture from their homes at their own risk, as we all do, and have always done, even before the pandemic. Life involves a measure of risk and always has. Instead of curtailing freedoms of the masses, the City Council should consider offering, as a less

restrictive alternative to mandating masks for all, volunteer help to house-bound seniors, and others at elevated risk, in running their errands, so they don't have to leave their homes. (To the woman who has told this City Council she is concerned about the mask-less person at the next ATM – your banking can be done online, without violating others' rights.) ***Law-as-mere-moral-suasion***, especially when it involves infringing everyone's civil liberties, for the benefit of the few who can still cope absent the edict, ***is inherently illiberal and unjust***. It does not avoid – and, indeed, actively encourages – the demise of civil society.

Further, there is no moral imperative whatsoever to obey an obviously unjust law, as Martin Luther King, Jr. teaches. <https://isi.org/intercollegiate-review/an-unjust-law-is-no-law-at-all-excerpts-from-letter-from-birmingham-jail/> ***Whereas, voluntarily heeding a health director's recommendation to wear a mask is an act of social virtue, voluntarily adhering to an illegal City Council requirement to wear a mask is indicia of serfdom***. “Doing the right thing” does not mean complying with an illegal and unenforceable law, but instead involves active civil disobedience. ***Virtue is fueled by choice, not command***.

Also, ***selective enforcement*** of (for sake of argument) an otherwise legal ordinance of ostensibly universal applicability ***presents its own legal problems***. See, e.g., *United States v. Armstrong*, 517 U.S. 456 (1996). Anyone charged with violating a mask-mandate will rightly raise the issue why they were singled out, especially if they are a member of a racial or ethnic minority group (as in the videotaped episode of racially-targeted enforcement-run-amok in New York City). A majority of San Jose residents are in a minority group of one sort or another, so, predictably, we can expect charges of racist enforcement to arise if the ordinance is widely ignored but only vaguely “egregious” cases involving “grandma” induce arrests. Also, the various exceptions in the Jones-Jimenez are rife with opportunity to game-the-system for those interested in mask-avoidance or mask-evasion. Under these circumstances, Police Chief Garcia's reported assessment seems correct; the proposed mask-mandate is impracticable. It probably cannot be enforced broadly, and if only enforced selectively it will likely not be enforced fairly or equitably.

Conversely, per the *Mercury News*, in an April 20, 2020 article: “There are concerns, too, that black and Latino men and women in masks may be racially profiled. Several people who spoke to CNN earlier this month said they wouldn't wear masks in public because they feared they'd be presumed to be criminals.” Under the Jones-Jimenez proposal, if they don't wear masks, they will ironically also be presumed to be criminals.

<https://www.mercurynews.com/2020/04/20/which-states-require-you-to-wear-a-face-mask-in-public/>

Finally, there are the costs of litigating the constitutionality of a mask-mandate, even if the City prevails. There are even more costs, in damages and attorneys' fees, if the City does not prevail. Why not wait to see how the lawsuits play out elsewhere?

## **Preemption Considerations under State Law**

Even if, for sake of argument, it would be constitutional for the state legislature to enact a law mandating mask wearing for all Californians, it is not within this City Council's prerogative to do so for residents of San Jose. While Article 11, section 5 of the California Constitution gives charter cities plenary power over municipal affairs, grappling with the COVID-19 pandemic is, undeniably, **not** a localized municipal matter. Under state preemption law, **local legislation conflicting with state law on the same subject is preempted and void**. See, *Sherwin-Williams Company v. City of Los Angeles*, 4 Cal.4th 893 (1993).

"The significant issue in determining whether local regulation should be permitted depends upon a balancing of two conflicting interests: (1) the needs of local governments to meet **the special needs of their communities**; and (2) the **need for uniform state regulation**, whether local legislators are more aware of and better able to regulate appropriately the problems of their areas, whether substantial geographic, economic, ecological or other distinctions are persuasive of the need for local control, and **whether local needs have been adequately recognized and comprehensively dealt with at the state level**."

*Northern California Psychiatric Society v. City of Berkeley* (1986) 178 Cal.App.3d 90, 101 (1986) (emphasis added).

With respect to the COVID-19 pandemic mitigation, the State of California has made plain the need for uniform state regulation, except insofar as it has delegated authority to county health directors. The COVID-19 pandemic is the subject of Governor Newsom's Executive Order N-33-20, dated March 19, 2020, which expressly "**looks to establish consistency across the state in order to ensure that we mitigate the impact of COVID-19. Our goal is simple, we want to bend the curve and disrupt the spread of the virus.**" (Emphasis added). This is a clear directive that the State occupies the field, except as expressly delegated, on precisely the subject of Item 36 on this City Council's May 19, 2020 agenda.

<https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf>

Further, the State of California Department of Public Health has already issued guidance on face masks, making them **optional rather than mandatory**: "There **may be a benefit** to reducing asymptomatic transmission and reinforcing physical distancing from the use of face coverings. **However, face coverings may increase risk if users reduce their use of strong defenses, such as physical distancing and frequent hand washing, when using face coverings . . . You may choose to wear a cloth face covering when you must be in public . . .**" (Emphasis added)

<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Face-Coverings-Guidance.aspx>

**Individual choice on whether to wear a mask is the key concept in the State's health guidance.** Wearing masks in public is not mandatory statewide in California.

Governor Newsom's subsequent orders, most recently dated May 7, 2020, in ushering "Phase 2" of state-wide shelter-in-place due to the COVID-19 pandemic, expressly contemplate that "***a local health jurisdiction may implement or continue more restrictive public health measures if the jurisdiction's Local Health Officer believes conditions in that jurisdiction warrant it.***" (Emphasis added).

<https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/SHO%20Order%205-7-2020.pdf>

This is a narrow delegation of the State's authority over the COVID-19 pandemic response that gives Santa Clara County's health director authority to more aggressively combat the virus but does ***not*** give the same legal authority to the San Jose City Council. The City Council is not a "local health jurisdiction" and, as far as I am aware, does not employ a "Local Health Officer." The City Council would be acting *ultra vires* in adopting the proposed mask-mandate in contradiction of state and county policy that makes mask-wearing a matter of personal choice, while balancing interests of statewide uniformity and local needs. The City Council has no legal role to play here and should avoid overstepping its authority.

Santa Clara County's "Local Health Officer," Dr. Cody, who does have the express authority from the State of California to mandate masks, in her discretion ***where local conditions warrant*** (she, too, is bound by the Constitution), has not exercised it. Instead, like the State, she is "strongly urging," but ***not mandating***, wearing of masks, per the County's April 17, 2020 guidance on face coverings. "Staying home, minimizing even essential activities, and reducing contact with others is still the most important tool. But, when we do have to go out into the public, face covering is a critical tool to reduce asymptomatic transmission."

<https://www.sccgov.org/sites/covid19/Pages/press-release-04-17-2020-guidance-face-coverings.aspx>

Dr. Cody was questioned about the absence of a County of Santa Clara mask-mandate in a *San Jose Spotlight* article published April 24, 2020:

"[SJS:] Why not mandate masks when out in public?"

"[Dr. Cody:] Santa Clara County is 100% aligned with other counties and the state with ***recommending*** wearing a face covering. ***Our strategy here was to not make it a legally enforceable order*** — in other words, law enforcement can come and take action if you're not complying with the order. ***Law enforcement has a lot of priorities for enforcement and I didn't want to take enforcement resources away from other things towards people wearing face coverings.***

***"When I issue a health officer order, I mean it and I want law enforcement to take action and I didn't really see that law enforcement was going to be going around to the grocery store and citing people for not having face coverings. That's the practical aspect of it.***

“People do what’s right to protect others. Again, I want to remind everyone: In case I have COVID-19 and am asymptomatic, when I cover my nose and mouth, I protect the people around me. So, if everyone is wearing a face covering when they’re out and about, then everyone has an extra layer of protection. The hope is that it becomes a social norm. I know we can get there.”

*(Emphasis added).*

<https://sanjosespotlight.com/exclusive-qa-dr-sara-cody-answers-san-jose-spotlight-readers/>

In other words, Dr. Cody knows that face masks are not, and cannot be, a law enforcement priority, and she does not wish to issue empty orders. This is sound reasoning. Unenforced orders breed contempt for the law and corrode the social fabric, as discussed above, making a unified community response to the pandemic more difficult.

