

From: Sandra Delvin
Sent: Friday, May 22, 2020 9:26 AM
To: City Clerk

Subject: 3.5 Urgency Ordinance and Companion Ordinance to Require Fabric Face Coverings.

Dear Sirs/Madams:

Please do not pass any proposed fabric face coverings laws. Please see my concerns below and the attached WSJ article. Please stay in your "governmental lane" which is roads, parks, police, library, and fires. Let's try to keep the rules within the county the same. We have enough issues with different rules between counties. We don't need different rules among cities within our county.

Sandra Delvin, PE
A small business owner
A senior citizen

----- Forwarded Message -----

From: Sandra Delvin >
To: Johnny Khamis ; The Office of Mayor Sam Liccardo
Sent: Wednesday, May 20, 2020, 11:02:28 AM PDT
Subject: Opposed to Mask/Face Covering Ordinance

Dear Sirs:

Please reconsider the ordinance on face coverings/masks. Please see the following article/editorial.

We already have so many issues regarding law enforcement – from zero bail to release of felons to non-enforcement of health directives. We do not need to undermine authority.

We already have enough "heavy-hand" rules that the SCC Health Department has issued during this crisis such as "no parades."

San Jose adding additional face covering ordinances is not necessary, the SCC Health Department is already taking actions.

Regards,
Sandra Delvin

From: Barb MacNeil

Sent: Tuesday, May 26, 2020 1:15 AM

To: City Clerk

Subject: 20-582 Urgency Ordinance and Companion Ordinance to Require Fabric Face Coverings
20-582 Urgency Ordinance and Companion Ordinance to Require Fabric Face Coverings

Dear Mayor Sam Liccardo and San Jose City Council,

We are adamantly opposed to this new/revised ordinance in San Jose for several reasons and request the Mayor and all Council members vote NO.

- 1). This ordinance would require SJPD officers to spend their time and our taxpayer money to stop anyone they observe, or who have been reported, to stop the person and give either a warning or citation instead of pursuing real criminals. Criminals should be the #1 priority of SJPD.
- 2). If you adopt this ordinance, you will not only create a wedge between the community and SJPD officers, but also between neighbors. Do you really want neighbors reporting neighbors?
- 3). Santa Clara County has already put guidelines into place for how we are to conduct ourself to keep ourselves and others safe. We see this proposal not only an overreach, but also confusing.
- 4). The only question I have is this: If the City of San Jose is sued because of this ordinance, out of which funds will you be paying the legal and any other costs? Will they come out of the already strapped General Fund account?

Sincerely,

Barbara MacNeil
San Jose resident since 1951

From: Christina

Sent: Saturday, May 23, 2020 11:06 AM

To: The Office of Mayor Sam Liccardo

Subject: Mandatory Face Mask Vote

Hi Mayor Liccardo,

I understand the city Council is prepared to vote [on June 2](#) making wearing a face mask mandatory at all times even went outdoors doing recreational activities. I am vehemently opposed to this rule, and as a constituent of yours I urge you to vote NO. There is no legal basis allowing the City Council to infringe on my right to breathe fresh air when I am within 6 feet distance of another person and not in a business where the business owner can dictate whether or not you should be wearing a mask. A vote requiring everyone to wear face masks will infringe more greatly on the low income, homeless, and non-white population of our city. Not to mention the fact that the police have much more important things to do than take ridiculous calls from our citizens reporting their neighbors on not wearing face masks. This reminds me of a different era and I don't think we want to go there. Thank you for taking this as a NO vote on this matter from your local constituent.

Christina and Doug Biagi

City Council 6-2-20

Item 3.5

from Martha O'Connell

Councilperson Diep - Err on the side of saving lives.

Copy to agenda packet, Mayor and Council

Although you changed your party registration from Republican to Independent in 2019, as a (moderate) Republican I recognize the arguments you appear to be making against the proposed ordinance to require face coverings in San Jose (with sensible exceptions). The argument you and some others on the Council appear to make is that of "government overreach."

Such is not the case. **The same "government overreach" argument was used against seat belts and motorcycle helmets. I quote Ralph Nader from the article cited below: "The same people who don't want to do social distancing and face masks get in their car and put their seat belt on," he said. "Nice irony, huh?"**

At the bottom of this page, you will find a photo of a man who died in a crash while attending a protest against mandatory motorcycle helmets. Police said if he had been wearing a helmet, he would have survived.

The City Council has the duty to protect the folks who reside in San Jose especially the medically vulnerable.

VOTE YES ON THE PROPOSED FACE COVERING ORDINANCE. The ordinance would simply codify the best practices throughout the world, as well as recommendations from the CDC, the WHO and countless other organizations, doctors and researchers. **This simple act will undisputedly save lives.**

<https://www.businessinsider.com/when-americans-went-to-war-against-seat-belts-2020-5>

While there was already clear evidence seat belts saved lives, these measures faced stiff opposition. A Gallup poll from July 1984 showed that 65% of Americans opposed mandatory belt laws, according to the Los Angeles Times..... Some people cut the belts out of their cars. Others challenged seat-belt laws in court..... A similar ideology seems to be fueling pushback against face covering during the pandemic.... A recent Washington Post poll found that fewer than 20% of Americans opposed wearing masks and maintaining social distancing.



From: Connolly, Shane Patrick

Sent: Thursday, May 28, 2020 10:35 AM

To: City Clerk

Subject: Letter for Tuesday 6-2-2020 Agenda Item 3.5 - The Ethics of Mandatory Masks Beyond Social Distance

Forwarding this letter from the public on item 3.5 for Tuesday:

Dear Councilperson,

One of the arguments put forth in favor of mandatory masks is that they definitely are effective in stopping the spread of Covid 19. Councilperson Chappie Jones has even taken this argument further by claiming that any person not wearing a mask is actually trampling on the rights of others. While I applaud any politician seeking to use the principle of limits to freedom I think it is important that the facts are carefully examined before such use. The principle of limits to freedom is generally stated as being: "One person or group's freedoms cannot impose undue burdens upon the freedoms of other persons or groups." The principle is popularly traced back to Baron de Montesquieu's "The Spirit of the Laws" and is rightly considered to be a foundational principle of good political governance. However, John Locke in his "Second Treatise on Government" actually first formulated it.

The question is if people not wearing masks in public is a clear and eminent threat to the health of others? The first problem here is that the experts disagree on the issue of face masks in general. The World Health Organization does not recommend that the healthy wear masks at all but only those who are sick or caring for someone who is sick (<https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.cnn.com%2F2020%2F03%2F30%2Fworld%2Fcoronavirus-who-masks-recommendation-trnd%2Findex.html&data=01%7C01%7Cjohnny.khamis%40sanjoseca.gov%7C132aed305712475c4ea608d802b677d5%7C0fe33be061424f969b8d7817d5c26139%7C1&reserved=0>). After conducting a careful review of face masks and Covid 19, New Zealand found that there was evidence of potential benefits - but also potential harm - around masks and that the science wasn't conclusive (<https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.nzherald.co.nz%2Fnz%2Fnews%2Farticle.cfm%3Fid%3D1%26objectid%3D12330388&data=01%7C01%7Cjohnny.khamis%40sanjoseca.gov%7C132aed305712475c4ea608d802b677d5%7C0fe33be061424f969b8d7817d5c26139%7C1&reserved=0>). Dr Antonio Lazzarino of the Department of Epidemiology and Public Health at University College London said: "Based on what we now know about the dynamics of transmission and the pathophysiology of Covid-19, the negative effects of wearing masks outweigh the positive" (https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.theguardian.com%2Fworld%2F2020%2Fmay%2F04%2Fscientists-disagree-over-face-masks-effect-on-covid-19%3FCMP%3Dshare_btn_fb&data=01%7C01%7Cjohnny.khamis%40sanjoseca.gov%7C132aed305712475c4ea608d802b677d5%7C0fe33be061424f969b8d7817d5c26139%7C1&reserved=0).