Again, a City of San Jose ordinance making mandatory what both the State of California and Dr. Cody consider optional would conflict with state law and therefore be preempted. It would be illegal for this City Council to enact such an ordinance, even if, for sake of discussion, it would not be unconstitutional for Dr. Cody to have issued the same order.

Preemption is not only the law as to COVID-19, it is good public policy, ensuring that state and county *health experts* deal with the matter instead of municipal officials devoid of expertise. City of Cupertino’s mayor, an electrical engineer by trade rather than a health professional, <https://portal.clubrunner.ca/3794/Speakers/219bcc9-8c89-4096-bed4-6213aae6bd>, made clear during deliberations while enacting Cupertino’s mask-mandate that he substituted his own non-expert judgment for that of Dr. Cody:

***“Why did Cupertino go beyond the County’s recommendation?”***

“... Councilmember Rod Sinks, who voted against the city’s measure, worried that passing a measure in Cupertino would create confusion. Neighboring cities have not passed similar efforts to date. ‘I would prefer to see us simply abide by the orders as the county of Santa Clara deems to see fit,’ Sinks said, while lauding the county’s leadership on COVID-19 response. ***That was a perspective that Cupertino Mayor Steven Scharf sharply disagreed with. ‘If we do it and other city does it, Santa Clara County may follow the best practices*** of the other Bay Area Counties if we act responsibly,’ Scharf said. ***Scharf, in a PowerPoint presentation defending his perspective cast aspersions on the county’s facemask recommendations.*** It read, in part, ‘The County is looking for a way to save face after all the negative news stories in the last two days.’”

*(Emphasis added).* <https://cupertinotoday.com/2020/04/23/cupertino-to-require-face-coverings-in-public/>



It is ironic that Dr. Cody is criticized for being insufficiently attuned to “best practices,” when she was perhaps the most forward-thinking health director in the country at the onset of the crisis two months ago. As reported by *San Jose Inside* on April 15, 2020, “Santa Clara County—Not S.F.—Was Ahead of the Curve with Public Health Mandate . . . Despite living in San Francisco’s shadow, *South Bay health officials were always one step ahead.*” (*Emphasis added*).  
<https://www.sanjoseinside.com/the-fly/santa-clara-county-not-s-f-was-ahead-of-the-curve-with-public-health-order/>

A San Francisco publication, *Mission Local*, echoes, with considerably more detail, that Mayor London Breed unfairly took credit for Dr. Cody’s leadership: “You will note that San Francisco has simply copied-and-pasted the text from Santa Clara, which explains why it lists the COVID-19 case totals for that county . . . Other counties’ elected and appointed officials have grumbled quietly about this . . .” <https://missionlocal.org/2020/04/covid-atlantic-london-breed/>

If the City of San Jose follows the lead of the City of Cupertino, as the Jones-Jimenez memo proposes, it is doing so in direct conflict with Dr. Cody, disrespecting her in the process, just as Cupertino’s mayor has done. Assuredly, that is not your intent, but it will be the effect of overruling her with your own non-expert and contrary notions of “best practices.”

San Jose officials (like Cupertino’s mayor) have already shown themselves to be unqualified to weigh in on the current COVID-19 pandemic. For example, on March 26, 2020, Deputy City Manager Kip Harkness, who (like Cupertino’s mayor) is not a medical professional, misled this City Council by stating that, no matter what steps were taken to combat the virus, up to two thousand (2,000) San Joseans would die of the disease within twelve weeks:

“This again is the best case and even there we are likely to see many, many hundreds or up to 2,000 deaths,” said San Jose deputy city manager Kip Harkness during Tuesday’s city council meeting.”

<https://sanfrancisco.cbslocal.com/2020/03/26/coronavirus-santa-clara-county-deaths-prediction-sj-city-manager/> Harkness’ comments prompted alarm at the County of Santa Clara, as reported in *San Jose Spotlight*:

“But county officials *blasted* San Jose officials and *sharply disputed* the city’s estimation in a Thursday news release.

“*The model shared by the city of San Jose projecting deaths and future case counts of COVID-19 was not produced, reviewed, or vetted by the county of Santa Clara,*’ the county’s statement said. ‘The county of Santa Clara continues to actively assess the situation and take necessary actions to slow the spread of the novel coronavirus in our community and protect those most at risk for severe illness.’”

(*Emphasis added*).

<https://sanjosespotlight.com/county-disputes-san-jose-projections-of-2000-coronavirus-deaths-by-may/>

Time has proven Harkness' unvetted prediction wrong. As of May 16, seven weeks later, there have been only 135 deaths in the entire county of over 1.9 million people.

<https://www.sccgov.org/sites/covid19/Pages/dashboard.aspx>

<https://worldpopulationreview.com/us-counties/ca/santa-clara-county-population/>

Sadly, this City Council appears not to have learned from Harkness' misguided comments made less than two months ago. San Jose officials are not better-situated than Dr. Cody on matters of public health in San Jose, and the City Council should not substitute the Jones-Jimenez memo for her considered opinion that ***a mask-requirement is not appropriately a substitute for a mask-recommendation that preserves civil rights and civil liberties of County residents***, including those in its largest city. Even if preemption law does not require it, common sense suggests that City officials should stay in their proverbial lane and leave public health issues to the County health director, who is better able to make sound public health policy.

In conclusion, I remind the City Council of the historical examples of past crises in American history. When the panic subsided, it became apparent that prior generations of elected officials acted precipitously and with disregard for the rights and liberties of their constituents. UCLA law professor Eugene Volokh astutely observes:

“ . . . it would be naive to imagine we are immune from the tendency of governments to exploit crises for their benefit. To the contrary, we too have a long history of crises being used to undermine constitutional rights, subvert limits on government power, and target unpopular minorities. The notorious internment of Japanese Americans during World War II is just one of many examples.

“The fact that the coronavirus crisis is a genuinely serious threat to public health does not mean it can't be exploited in similar ways. World War II was a genuine crisis, too. Indeed, the genuinely severe nature of the crisis may actually make the threat of exploitation even greater, as the severity of the danger makes Americans more willing to sacrifice constitutional rights to address it, and less likely to closely scrutinize government actions enacted in response.”

[https://reason.com/2020/04/15/the-case-for-normal-judicial-review-of-coronavirus-emergency-policies/?utm\\_source=dlvr.it&utm\\_medium=twitter](https://reason.com/2020/04/15/the-case-for-normal-judicial-review-of-coronavirus-emergency-policies/?utm_source=dlvr.it&utm_medium=twitter)

Mandating the wearing of masks is not the equivalent of interning Japanese-Americans. Not even close. But, as Professor Volokh observes, the constitutional principles that you flirt with ignoring are similar, and they remain in force today. The regret from public officials following the COVID-19 pandemic is likely to be as genuine as the regret over the hysteria engendered by the bombing of Pearl Harbor. The Constitution still applies. And the measures you undertake

Mayor Sam Liccardo & San Jose City Councilmembers  
Re: Agenda Item 3.6 (May 19, 2020 City Council Meeting)  
May 17, 2020  
Page 21

during this pandemic must be done while cognizant of the oath each of you swore to uphold the Constitution.

A single vote on Item 3.6 of the May 19, 2020 agenda may define forever each of you who endorse this ill-considered, and in my view illegal, proposal to curtail all of our civil liberties, overshadowing the rest of your tenure on this body for decades to come, long after all else you have done is forgotten. As California Assemblyman Mike Gatto opined on April 23, 2020 in the *Mercury News*, “During a crisis, panic can make every extreme seem justified. Our government must avoid egregious violations that history will deem excessive.”

<https://www.mercurynews.com/2020/04/23/opinion-wheres-the-line-on-constitutional-rights-in-a-pandemic/>

Thank you for your consideration of the foregoing and for hopefully doing the right thing by rejecting the proposed mask-mandate.

Respectfully submitted,

/S/  
Don Gagliardi

**From:** Annie Colbeck

**Sent:** Sunday, May 17, 2020 2:16 PM

**To:** The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; City Clerk <city.clerk@sanjoseca.gov>

**Subject:** Agenda item 3.6, 20-562

Dear Mayor and City Council Members,

On May 19, 2020, the City Council will be voting on Agenda item 3.6, 20-562, on whether to require a fabric face mask when outside one's home.