Thus the thought that the principle of limits to freedom should be applied in this case must be rejected because no clear and eminent threat can be shown. More scientific research is needed yet scientific research also has its ethical implications. Some initial research has been done on hamsters but what is really needed are randomized controlled trials at population level on human subjects. However, the ethical standard whenever using human subjects is informed consent. Clearly then, because they exclude free consent, mandatory mask requirements are by their very nature ethically quite suspect. I believe this is why the CDC, which is very familiar with the ethics of medical research, uses the term "recommended" rather than "mandatory" when speaking of wearing face masks.

I very much understand the City of San Jose's wish to do something here to protect its people and that is why I am concerned that all the facts be presented in context and the best most ethical course of action be followed. The supposed "fact" that face masks prevent Covid 19 is not a fact at all but still up for scientific study. The supposed "fact" that people not wearing face masks in public violates the rights of others is simply not born out by the context of the many diverse opinions in the real world about the effectiveness of face masks.

The face mask debate is being framed by some as being about personal virtue. However, without freedom there can be no virtue because virtuous acts are only praiseworthy to the extent that they are freely made. What the debate is really about is the inalienable right of each one of us, not of the aggregate whole but of each one of us, to life, liberty and the pursuit of happiness. Among these rights life is the most fundamental and exercising it requires both the freedom to defend it and the freedom to make one's own health and medical choices.

In a free society the consent of the governed is the only real justification for political power.

In medical ethics informed consent is the gold standard. My suggestion as an academic who specializes in ethics would be to emphasize social distance over masking and to inform people about the real dangers of wearing a face mask improperly. My suggestion as an instructor would be to send a consistent message by keeping San Jose guidelines consistent with the CDC, County, and other neighboring cities like Cupertino and Milpitas which do not require the general use of face masks in public beyond social distance.

Thank you for your consideration.

John C. Wilhelmsson

From: Rich Crowley

Sent: Saturday, May 30, 2020 6:32 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>; District9 <district9@sanjoseca.gov>; District 10 <District10@sanjoseca.gov> **Cc:** City Clerk

Subject: Requiring Masks Outdoors is a step too far !!!

Mayor Liccardo and Council Members -

If you had a chance to read my email of 5/19, you know that I oppose any ordinance that would make law abiding citizens into scofflaws. Below, is a copy of an un printed letter to the Mercury News that I sent them just after my email to you:

“As Mark Twain was apt to say, “...there are lies, damned lies, and statistics...” The Mercury News Covid daily statistics fall into that last category. They are big, bright colored and for the most part useless in telling our local story of how the pandemic affects us. Since Santa Clara County Health & Governments have intimidated us into staying home we need the complete numbers in understandable form. We need the Santa Clara numbers of recoveries, infections by day, deaths by day, ICU beds available & in use, hospital beds available, nursing/senior home deaths & where they are, school aged infected & deaths. In addition, graphs of how these have changed daily since shelter in place started. We need the tools to tell us how we’re really doing to give us hope, not some pronouncement from an ‘Expert’ to scare us to death & kill our economy.”

Needless to say, without real scientific facts presented in an unbiased and simple to understand fashion the people of San Jose will not see the value of adding legal force to an unreasonable and unenforceable ordinance. To pass such a law would be a slap in the face of the vast majority of San Jose residents who have complied with the medical suggestions that have resulted in “Flattening the Curve”. Everyone I’ve spoken with as I walk the streets of my neighborhood agrees that this is that one step too far. Even a poll of SJ Spotlight readers shows only an even split on you moving forward. Also, deciding to pass this ordinance just because the County of Santa Clara has done so is an abdication of your responsibility to the citizens who elected you.

I ask you once again, please turn down any ordinance that will make us law breakers.

Thanks for your consideration,

Rich Crowley

June 1, 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

Re: Item 3.5 on June 2, 2020 City Council Agenda
("Emergency Mandate of Fabric Face Coverings")

Dear Mayor Liccardo and San Jose City Councilmembers:

This follows on my letter dated May 17, 2020 in opposition to the proposed "Emergency Mandate of Fabric Face Coverings," Item 3.6 on the May 19, 2020 City Council Agenda, deferred to the June 2, 2020 City Council Agenda, as Item 3.5.

As previously stated, 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 directors, both of whom had 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.

As of Saturday May 30, 2020, at 5:45 p.m. PDT, **less than 72 hours before the June 2, 2020 City Council meeting, no draft of the proposed ordinance was available for review** in connection with the City Council agenda for June 2, making it unclear what precisely is being considered by this Council. *See, California Gov't Code § 54954.2(a)(1)*. No proposed ordinance was linked with the June 2 online agenda, and the prior links to the previous proposed ordinance for the May 19 meeting were missing. By Sunday evening, May 31, the new proposed ordinance was finally posted, but insufficient time was permitted to allow careful consideration of its specific terms.

Although, since the mask-mandate was first proposed Santa Clara County Health Director Sara Cody has issued an order effective May 22, 2020 mandating the wearing of face masks while patronizing businesses or using public transportation, this City Council at its May 19 meeting did not defer to her order, but instead deferred its own mask mandate edict to June 2 to allow the City Attorney to re-draft the proposed ordinance to fill in **unspecified "gaps"** in Dr. Cody's order. In doing so, the City Council gave no express consideration whatsoever to my legal preemption concerns set forth at length in my May 17 letter, which if valid mean that the City Council is acting beyond its legal authority in attempting to address COVID-19 public health considerations that are a State and County health director prerogative, whether or not a municipal mask mandate is constitutional under the circumstances. This is deeply troubling.

Also troubling is the City Council's flaunting of sunshine precepts, in failing to timely publish the proposed mask-mandate ordinance, thereby showing exactly how Dr. Cody's May 22 order is proposed to be augmented. "While state law requires posting agendas 72 hours before a public meeting, San Jose takes it a step further. The city requires documents such as staff reports and meeting agendas must be released 10 days before City Council meetings, allowing the public and policymakers enough time to digest the complex topics." <https://sanjosespotlight.com/does-san-joses-sunshine-policy-have-teeth/> A first-blush reading of the proposed ordinance, which is all that the limited time allows, suggests the ordinance does not actually involve any gap-filling of Dr. Cody's extant order. Both her order and the City of San Jose's redundant (and preempted) proposed ordinance **require** mask-wearing at businesses and on public transportation. The proposed ordinance merely **recommends** mask-wearing while outdoors, otherwise, which again is coextensive with Dr. Cody's order. Insofar as the City's and Dr. Cody's decrees differ, they are not specifically-identified in the proposed ordinance. At the least, **consideration of any mask-mandate should be postponed to a future meeting so that the public has time to carefully consider and comment on the specific language of the proposed ordinance.**

More troubling, indeed alarming, Mayor Sam Liccardo and Vice Mayor Chappie Jones, at the May 19 City Council meeting, gave superficial and misguided consideration to the constitutionality of the proposed mask-mandate ordinance (then, seemingly requiring mask-wearing as soon as you step outside your front door, as Councilmember Johnny Khamis observed) under long-established standards of judicial review. Vice Mayor Jones, who is not a lawyer, asserted an aphorism (our rights end where his begin) in lieu of a legal argument, in dismissing widespread criticism that his proposal is unconstitutional under existing judicial standards and precedent. Mayor Liccardo, for his part, asserted his non-expert disagreement with the professional assessment of San Jose Police Chief Eddie Garcia that the proposed ordinance cannot be effectively enforced, is not enforced elsewhere in the Bay Area, and will undermine relations of the San Jose Police Department (“SJPD”) with residents of San Jose.