I am asking you to **vote no on this agenda item**. I am otherwise healthy but live with (and manage life with) an autoimmune disorder - so I am all too aware about the necessity of keeping my immune system strong - and forcing residents to wear a mask will not accomplish this.

While grocery shopping or running errands over the last two weeks, I have complied with the recommendation to wear a mask while patronizing businesses and within 90 seconds, I am lightheaded and become nauseous due to the lack of oxygen or fresh air. This is not a healthy practice for any of your San Jose residents or essential workers outside of healthcare.

We have been sheltering in place for the last 9 weeks and have not overburdened our medical facilities. As of May 17th, The cumulative case count for San Jose is 1,601 which is less than a quarter of a percent (00.15%) of San Jose's 2018 population of 1,030,119. The cumulative Santa Clara County death count is 135; which is 00.013% of Santa Clara County's population (per 2010 census numbers). The data in Santa Clara County does not support tightening the restrictions already put in place on your residents. We have seen worse pandemics in the past including more severe flu seasons - none have warranted removing people's liberties, forcing people into poverty or ruining the economy.

Instead of voting on inconsequential measures such as mask wearing, let's instead focus on getting our people back to work and re-opening the San Jose economy.

For your reference, I have included several peer review medical studies and articles showing the ineffectiveness of masks as protection from an infection.

<https://www.bmj.com/content/369/bmj.m1422>.

**"The evidence is not sufficiently strong to support widespread use of facemasks as a protective measure against covid-19."**

[https://bmjopen.bmj.com/content/5/4/e006577?ijkey=5093aa11b13aa4b05ee4dcf1d9a24300418e87cf&keytype=tf\\_ipsecsha](https://bmjopen.bmj.com/content/5/4/e006577?ijkey=5093aa11b13aa4b05ee4dcf1d9a24300418e87cf&keytype=tf_ipsecsha)

**"This study is the first RCT of cloth masks, and the results caution against the use of cloth masks. This is an important finding to inform occupational health and safety. Moisture retention, reuse of cloth masks and poor filtration may result in increased risk of infection."**

<https://www.nature.com/articles/s41591-020-0843-2>

**"Among the samples collected without a face mask, we found that the majority of participants with influenza virus and coronavirus infection did not shed detectable virus in respiratory droplets or aerosols"**

<https://www.globalresearch.ca/face-masks-pose-serious-risks-healthy/5712649>

**"The importance of these findings is that a drop in oxygen levels (hypoxia) is associated with an impairment in immunity. Studies have shown that hypoxia can inhibit the type of main immune cells used to fight viral infections called the CD4+ T-lymphocyte...When a person is infected with a respiratory virus, they will expel some of the virus with each breath. If they are wearing a mask, especially an N95 mask or other tightly fitting mask, they will be constantly rebreathing the viruses, raising the concentration of the virus in the lungs and the nasal passages."**

[https://www.who.int/publications-detail/advice-on-the-use-of-masks-in-the-community-during-home-care-and-in-healthcare-settings-in-the-context-of-the-novel-coronavirus-\(2019-ncov\)-outbreak](https://www.who.int/publications-detail/advice-on-the-use-of-masks-in-the-community-during-home-care-and-in-healthcare-settings-in-the-context-of-the-novel-coronavirus-(2019-ncov)-outbreak) **“the wide use of masks by healthy people in the community setting is not supported by current evidence and carries uncertainties and critical risks.”**

Thank you  
Anne Colbeck



From: philip monte  
Sent: Sunday, May 17, 2020 12:10 PM  
To: City Clerk  
Subject: Mandatory mask

[External Email]

I VOTE NO NO NO NO NO !!!!!!!!!!!

Sent from my iPhone

**From:** Vicki Woledge

**Sent:** Monday, May 18, 2020 10:09 AM

**To:** The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>; City Clerk <city.clerk@sanjoseca.gov>; CouncilMeeting <CouncilMeeting@sanjoseca.gov>

**Cc:** me me <vwoledge22@yahoo.com>

**Subject:** Agenda item 3.6, 20-562

May 18, 2020

To: The Mayor, City Council, and City Clerk of San Jose

On May 19, 2020, the City Council will be voting on Agenda item 3.6, 20-562, on whether to require a fabric face mask when outside one's home. I urge each of you to VOTE NO to this.

All masks are not protective. Some people cannot afford masks. People tend to touch their faces more when wearing a mask. Masks cause other health issues because they limit the oxygen one can get while wearing them. This is a false sense of security and an infringement on our freedom! Please consider actual facts instead of just going along with what people may perceive as protection.

\*\*\*If masks are required in school and otherwise, the negative impact of the social and emotional development of children is serious and cannot be overlooked. Special needs children and adults will not be able to comply either. Those who do not wear a mask are discriminated against... this is causing unfriendly, unjust actions already!

According to the World Health Organization (the "WHO"), "there are potential risks and disadvantages that should be taken into account in any decision-making process on the use of masks", including whether "a non-medical or cloth masks could increase potential for COVID-19 to infect a person if the mask is contaminated by dirty hands and touched often, or kept on other parts of the face or head and then placed back over the mouth and nose". The WHO has explained: "Currently, there is not enough evidence for or against the use of masks (medical or other) for healthy individuals in the wider community. WHO continues to recommend that medical masks be worn by individuals who are sick or those caring for them." WHO explained, the "evidence about the benefits of these masks is limited. One good quality study showed that the risk of respiratory infection is increased (and not reduced) in health care workers using cotton cloth masks when compared to medical masks."

The WHO, has further stated, "it is possible that mask use, with unclear benefits, could create a false sense of security in the wearer, leading to diminished practice of recognized beneficial preventive measures such as physical distancing and hand hygiene." According to live science, the problem with non-medical, cloth masks is that "cloth holds on to moisture, is often reused, and filters poorly compared to medical masks." Live science indicated you need to always wear your face mask in the same orientation, and that face "masks should be machine-washed frequently to eliminate any residual flu particles, which may be contaminating the outside of the mask." It further states you must "remove your mask by taking the straps from the back of your head and pull forward — do not touch the material part of the mask. If you do, please remember to wash your hands with soap and water before and after you touch your mask." Since the failure to follow these basic protocols is common practice, as you yourselves could observe on a quick trip to a supermarket where you will regularly see dirty hands touching the material part of the mask, it is quite likely you will be doing more harm

then good by requiring fabric masks with the knowledge the masks will usually be worn improperly and in a fashion more likely to increase infection than not. It is no wonder why the county health department, with one of the most restrictive shelter in place orders remaining in the state, has refused to order the wearing of such masks.

Again, I ask that you please VOTE NO on mandatory masks.

Thank you,  
Vicki Woledge  
San Jose, CA

**From:** Erin Vokey  
**Sent:** Sunday, May 17, 2020 2:33 PM  
**To:** City Clerk <city.clerk@sanjoseca.gov>  
**Subject:** Mandatory mask

To Whom it May Concern:

As a voter, and active community member in San Jose, I am asking that you please consider voting no on the mandatory use of masks outside of residences.

When out of my house in stores or crowded places I wear a mask. However every person and situation is different and I don't think that making the use of masks mandatory is a workable solution.

For example, my 8 year old son has asthma and does not do well with a mask, he says he feels like he's suffocating.

Additionally, according to the World Health Organization, "there are potential risks and disadvantages that should be taken into account in any decision-making process on the use of masks", including whether "a non-medical or cloth masks could increase potential for COVID-19 to infect a person if the mask is contaminated by dirty hands and touched often, or kept on other parts of the face or head and then placed back over the mouth and nose".

The WHO has explained: "Currently, there is not enough evidence for or against the use of masks (medical or other) for healthy individuals in the wider community. WHO continues to recommend that medical masks be worn by individuals who are sick or those caring for them." WHO explained, the "evidence about the benefits of these masks is limited. There have been studies showing that the risk of respiratory infection is increased (and not reduced) in health care workers using cotton cloth masks when compared to medical masks."

Please do not just approve this mandatory action because other neighboring cities are. We are a large and diverse people with a wide range of life situations. I truly believe the majority of our citizens have the intellect and care to determine if a situation calls for a mask or not and do not feel it should be mandatory.

Sincerely,

Erin Vokey

From: Diana Monica Rios-Dominguez  
Sent: Monday, May 18, 2020 11:49 AM  
To: The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>  
Cc: District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>  
Subject: Agenda item 3.6, 20-562

[External Email]

Dear Mayor and City Council Members,

On May 19, 2020, the City Council will be voting on Agenda item 3.6, 20-562, on whether to require a fabric face mask when outside one's home. We urge you to all to vote no on this agenda item. Since we have been asked to wear masks to go grocery shopping or to work; My husband has complied out of fear and so he isn't shamed or thrown out of a store, but sadly his blood pressure has been at its highest since the order. Him and my dad both have high blood pressure and I feel wearing the mask has added stress to what was a basic joyful activity- work and grocery shopping. They provide for our family and we need them to be happy and healthy the mask does not guarantee they wont get a virus. But it has guaranteed that my husbands blood pressure numbers have gone up, his health is definitely at risk and making it mandatory may kill him in the long run. Fresh air is critical for survival. I am sure you may have friends or family members who are directly being affected in this manner. Please protect them and ask them to monitor their blood pressure daily-they may have no clue to do so. Please note no on this agenda item. Regards, Diana Rios-Dominguez San Jose CA 95127

According to the World Health Organization (the "WHO"), "there are potential risks and disadvantages that should be taken into account in any decision-making process on the use of masks.

The WHO, has stated, "it is possible that mask use, with unclear benefits, could create a false sense of security in the wearer, leading to diminished practice of recognized beneficial preventive measures such as physical distancing and hand hygiene." According to live science, the problem with non-medical, cloth masks is that "cloth holds on to moisture, is often reused, and filters poorly compared to medical masks." -- it is quite likely you will be doing more harm than good by requiring fabric masks with the knowledge the masks will usually be worn improperly and in a fashion more likely to increase infection than not. It is no wonder why the county health department, with one of the most restrictive shelter in place orders remaining in the state, has refused to order the wearing of such masks.

We would also suggest as a group that raises awareness about negative political implications of unjust policy on children: the negative impact of the social and emotional development of children if



such masks are required in school and otherwise cannot be overlooked.

Thank you for your consideration,

Tax Payers, Residents of San Jose, and Members of EPEC and this community.”

**From:** Emily Burns

**Sent:** Monday, May 18, 2020 12:33 PM

**To:** The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; City Clerk <city.clerk@sanjoseca.gov>

**Subject:** Agenda item 3.6, 20-562

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On May 19, 2020, the City Council will be voting on Agenda item 3.6, 20-562, on whether to require a fabric face mask when outside one's home.

I am asking you to **vote no on this agenda item.**

We have been sheltering in place for the last 9 weeks and have not overburdened our medical facilities. As of May 17th, The cumulative case count for San Jose is 1,601 which is less than a quarter of a percent (00.15%) of San Jose's 2018 population of 1,030,119. The cumulative Santa Clara County death count is 135; which is 00.013% of Santa Clara County's population (per 2010 census numbers). The data in Santa Clara County does not support tightening the restrictions already put in place on your residents. We have seen worse pandemics in the past including more severe flu seasons - none have warranted removing people's liberties, forcing people into poverty or ruining the economy.

Instead of voting on inconsequential measures such as mask wearing, let's instead focus on getting our people back to work and re-opening the San Jose economy.

For your reference, I have included several peer review medical studies and articles showing the ineffectiveness of masks as protection from an infection.

<https://www.bmj.com/content/369/bmj.m1422>.

**"The evidence is not sufficiently strong to support widespread use of facemasks as a protective measure against covid-19."**

[https://bmjopen.bmj.com/content/5/4/e006577?ijkey=5093aa11b13aa4b05ee4dcf1d9a24300418e87cf&keytype=tf\\_ipsecsha](https://bmjopen.bmj.com/content/5/4/e006577?ijkey=5093aa11b13aa4b05ee4dcf1d9a24300418e87cf&keytype=tf_ipsecsha)

**"This study is the first RCT of cloth masks, and the results caution against the use of cloth masks. This is an important finding to inform occupational health and safety. Moisture retention, reuse of cloth masks and poor filtration may result in increased risk of infection."**

<https://www.nature.com/articles/s41591-020-0843-2>

**"Among the samples collected without a face mask, we found that the majority of participants with influenza virus and coronavirus infection did not shed detectable virus in respiratory droplets or aerosols"**

<https://www.globalresearch.ca/face-masks-pose-serious-risks-healthy/5712649>

**"The importance of these findings is that a drop in oxygen levels (hypoxia) is associated with an impairment in immunity. Studies have shown that hypoxia can inhibit the type of main immune cells used to fight viral infections called the CD4+ T-lymphocyte... When a person is infected with a respiratory virus, they will expel some of the virus with each breath. If they are wearing a mask, especially an N95 mask or other tightly fitting mask, they will be constantly rebreathing the viruses, raising the concentration of the virus in the lungs and the nasal passages."**

[https://www.who.int/publications-detail/advice-on-the-use-of-masks-in-the-community-during-home-care-and-in-healthcare-settings-in-the-context-of-the-novel-coronavirus-\(2019-ncov\)-outbreak](https://www.who.int/publications-detail/advice-on-the-use-of-masks-in-the-community-during-home-care-and-in-healthcare-settings-in-the-context-of-the-novel-coronavirus-(2019-ncov)-outbreak) **"the wide use of masks by healthy people in the community setting is not supported by current evidence and carries uncertainties and critical risks. "**

Thank you,

Emily Burns

**From:** Erin Levin

**Sent:** Sunday, May 17, 2020 10:01 PM

**To:** The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>

**Subject:** Agenda item 3.6, 20-562

Dear Mayor and City Council Members,

On May 19, 2020, the City Council will be voting on Agenda item 3.6, 20-562, on whether to require a fabric face mask when outside one's home. I'm writing to ask that you please vote no on this item.

I'm very concerned about the health of our community, both in terms of how this pandemic affects our vulnerable populations, and how our response to the crisis affects all citizens and the social fabric we rely on.

Our county has not seen fit to require the wearing of masks in public, except for in businesses where people cannot reliably maintain safe distances. It strikes me as important to note this, because our county has some of the strictest measures in the country. Why would San Jose feel the need to impose even further limits? If you look at the [five indicators](#) our county has created in order to guide our response to COVID-19, you'll easily note that our community's response has already kept hospitalizations, new cases, and deaths at laudable lows.

Our lives have been disrupted so much already. What will the wearing of masks accomplish that hasn't already been shown in the data linked above? My answer is, only negative outcomes will result. Wearing masks disincentivizes eye contact and smiling, things we, as social beings, rely on, especially in trying times like these. A smile from a stranger--from a safe six feet--can really make the heart swell. Wearing masks promotes a culture of fear and anger, giving people opportunities to assess, rather than support, their neighbor. Wearing masks is physically uncomfortable: consider those with breathing trouble, who wear glasses, or who have anxiety disorders that are triggered by claustrophobic breathing. Wearing masks is impractical as we approach the heat of the summer months, and people desire to maintain their health and wellness by doing outdoor fitness activities. Wearing masks is impossible for children, who also are easily frightened by adults whose faces they cannot see. There will also be those who choose not to comply with a mask order, which will only serve to further divide and disrupt our sense of community. Why create such an environment?

I am deeply, deeply troubled by the thought that what little freedom we have to move about and enjoy the outdoors will be further curtailed. Let's find other ways to join together in our response. I urge you to listen to all your constituents who feel as I do.

Sincerely,  
Erin Levin

**From:** Ethan Cunningham

**Sent:** Sunday, May 17, 2020 11:10 PM

**To:** The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>

**Subject:** Vote Yes to require public masks

Dear Mayor and City Council Members,

On May 19, 2020, the City Council will be voting on Agenda item 3.6, 20-562, on whether to require a fabric face mask when outside one's home. I'm writing to ask that you vote yes.

I am growingly concerned about our community's well-being and continued well-being, due to how easily this highly infectious virus spreads, and how it will impact the lives and futures of San Jose residents. As we already know, the disease can incubate inside a person without the person experiencing any symptoms making it an invisible killer. Without any available drug treatments or vaccines, I cannot see any near future where COVID-19 isn't rampaging the streets of our city.

With the community's health and human lives at stake, it should be no quarrel among the people of San Jose that changes in our lives are needed in order to help. It should be seen as a personal responsibility that we wear a mask, not for ourselves but for everyone else. When I am wearing my mask, I do not think about myself and my own safety. Instead, I worry about those around me, and I hope others would take adhere to that same responsibility.