Mayor Liccardo also apparently disagrees with the sheriff of Orange County, California, who, according to the *Voice of OC*, in an article dated May 26, 2020, is refusing to enforce that county’s mask-mandate:

“OC Health Office Dr. Nichole Quick also issued a health order Saturday requiring Orange County residents wear masks when they go out in public. . . . Through Steel’s questions, *County Sheriff Don Barnes said his deputies . . . won’t be enforcing Quick’s mask order. ‘We are not the mask police nor do I intend to be the mask police.’*”

(*Emphasis added*).

<https://voiceofoc.org/2020/05/oc-supervisors-deem-churches-essential-sheriff-wont-enforce-mask-requirements-or-church-restrictions/>

Likewise, a “Rhode Island police union is raising red flags on Gov. Gina Raimondo's executive order about face masks In a letter addressed to the community and police officers, the president of the Warwick police union said *the union supports encouraging people to wear a mask, but thinks the order goes too far* ‘*We will not stand idly by and allow Governor Raimondo's overreaching Order to tear that bridge down, and we will certainly not be a part of it by enforcing this Order against our community* We do not have time to be used to enforce Governor Raimondo's Order, which attempts to control the action of law abiding, taxpaying individuals of our community. *Especially when this order is questionably unconstitutional,*” wrote Jedidiah Pineau, president of Warwick Fraternal Order of Police Lodge No. 7. (*Emphasis added*). <https://turnto10.com/news/local/warwick-police-union-calls-new-face-mask-order-overreaching>

Mayor Liccardo also evidently disagrees with Mayor Bill DiBlasio of New York City, who, according to *Time* magazine, in a March 14, 2020 article, because of the Big Apple’s sorry experience, its cops will no longer be enforcing the city’s mask-mandate:

“The New York City Police Department (NYPD) will be taking a step back from its role enforcing social distancing guidelines after multiple violent incidents drew widespread criticism. During a Friday press conference, NYC Mayor Bill de Blasio said that *NYPD officers will no longer be handing out tickets or arresting people who are not wearing masks in public*, or who are gathered in small groups. ‘We’re going to focus on when it starts to be more than a handful of people, and *we’re not going to be having the NYPD enforcing on face coverings,*’ Mayor de Blasio announced. ‘Hopefully that will clarify everyone’s relationship to each other *and help us get the best result while also really protecting the progress we’ve made in the relationship between police and community.*’”

(*Emphasis added*). <https://time.com/5837596/new-york-mayor-announces-nypd-will-scale-back-social-distancing-enforcement/>

Mayor Liccardo claimed during the May 19 meeting that his disagreement with Chief Garcia is based on his (unsupported) opinion that a mask-*mandate* (as opposed to mere recommendation) involves “best practices,” purportedly across the world (but, obviously, *not* based on the actual experience in New York City). In disagreeing with Chief Garcia’s professional opinion, Mayor Liccardo disregards not only the professional opinion of his top law enforcement officer, he disregards the federal Constitution, because regardless what is done elsewhere in the world (for example, in totalitarian China, or authoritarian Singapore), the *United States* Constitution forbids a San Jose mask-mandate under the circumstances.

The mayor also, most egregiously, disregards Dr. Cody’s opinion as a medical professional. By professing that Dr. Cody’s order leaves “gaps” that must be augmented with more restrictive measures (inherently authoritarian in nature,

curtailing our civil liberties) to comply with “best practices” (in other parts of the world where liberty is less cherished), Mayor Liccardo is necessarily describing the County health director’s less restrictive order as medically deficient to achieve the objective she is also seeking. Because, *least-restrictive-to-achieve-the-compelling-governmental-interest* is the constitutional standard (as explained in my May 17 letter), either Dr. Cody is a quack or the City’s proposed mask-mandate is unconstitutionally onerous because it is more restrictive than necessary. A San Jose ordinance “filling in gaps” in Dr. Cody’s order cannot withstand constitutional scrutiny under a least-restrictive test unless Dr. Cody’s professional medical opinion is erroneous. In short, by urging a more wide-ranging mask-mandate than that imposed by Dr. Cody in her May 22 order, Mayor Liccardo is suggesting Dr. Cody is committing medical malpractice, inconsistent with global “best practices,” thereby mansplaining her concerning a subject on which he has no personal expertise. This City Council risks doing likewise by following the mayor’s faulty, non-expert reasoning.