Due to our county's strong response to the pandemic, we have limited the number of hospitalizations, new cases, and deaths. The pandemic will continue to plague our community, county, and country, and there should be responsible and necessary steps taken to fight it. In my eyes, and those of many others around me, this means voting yes.

With my support of this proposal, I would like to add that this is a wonderful opportunity for community building. It would be wonderful if masks were easily available in places where people most need them. Further, if instead of punishing those without masks, policemen carried extra masks in case someone has 'forgotten' theirs or refuses to wear one.

I am willing to do whatever necessary steps needed to ensure that this pandemic sees its end. I'm hoping that you recognize the urgency and action needed to fight it. I urge you to take the responsibility demanded to maximize our city's health and safety, and continue to make our city prosper. Please, vote yes.

Thank you.

Ethan.

From: bob .

Sent: Monday, May 18, 2020 12:14 PM

To: The Office of Mayor Sam Liccardo

Subject: No on Mandatory masks

[External Email]

Please vote no on mandatory masks. If you do the research you will find that ultimately more people will get sick from the kinds of flimsy masks they're wearing anyway. And besides, many people can't wear masks By case of medical conditions so what happens to them? Will they be shut out of services because they can't wear one?

This is extremely un-American and unconstitutional.

Please end the Mandates. Let's be Free again!

Thank you!

Sent from my iPhone



**From:** Kimberly Potts

**Sent:** Monday, May 18, 2020 3:32 PM

**To:** City Clerk <city.clerk@sanjoseca.gov>; CouncilMeeting <CouncilMeeting@sanjoseca.gov>; The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>

**Subject:** Agenda Item 3.6, 20-562

May 18, 2020

To: The Mayor & City Council of San Jose, CA

Dear Mayor & City Council Members,

Good afternoon - I am writing to urge you to vote **NO** on **requiring a mask** to be worn outside one's home. There is clearly much debate on this issue, & even the **WHO declares that** "there are potential risks & disadvantages that should be taken into account in any decision-making process on the use of masks", including whether "a non-medical or cloth mask could *increase* potential for COVID-19 to infect a person if the mask is contaminated by dirty hands & touched often, or kept on other parts of the face or head & then placed back over the mouth & nose." The WHO goes on to explain: "Currently, there is not enough evidence for or against the use of masks (medical or other) for healthy individual in the wider community. WHO continues to recommend that medical masks be worn by individuals who are sick or those caring for them." The WHO continues: the "evidence about the benefits of these masks is limited. One good quality study showed that the risk of respiratory infection is **increased** (not reduced) in health care workers using cloth masks when compared to medical masks..... it is possible that mask use, with unclear benefits, could create a false sense of security in the wearer, leading to diminished practice of recognized beneficial preventative measures such as physical distancing & hand hygiene."

I am a teacher in San Jose. I am NOT affiliated with any "Freedom Fighter" group. I am a staunch Progressive NPP who votes Democrat. I am basing my argument not on my "personal freedoms", though obviously those are critical; I base my argument on the **LACK OF SCIENTIFIC EVIDENCE for healthy people to wear masks at all times. The evidence points to the contrary.** Our immune systems need exposure to fresh air & a *variety* of microorganisms.

Viruses have traveled the world for millennia. They do not need humans to move around. Even if one were trying to completely eliminate the viruses spread by human saliva, the "masks" that people are wearing do not eliminate the Corona Virus. And, this elimination is completely unnecessary in healthy people. The way our immune systems work has not changed! We have always lived with viruses. It is the *terrain* (microbiome) that must remain healthy. Wearing masks can **decrease** the strength of our immune system by denying us fresh air & exposure to a variety of microorganisms that we need for health.

I urge you to do your OWN research on the issue of health & wellness, & as it relates to all of the restrictions being put into place right now. You owe this to your community. There is little real scientific evidence for what we are doing. This health crisis has become politicized. Progressives want to take the compassionate route, hoping they will save lives. Masks "look" like we are doing something, but it is NOT

the something that will actually be effective to sustain a healthy population. As well, shutting down our way of life will NOT save lives. Obviously, there is so much that people (ESPECIALLY CHILDREN) desperately need right now, **FOR** THE MAINTENANCE OF OUR HEALTH, that we not getting: an income, fresh air & sunshine, movement, & connection to other people. Lack of these things has been scientifically shown to DECREASE our immune system.

Please, see this article from a **board-certified neurosurgeon** who warns of the dangers of healthy people wearing masks at all times:

[Face Masks Pose Serious Risks to the Healthy](#)

I also highly recommend listening to the interviews (below) with a **triple board-certified MD**. His explanation of viruses & the immune system is profound.

[Dr. Bush, MD, Internal Medicine, Endocrinology & Hospice - 1](#)

[Dr. Bush, MD, Internal Medicine, Endocrinology & Hospice - 2](#)

Thank you for moving beyond politics to what will actually bring HEALTH to your constituents (like me, who voted for you) at this critical time.

Sincerely,  
Kimberly Potts  
Nutrition teacher  
San Jose, CA

**From:** Susan Tran  
**Sent:** Monday, May 18, 2020 5:26 PM  
**To:** City Clerk <city.clerk@sanjoseca.gov>  
**Subject:** Item # G.6 Emergency Mandate for Wearing Face Coverings

Ladies and Gentlemen,

Thank you for representing us and thank you to Johnny Khamis for posting on your Facebook page and asking our opinion.

I oppose mandatory wearing of face masks in public. And would ask you to oppose this measure. But I am very respectful of those wearing face masks and to me it is a cue that they feel uncomfortable and I give them significant distance.

We were told that we were to shelter in because medical services would be overwhelmed. And we did. They are now significantly underutilized. There is no surge. We were told that millions of people would die from this virus. And they didn't. Summer is when the sun is out and people can get Vitamin D (there have been studies showing that those with higher Vitamin D levels fair well against Covid-19) and be exposed to germs and boost their immune systems. This is the best time for us to be exposed to Covid-19. Opening up allows some to become ill and let the virus gradually move through society, protecting the vulnerable. It will eventually have to work its way through society to establish herd immunity. Otherwise you will be locking people in their houses and violating people's constitutional rights to refuse vaccines. People can choose to stay in. They can choose to wear masks. They can choose to be tested. They can choose to accept the vaccine. But it is not within the right of government to mandate any of this. Government is subject to the Constitution and each of you have taken an oath to uphold the Constitution which protects your rights and mine. I know you know this. Just a gentle reminder. ☺

Thank you for your service. Please protect our rights and liberties.

Respectfully,  
Susan Tran

From: Katie Rue  
Sent: Tuesday, May 19, 2020 8:11 AM  
To: City Clerk  
Subject: Agenda item 3.6 20-562

[External Email]

To whom it may concern,

I ask that you vote NO on the face covering mandate.

People in China have been using masks for many years, yet it appears this virus started there and was the most deadly there.

Most people are also just using any sort of face covering, which is obviously not effective and can pose more risk than not.

Many people have valid reasons for being unable to wear a mask, and are being discriminated against at stores.

Furthermore, if masks were effective, why were prisoners released instead of just having them wear masks?

And if everyone in society does wear a mask, will the state fully open immediately as a result, as we are now all safe because we have on masks?

A mask mandate does not make sense. It will not protect anyone and puts many people at more risk.

Katie Rue

**From:** Stacey Nelson  
**Sent:** Tuesday, May 19, 2020 7:57 AM  
**To:** City Clerk <city.clerk@sanjoseca.gov>  
**Subject:** 3.6, 20-562

I STRONGLY oppose a vote requiring mandatory wearing of masks for residents of San Jose whenever outside! Scientific research shows wearing a mask can lead to reduced immunity and cause us to inhale our own bacteria and toxins due to lack of circulation. This is a violation of my civil liberties!!

My vote is resounding NO!

Respectfully,

Stacey Nelson

From: Jean Skamra  
Sent: Tuesday, May 19, 2020 7:57 AM  
To: City Clerk  
Subject: agenda# 3.6,20-562

Hello

I am requesting a NO VOTE on making masks mandatory for the people of San Jose. The WHO and CDC both have stated they do not protect from viruses. Since when has San Jose forced a dress code policy on it's citizens? This is tyranny. This is an outrage! I am professional artist in San Jose and I wear those masks all the time while sanding wood and my nose is filled with sawdust in about two minutes. There is NO PROOF that these masks work. Please VOTE NO or we may end up loosing our great city.

Thank you

Jean Skamra



**From:** Joel Everidge  
**Sent:** Tuesday, May 19, 2020 7:40 AM  
**To:** City Clerk <city.clerk@sanjoseca.gov>  
**Subject:** 3.6, 20-526

Hello,

I would say with all due respect, but I do not respect people especially politician who try to take our liberties.

I demand a no vote on the mask wearing in public.

For myself and my family if this is passed we will not abide by an unconstitutional law.

Please remember we live in a Constitutional Republic.

Thank you,  
Joel Williams.

**From:** Tiffany Vierra  
**Sent:** Tuesday, May 19, 2020 7:27 AM  
**To:** City Clerk <city.clerk@sanjoseca.gov>  
**Subject:** Vote no on mandatory mask

Good morning-

I am a wife, mom and health care provider. I have lived in masks at work for the past 22 years. Eight of those years were on the burn unit at VMC. I understand their importance. I also understand how moisture, humidity, etc can be a haven for bacterial growth. People are not washing/changing masks often. I will wear a mask in a store, shop, MD appointment, etc. But not riding my bike, walking my dog and never running. I run between 7-8 am and in the street to avoid those on the sidewalk. I am mindful and respectful. If I wear a mask running I will more likely become ill, pass out, etc. No one will likely come to my aid if I pass out.

Our air has never been cleaner! Let us enjoy it in a mindful, respectful way.

Best-

Tiffany Vierra, OTR/L

Sent from my iPhone

From: Carol Ellis

Sent: Tuesday, May 19, 2020 6:23 AM

To: City Clerk

Subject: 3.6, 20-562

I am urging you to vote NO on mandatory face masks out in public! People need fresh air and sunshine.

Carol Ellis

Sent from my iPad

From: Monica Song  
Sent: Tuesday, May 19, 2020 4:19 AM  
To: City Clerk  
Subject: Agenda item #3.6 Face Coverings

Dear Mayor Licardo and SJ City Council Members,

I strongly oppose the mandate requiring face coverings while outdoors.

I can understand some of the reasons for wearing a mask indoors, but outdoors is not necessary and not in the best interests of SJ residents.

What is the data showing in terms of the period where no masks were required (about a 2 month stretch)? Is there a significant difference or noticeable increase of COVID cases during the time when masks were not required at all? If not, impose this mandate now?

How will you enforce this? You don't have enough police staff to enforce; and consequently, this will lead to more problems such as arguments and even physical altercations as people attempt to police fellow residents on this matter. We've already seen this happen in stores, at gas stations, at the farmers market, etc... The citizenry is already divided on the matter of wearing masks INDOORS.

Is it wise to enact a mandate that will cause further division and tension among fellow San Jose residents?

In addition, with the release of thousands of violent criminals into our communities, I don't feel safe being out and not being able to see people's faces. How will anyone be able to accurately identify an offender when, God forbid, any of them should strike again?

We have seen reports from all over California of sheriff's deputies and police officers rearresting released criminals, sometimes the same person multiple times! A face/mask covering works to the advantage of a perpetrator for THEIR protection from accurate identification by victims.

Finally, it is well known that fresh air and sunshine strengthen the immune system and are necessary for mental health. For many, wearing a mask may not only be a physical health risk (ie..not being able to breath well with a mask due to asthma and other respiratory ailments), but it is also a psychological and emotional stressor.

Those people will simply choose not to go out at all. Leading to 1) A weakened immune system and increased risk of sickness once exposed to COVID or any other infections for that matter, and/or 2) Increased isolation, and consequently, an increased risk of worsened anxiety and depression for those who already struggle with mental health.

A majority of the residents of San Jose have been readily compliant with social distancing and wearing masks in stores. Imposing further mandates around face covering is simply not necessary and will lead to so many other problems.

Please consider the risks carefully.

Sincerely,

Monica Song



**From:** Jeff T.

**Sent:** Tuesday, May 19, 2020 12:38 AM

**To:** City Clerk <city.clerk@sanjoseca.gov>

**Subject:** Council agenda on 5/19/20 Item 3.6 File no. 20-582

To whom it may concern,

I would like to ask for a NO vote regarding the proposed mandate requiring face coverings be worn at all times when outside in San Jose.

To be voted on during the council meeting today, item 3.6, file no. 20-582.

From the WHO website:

Advice to decision makers on the use of masks for healthy people in community settings:

The wide use of masks by healthy people in the community setting is not supported by current evidence and carries uncertainties and critical risks.

WHO offers the following advice to decision makers so they apply a risk-based approach.

The use of masks made of other materials (e.g., cotton fabric), also known as nonmedical masks, in the community setting has not been well evaluated. There is no current evidence to make a recommendation for or against their use in this setting.

Decisions makers should consider the following:

1. Purpose of mask use: the rationale and reason for mask use should be clear— whether it is to be used for source control (used by infected persons) or prevention of COVID-19 (used by healthy persons)
2. Risk of exposure to the COVID-19 virus in the local context: The population: current epidemiology about how widely the virus is circulating (e.g., clusters of cases versus community transmission), as well as local surveillance and testing capacity (e.g., contact tracing and follow up, ability to carry out testing). The individual: working in close contact with public (e.g., community health worker, cashier)
3. Vulnerability of the person/population to develop severe disease or be at higher risk of death, e.g. people with comorbidities, such as cardiovascular disease or diabetes mellitus, and older people
4. Setting in which the population lives in terms of population density, the ability to carry out physical distancing (e.g. on a crowded bus), and risk of rapid spread (e.g. closed settings, slums, camps/camp-like settings).
5. Feasibility: availability and costs of the mask, and tolerability by individuals
6. Type of mask: medical mask versus nonmedical mask

The following potential risks should be carefully taken into account in any decision-making process:

- self-contamination that can occur by touching and reusing contaminated mask
- depending on type of mask used, potential breathing difficulties
- false sense of security, leading to potentially less adherence to other preventive measures such as physical distancing and hand hygiene
- diversion of mask supplies and consequent shortage of mask for health care workers
- diversion of resources from effective public health measures, such as hand hygiene

The WHO has explained, "Currently, there is not enough evidence for or against the use of masks (medical or other) for healthy individuals in the wider community. WHO continues to recommend that medical masks be worn only by individuals who are sick or those caring for them. Evidence about the benefits of these masks is limited." WHO has further stated, "It is possible that mask use, with unclear benefits, could create a false sense of security in the wearer, leading to diminished practice of recognized beneficial preventive measures such as physical distancing and hand hygiene."

In conclusion, 1.93 million people live in Santa Clara county and currently there are 2470 confirmed Covid-19 cases. That is only .13% of the population of Santa Clara county that is currently infected. I do not believe that the healthy 99.87% of the population should be forced to wear face masks when there is such a low infection rate.

Once again, I ask for a NO vote.

Thank you,



# WHEN TO USE A MASK

For healthy people wear a mask **only if you are taking care of a person with suspected 2019-nCoV infection**

**Wear a mask, if you are coughing or sneezing**

Masks are effective only when used **in combination with frequent hand-cleaning with alcohol-based hand rub or soap and water**

If you wear a mask then you **must know how to use it and dispose of it properly**



World Health  
Organization



**From:** Melisa Velasco  
**Sent:** Tuesday, May 19, 2020 12:18 AM  
**To:** City Clerk <city.clerk@sanjoseca.gov>  
**Subject:** NO to mandatory masks

Mandatory Mask wearing is a very short sighted and narrow approach to the addressed issue of preventing disease spread.

Face masks should not be mandatory, especially for healthy individuals. It is well documented that covid is transmitted via DROPLETS. Healthy or asymptomatic people do NOT transmit droplets as these are not produced in regular breathing. Furthermore, masks decrease oxygenation to the blood. Decreased oxygen intake and increased carbon dioxide uptake in the body can have detrimental effects on the immune system, as bacteria and viruses find these environments more hospitable.

Prolonged mask use decreases the immune system through the mechanism stated above.

As a healthcare practitioner, I have helped many individuals increase their blood pH and have seen great improvements in their health. On the contrary, some of my least healthy patients are those with lower (more acidic) fluid pH. Mask use will only lead to prolonged illness and increased susceptibility to infection.