In fact, mask-mandates are not effective, let alone “best practices,” as evidenced by an article in the *New England Journal of Medicine*, dated May 21, 2020, after the City Council’s May 19 meeting on the subject and after Dr. Cody issued her order which became effective on May 22. Medical professionals in the acclaimed scientific journal write:

*“We know that wearing a mask outside health care facilities offers little, if any, protection from infection. Public health authorities define a significant exposure to Covid-19 as face-to-face contact within 6 feet with a patient with symptomatic Covid-19 that is sustained for at least a few minutes (and some say more than 10 minutes or even 30 minutes). **The chance of catching Covid-19 from a passing interaction in a public space is therefore minimal. In many cases, the desire for widespread masking is a reflexive reaction to anxiety over the pandemic.**”*

(*Emphasis added*). <https://www.nejm.org/doi/full/10.1056/NEJMp2006372> This is in keeping with April 2020 guidance from the World Health Organization (“WHO”), as discussed in my May 17 letter. Two weeks later, the *WHO’s guidance against mask-mandates* remains in effect, as confirmed by a May 28, 2020 article in the *New York Post*:

“Healthy people should wear masks only if caring for coronavirus patients, WHO says

*“The World Health Organization is recommending healthy people, including those who don’t exhibit COVID-19 symptoms, only wear masks when taking care of someone infected with the contagion, a sharp contrast from the advice given by American public health officials who recommend everyone wear a mask in public. ‘If you do not have any [respiratory] symptoms such as fever, cough or runny nose, you do not need to wear a mask,’ Dr. April Baller, a public health specialist for the WHO, says in a video on the world health body’s website. ‘**Masks should only be used by health care workers, caretakers or by people who are sick with symptoms of fever and cough.**’ The recommendation differs from the Centers for Disease Control and Prevention (CDC), which urges individuals to wear a mask or face covering in public settings, regardless of infection, to limit the spread of the virus.*

(*Emphasis added*).

<https://nypost.com/2020/05/28/healthy-people-should-wear-masks-only-if-caring-for-coronavirus-patients-who-says/>

And, of course, even the CDC, while *recommending* widespread mask-wearing, does *not mandate mask-wearing* or recommend mask-wearing be mandated by municipal officials. Thus, far from being a “best practice” world-wide, *a mask-mandate is contrary to the advice of the organizations specifically entrusted with disease control, not to mention the New England Journal of Medicine*. The mayor is mistaken in stating “best practices” support a comprehensive mask-mandate.

Further, San Jose’s proposed mask-mandate ordinance expressly defines face masks to exclude “medical grade masks, such as N95 masks,” which it says are to be reserved for health professionals. Instead, the ordinance allows “a homemade covering made from a tshirt, sweatshirt, or towel, held on with rubber bands or otherwise,” making plain how disingenuous and unserious the notion that San Jose’s mask-mandate is about public health.

Not only is Mayor Liccardo disinterested in pursuing the least restrictive means of achieving the mask-mandate’s asserted objective of further flattening the curve of COVID-19 by deferring to the expertise of Dr. Cody, he admitted during the May 19 Council meeting that this objective is *not* truly a compelling governmental interest, in his mind. *Mayor Liccardo conceded* on the Zoom *de facto* dais on May 19 that *he does not care whether the City Council’s anticipated mask-mandate will actually be enforced by SJPD. Yet, a matter of governmental diffidence is the antithesis of a matter of*

compelling governmental concern. Insofar as Mayor Liccardo admits he does not care if the mask-mandate is actually enforced, he tacitly also admits the objective for which it is sought is not sufficiently compelling in nature to render it constitutional. If the mask-mandate is seriously directed to a serious concern, it will be seriously enforced. If the mask-mandate is merely virtue-signaling, as Mayor Liccardo (and the actual language of the proposed ordinance) suggests, it necessarily cannot be constitutional under the standard of judicial review I have outlined, which requires that an infringement on civil liberties be the least restrictive means to further a compelling government interest.