**From:** MALvarezDC  
**Sent:** Tuesday, May 19, 2020 12:33 AM  
**To:** City Clerk <city.clerk@sanjoseca.gov>  
**Subject:** NO on mandatory face masks

Face masks decrease oxygen intake. Nearly 25% of the population suffers from a form of anemia, varying conditions where the blood does not have enough oxygen. What do you suppose would happen to a quarter of your residents who have this condition??

Have you ever run with a face mask? Heavy exertion while use of a mask can be detrimental to a person's health.

Exercise boosts the immune system. Time spent in the sun increases the immune system. Fresh air also bolsters the immune system allowing more oxygenated blood to circulate (the air inside a home is two to five times more polluted than outdoor air). Wearing a mask completely negates the positive effects of simply being outdoors. Furthermore, if you are not coughing or sneezing you are not transmitting this disease.

Please keep in mind, healthy individuals do not transmit covid. You can't transmit something you don't have.

Sent from ProtonMail mobile

**From:** LIANE BURTON

**Sent:** Monday, May 18, 2020 11:27 PM

**To:** City Clerk <city.clerk@sanjoseca.gov>

**Subject:** AGENDA # 3.6, 20-562 - NO MANDATORY MASKS OUTDOORS

Hello,

I am writing to urge you to VOTE NO FOR OUTDOOR MANDATORY MASKS.

Thank you very much.

Sincerely,

Liane Burton

From: Steve Burton  
Sent: Monday, May 18, 2020 11:21 PM  
To: City Clerk  
Subject: 3.6, 20-562

Vote NO NO NO for outdoor mandatory masks.  
Thank you  
Steve Burton

**From:** Janelle Blatchford  
**Sent:** Monday, May 18, 2020 9:50 PM  
**To:** City Clerk <city.clerk@sanjoseca.gov>  
**Subject:** 3.6, 20-562

Hello,

I ask for you to vote **NO on 3.6, 20-562**. There is no research to support this bill and that masks prevent the contraction and spread of COVID. There is, however, plenty of research to show the harm wearing a mask for an extended period of time can cause.

If you would like to look at some research here is a [link](#) to an article written by Dr. Russell Blaylock. He is a nationally recognized board-certified neurosurgeon, health practitioner, author, and lecturer, are some sources.

Thank you for your time.



**From:** Nima Fadavi  
**Sent:** Monday, May 18, 2020 9:36 PM  
**To:** City Clerk <city.clerk@sanjoseca.gov>  
**Subject:** Agenda #: 3.6, 20-562

May 18, 2020

To: The Mayor and City Council of San Jose,

Dear Mayor and City Council Members,

On May 19, 2020, the City Council will be voting on Agenda item 3.6, 20-562, on whether to require a fabric mask when outside one's home. We urge you to all vote 'No' on this agenda item. As for the scientific support for the use of face mask, a recent careful examination of the literature, in which 17 of the best studies were analyzed, concluded that, "None of the studies established a conclusive relationship between mask/respirator use and protection against influenza infection (Reza F et al, 2012). Keep in mind, no studies have been done to demonstrate that either a cloth mask or the N95 mask has any effect on transmission of the COVID-19 virus. Any recommendations, therefore, have to be based on studies of influenza virus transmission. And, as you have seen, there is no conclusive evidence of their efficiency in controlling flu virus transmission.

According to the World Health Organization, "there are potential risks and disadvantages that should be taken into account in any decision-making process on the use of masks", including whether "a non-medical or cloth masks could increase potential for COVID-19 to infect a person if the mask is contaminated by dirty hands and touched often, or kept on other parts of the face or head and then placed back over the mouth and nose." The Who has explained: "Currently, there is not enough evidence for or against the use of masks (medical or other) for healthy individuals in the wider community. WHO continues to recommend that medical masks be worn by individuals who are sick or those caring for them." WHO explained, the "evidence about the benefits of these masks is limited. One good quality study showed that the risk of respiratory infection is increased (and not reduced) in health care workers using cotton cloth masks when compared to medical masks".

There is another danger to wearing these masks on a daily basis, especially if worn for several hours. When a person is infected with a respiratory virus, they will expel some of the virus with each breath. If they are wearing a mask, especially an N95 mask or other tightly fitting mask, they will be constantly rebreathing the viruses, raising

the concentration of the virus in the lungs and the nasal passages. We know that people who have the worst reactions to the coronavirus have the highest concentrations of the virus early on. And this leads to the deadly cytokine storm in a selected number.

The Who, has further stated, "it is possible that mask use, with unclear benefits, could create a false sense of security in the wearer, leading to diminished practice of recognized beneficial preventive measures such as physical distancing and hand hygiene." According to life science, the problem with non medical, cloth masks is that "cloth holds on to moisture, is often reused, and filters poorly compared to medical masks." Live science indicated you need to always wear your face mask in the same orientation, and that face "masks should be machine- washed frequently to eliminate any residual flu particles, which may be contaminating the outside of the mask."

It further states you must "remove your mask by taking the straps from the back of your head and pull forward- do not touch the material part of the mask. If you do, please remember to wash your hands with soap and water before and after you touch your mask." Since the failure to follow these basic protocols is common practice, as you yourselves could observe on a quick trip to a supermarket where you will regularly see dirty hands touching the materials part of the mask, it is quite likely you will be doing more harm than good by requiring fabric masks with the knowledge the masks will usually be worn improperly and in a fashion more likely to increase infection than not. It is no wonder why the county health department, with one of the most restrictive shelter in place orders remaining in the state, has refused to order the wearing of such masks. We would also suggest as a group that raises awareness about negative political implications of unjust policy on children; the negative impact of the social and emotional development of children if such masks are required in school and otherwise cannot be overlooked.

Nima Fadavi  
Verticals Agency

**VERTICALS**  
AGENCY

From: Kiely  
Sent: Monday, May 18, 2020 9:21 PM  
To: City Clerk  
Subject: Agenda #: 3.6, 20-562

[External Email]

May 18, 2020

To: The Mayor and City Council of San Jose,

Dear Mayor and City Council Members,

On May 19, 2020, the City Council will be voting on Agenda item 3.6, 20-562, on whether to require a fabric mask when outside one's home. We urge you to all vote 'No' on this agenda item. As for the scientific support for the use of face mask, a recent careful examination of the literature, in which 17 of the best studies were analyzed, concluded that, "None of the studies established a conclusive relationship between mask/respirator use and protection against influenza infection (Reza F et al, 2012). Keep in mind, no studies have been done to demonstrate that either a cloth mask or the N95 mask has any effect on transmission of the COVID-19 virus. Any recommendations, therefore, have to be based on studies of influenza virus transmission. And, as you have seen, there is no conclusive evidence of their efficiency in controlling flu virus transmission.

According to the World Health Organization, "there are potential risks and disadvantages that should be taken into account in any decision-making process on the use of masks", including whether "a non-medical or cloth masks could increase potential for COVID-19 to infect a person if the mask is contaminated by dirty hands and touched often, or kept on other parts of the face or head and then placed back over the mouth and nose." The Who has explained: "Currently, there is not enough evidence for or against the use of masks (medical or other) for healthy individuals in the wider community. WHO continues to recommend that medical masks be worn by individuals who are sick or those caring for them." WHO explained, the "evidence about the benefits of these masks is limited. One good quality study showed that the risk of respiratory infection is increased (and not reduced) in health care workers using cotton cloth masks when compared to medical masks".

There is another danger to wearing these masks on a daily basis, especially if worn for several hours. When a person is infected with a respiratory virus, they will expel some of the virus with each breath. If they are wearing a mask, especially an N95 mask or other tightly

fitting mask, they will be constantly rebreathing the viruses, raising the concentration of the virus in the lungs and the nasal passages. We know that people who have the worst reactions to the coronavirus have the highest concentrations of the virus early on. And this leads to the deadly cytokine storm in a selected number.

The Who, has further stated, "it is possible that mask use, with unclear benefits, could create a false sense of security in the wearer, leading to diminished practice of recognized beneficial preventive measures such as physical distancing and hand hygiene." According to life science, the problem with non medical, cloth masks is that "cloth holds on to moisture, is often reused, and filters poorly compared to medical masks." Live science indicated you need to always wear your face mask in the same orientation, and that face "masks should be machine- washed frequently to eliminate any residual flu particles, which may be contaminating the outside of the mask."

It further states you must "remove your mask by taking the straps from the back of your head and pull forward- do not touch the material part of the mask. If you do, please remember to wash your hands with soap and water before and after you touch your mask." Since the failure to follow these basic protocols is common practice, as you yourselves could observe on a quick trip to a supermarket where you will regularly see dirty hands touching the materials part of the mask, it is quite likely you will be doing more harm than good by requiring fabric masks with the knowledge the masks will usually be worn improperly and in a fashion more likely to increase infection than not. It is no wonder why the county health department, with one of the most restrictive shelter in place orders remaining in the state, has refused to order the wearing of such masks. We would also suggest as a group that raises awareness about negative political implications of unjust policy on children; the negative impact of the social and emotional development of children if such masks are required in school and otherwise cannot be overlooked.

Thank you,  
Kiely Modiri

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From: philip monte  
Sent: Monday, May 18, 2020 9:08 PM  
To: City Clerk  
Subject: Mandatory mask 3.6,20-562

[External Email]

I VOTE NO NO NO NO NO !!!!!!!!!!!

Sent from my iPhone

**From:** Rich Ghiossi  
**Sent:** Monday, May 18, 2020 9:02 PM  
**To:** City Clerk <city.clerk@sanjoseca.gov>  
**Subject:** subject line: 3.6, 20-562

Please vote NO. This is not necessary especially given all the recent research, especially concerning people who are outside in the sun. Also, the WHO has proven NOT to be a reliable source of health information!! Thank you for voting no,  
A resident of San Jose for more than 40 years!!



From: Larry Ells  
Sent: Monday, May 18, 2020 8:50 PM  
To: City Clerk  
Subject: No face mask!!!

[External Email]

No on face masks!!!

Larry  
Sent from my iPhone

**From:** Cindy Fulk  
**Sent:** Monday, May 18, 2020 8:50 PM  
**To:** City Clerk <city.clerk@sanjoseca.gov>  
**Subject:** 3.6, 20-562

I vote No on wearing a mask.

Thank you  
Cindy Fulk

**From:** Alicia Fulk

**Sent:** Monday, May 18, 2020 8:47 PM

**To:** City Clerk <city.clerk@sanjoseca.gov>

**Subject:** 3.6, 20-562 ASK FOR A NO VOTE

3.6, 20-562 ASK FOR A NO VOTE

Vote: No on mandatory mask wearing

Thank you

**From:** Mia

**Sent:** Monday, May 18, 2020 7:56 PM

**To:** City Clerk <city.clerk@sanjoseca.gov>

**Subject:** YES to masks: Agenda # 3.6, 20-562

Please vote YES to masks!

**From:** Pat Bergman  
**Sent:** Monday, May 18, 2020 7:46 PM  
**To:** City Clerk <city.clerk@sanjoseca.gov>  
**Subject:** 3.6, 20-562

Please vote YES on requiring masks until this pandemic is over or at least until we are assured there have been enough vaccinations for herd immunity. It is the least we can do to protect each other. I hate them--they fog up my glasses--but I believe we need to be responsible for each other.

Patricia Bergman

**From:** Jack Nelson

**Sent:** Monday, May 18, 2020 7:41 PM

**To:** City Clerk <city.clerk@sanjoseca.gov>

**Subject:** Agenda # 3.6, 20-562

Good Afternoon,

My name is Jack Nelson, and I am a resident of the city of San Jose, CA. I am very much opposed to and urge the city council members to vote no on mandating San Jose residents to wear a face mask whenever they leave their home. It is clearly a violation of the constitution and our civil liberties, to be forced to wear any mandated article of clothing or equipment. We as a community have made great sacrifices to help “flatten the curve” and it has been beyond successful. Passing this mandate is not in the city’s best interest and is a gross violation of our personal liberties.

Thank you,

Jack Nelson

**From:** Rani Glaser

**Sent:** Monday, May 18, 2020 6:43 PM

**To:** City Clerk <city.clerk@sanjoseca.gov>

**Subject:** 3.6, 20-562 ASK FOR A YES VOTE

Masks are the only known way to prevent a second wave of COVID19. It has been shown that it dramatically decreases infections and is widely used successfully in East Asia - good examples of containment of COVID19 with the help of masks is Taiwan, South Korea, Japan, etc. Masks are a safety accessory, similar to seatbelts in cars. Years ago those were considered a nuisance, today very few drive without one.

**From:** Shana Sundstrom  
**Sent:** Monday, May 18, 2020 6:31 PM  
**To:** City Clerk <city.clerk@sanjoseca.gov>  
**Subject:** Please vote NO to Mandatory Masks, Here's why:

To whom this may concern,

At first, I thought it was a good idea to wear a mask around others to protect myself from germs and to prevent getting Covid, such as at the grocery store. Making it mandatory to wear a mask when you leave the house is insane. Most of the time, I'm not even around other people unless it's a store and people have been great at keeping distance in stores. So I prefer to breathe fresh healthy air and NOT the chemicals that are in most masks. I have friends who are claustrophobic and masking wearing causes panic attacks.

I can understand if someone has a cold or is sick, they should wear a mask so as not to infect others if they must leave the house, but in March and April, when going to the store without a mask was still okay, I nor any of my friends/family that I asked, got sick after going to a store without a mask. Masks can actually trigger viruses that live in all of us all the time. A friend sent me this article and it shows strong evidence that (unless you are a doctor preventing contamination such as in a sterilized surgery room) you really should NOT be wearing a mask as it can do more damage than prevention. Please read this article. Thank you

[New Evidence Shows Wearing Face Mask Can Help Coronavirus Enter the Brain and Pose More Health Risk, Warn Expert](#)



### **New Evidence Shows Wearing Face Mask Can Help Coronavirus Enter the Brai...**

Staff Reporter

First, it was gloves that health professionals deemed as potentially hazardous, now, face masks also face the sa...



**From:** Olivia Rose

**Sent:** Monday, May 18, 2020 6:29 PM

**To:** City Clerk <city.clerk@sanjoseca.gov>

**Subject:** Agenda number 3.6, 20-562 - VITE NO

Hello,

I would like to formally request a vote for NO on mandatory masks in San Jose. There is no sufficient research to suggest masks significantly decrease contamination and contagion. Furthermore, many stores in the area ALREADY require masks for entry. This decision should be left up to business owners, and does not inhibit the health of San Jose residents. Likelihood for contagion when outdoors is already extremely low, and masks are in no way necessary when one is outdoors social distancing while walking, running, or hiking. Personally, mandatory masks would have an immediate negative effect on my health as I would no longer be able to freely run outdoors (exercise is vital to staying well and immune to disease and contagion). PLEASE regard the seriousness of such a mandate and do not take it lightly. I implore you to vote NO.

Best,

Olivia G. Rose

From: Olga Klimochkin  
Sent: Monday, May 18, 2020 6:19 PM  
To: City Clerk  
Subject: agenda # number in subject line: 3.6, 20-562

[External Email]

Please vote "no"

**From:** j.mmarquez  
**Sent:** Monday, May 18, 2020 6:18 PM  
**To:** City Clerk <city.clerk@sanjoseca.gov>  
**Subject:** Yes on masks

Sent from my Verizon, Samsung Galaxy smartphone

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From: Marilyn  
Sent: Monday, May 18, 2020 6:09 PM  
To: City Clerk  
Subject: 3.6,20-562

[External Email]

no vote for mandatory mask wearing

Marilyn  
Sent from my iPad

From: Matthew Matlock  
Sent: Monday, May 18, 2020 5:53 PM  
To: City Clerk  
Subject: Agenda #3.6, 20-562

[External Email]

I vote no to mandatory masks in San Jose.

Sent from my iPhone

**From:** Sandra Bohlin  
**Sent:** Monday, May 18, 2020 5:44 PM  
**To:** City Clerk <city.clerk@sanjoseca.gov>  
**Subject:** No vote on mask agenda # 3.6, 20-562

Please I request NO on requiring masks.

My adult daughter has special needs, and Epilepsy. Having her face covered with a mask makes it impossible for me to see if she is starting to have a seizure. Her mouth is where her seizures always start, and I am able to get her safe before it is full on. But having a mask I am unable to see the tell tale sign, which will result in her falling and injuring herself unnecessarily.

Masks will cause more harm than protection.

Sincerely  
Sandra Bohlin

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From: LIZA PEREZ  
Sent: Monday, May 18, 2020 5:39 PM  
To: City Clerk  
Subject: Mandatory masks

[External Email]

Yes, please make them mandatory.

Thank you,

Liza Perez