As I said in my May 17 letter, insofar as the ordinance is enforced, it is likely to be enforced selectively and discriminatorily, and possibly violently. ***Police Chief Eddie Garcia has already warned this City Council at the May 19 City Council meeting that a mask-mandate ordinance cannot be widely enforced and that non-enforcement is the custom and practice in other Bay Area municipalities with mask-mandates.*** Non-enforcement engenders disrespect for municipal ordinances more generally. Coincidentally, since then, I was copied on a May 22, 2020 email to your office and to Councilmember Raul Peralez by Davide Vieira regarding the City's unenforced fireworks ordinance. Viera writes: ***"The city needs to enforce the laws on the books, and if it doesn't plan to do so, then don't create new ones. 'Social enforcement' is useless.*** Laws are for law-abiding citizens. Everybody else does what they want because they know there won't be repercussions." (*Emphasis added*). Good advice. This City Council should enforce the existing fireworks ordinance before following other municipalities further down the road of risible ineffectuality.

If, as it appears (because the mayor has so-stated), the City Council is unserious about enforcing a mask-mandate to achieve its stated objective of further flattening the curve of COVID-19, could there be an alternative, more-sinister unstated objective for an unenforced mask-mandate?

Scientific American, in a May 14, 2020 article, postulates that mask-mandates will be the "new social norm," long-outlasting the COVID-19 pandemic:

"Even for the large majority of Americans who are willing to follow public health guidelines, masks have been an adjustment. They can be hot and uncomfortable. They impede communication and cover identifying features in a way that gloves do not. They feel, well, weird. But weird behaviors can become standard, and long-standing customs can change, behavioral scientists say . . . To bring about such change, ***a new behavior must first ascend to the status of a social norm. Norms include both the perception of how a group behaves and a sense of social approval or censure for violating that conduct . . .***

"Barriers remain. The politicization of masks in the U.S. might mean that some areas of the country will never adopt them entirely. And endemic racism has led some young black men to fear that they will be mistaken for criminals if they wear masks in stores. ***Once masks become the norm in most places, however, donning them will not seem odd or alarming,*** says psychologist Alexander Todorov of Princeton University, who studies facial expression. 'People compensate. When they meet on the street, there is more gesticulation. People engage in strategies to make sure that they're being understood.'

". . . 'In a year or three or five years, it might be more normal during flu season to see Americans or people from Western Europe wear masks. This might be what changes the norm.' [quoting New York University psychologist Jay van Bavel]."

(*Emphasis added*).

<https://www.scientificamerican.com/article/masks-reveal-new-social-norms-what-a-difference-a-plague-makes/>

Wearing masks in San Jose may not be just for the indefinite duration of the exaggerated existing emergency – which, in truth, already ended weeks ago when California Governor Gavin Newsom declared the curve flattened –, but instead might be forever. This possibility is explored by David Marcus, in a May 28, 2020 *Federalist* commentary entitled, "Will We Wear Masks Forever?":

"When can we take off the masks? It's a simple enough question . . . whether the changes are temporary and specific to this one threat, or if they will become permanent.

". . . If the philosophy is that changing our ways is worth it if it 'saves one life,' then the end of this will be everyone wearing masks at baseball games and plays, in airplanes and shopping malls.

“And mask wearing is, as its proponents point out, a small thing. Just like keeping six feet apart is a small thing, just like not attending church is a small thing, just like being contact traced is a small thing. But *the thing about small things is that when you stack them up they can get pretty big. The ‘new normal’ like a pointillist painting will be constructed of small dots that together create an entire vision of reality.*

“The whole coronavirus crisis has been a long exercise in cost benefit analysis. But *as deaths decline and states reopen the crisis may be abating, but its social after-effects could be with us for a long time to come.* Is there a metric that can be reached which would mean we could take off the masks? If so, what is it? It is my very real fear that for many Americans the answer is no, and they will wear the mask until something other than a virus takes them to their graves.

“*This is a discussion that we need to be having. Because if we are to become a nation of faceless mask wearers it ought to be an active choice, not a jaundice we creep into by being peevisish. We must be in control of the lifestyle changes that come from this experience, not controlled by it.*

“. . . For my part I reject the idea that the facemask should become a permanent mark of American life. I want to smile at people; I want to see facial expressions and a pretty woman’s lipstick. These are not minor aspects of life; they are deeply ingrained in the experience of being human.

“. . . *Do we want to explain to our kids that there used to be a world where faces abounded and fear was not the coin of the realm but we destroyed it? . . .*”

(Emphasis added).

<https://thefederalist.com/2020/05/28/will-we-wear-masks-forever/>

We will get used to it, say the psychologists. And the only thing standing in the way of this dystopia, in the words of *Scientific American*, is the “politicization of masks.” Indeed, *mask-mandates are about politics, not public health*, especially San Jose’s proposed ordinance, which expressly eschews medical grade masks in favor of the homemade variety with rubber-bands. Another commentator, Molly McCann, on May 27, 2020, in the *Federalist*:

“**Masking Is Meant to Build an Opinion Cascade**

“. . . *Mandatory masking seeks to build [] consent. In addition to extending the fiction that we are in an emergency sufficient to trigger the extra-constitutional authority of local and state executives, mandatory masking acts as a peer pressure-fueled signal that encourages conformity to our coming ‘new normal.’*

“. . . If everyone is wearing a mask, *it telegraphs a society-wide acceptance that the status quo has changed, and with that consensus other changes can come, too. Society will be primed to accept measures that most normal Americans would reject in any other time.* Our new normal will include a permanent expansion of the bureaucracy and alarming new COVID-related regulations.

“**Masks Are of Limited Benefit**

“*The truth is you aren’t irrational or obdurate if you are skeptical about masks. The “experts” have admitted that masks’ efficacy is usually negligible. Dr. Anthony Fauci himself, in a ‘60 Minutes’ interview early in this pandemic, dismissed masks as essentially useless.*

“*There is no reason to be walking around wearing a mask.* When you are in the middle of an outbreak, wearing a mask might make people feel better, and might even block a droplet,” he said with almost an eyeroll, ‘but it’s not providing the perfect protection people think it is, and often there are unintended consequences...’

“Fauci may have changed his tune, but *plenty of sensible doctors are still speaking up.* Last week, a doctor in the Wall Street Journal pointed out that *cloth masks—the type worn by the overwhelming majority of the population—are not very effective*, echoing Fauci’s earlier admission. The WSJ author noted that *even the N95 masks fall short: ‘They’re considered effective at blocking coronavirus particles only when they’re form fitted and tested to make sure there isn’t any leakage.’*

In short, cloth masks are largely symbolic. The science hasn’t changed, but the agenda has. Implementing mandatory mask policies across a society of 300 million because it makes some people feel better is absurd on its

face. ***But the policy makes a lot of sense if you understand its purpose and usefulness to shift the American mindset. Mandatory masks are a critical predicate conditioning us to accept abuses of our liberty. Mandatory masking provides the foundation on which governments continue to justify emergency measures and rule by executive fiat, and it creates a national mood of consent that America will accept indefinite government expansion*** because we face a ‘new normal.’”

(Emphasis added).

<https://thefederalist.com/2020/05/27/mandatory-masks-arent-about-safety-theyre-about-social-control/>

McCann’s take might seem alarmist, except we heard the exact same thing a couple weeks earlier in more soothing tones from *Scientific American*, as shown above: ***Forced mask-wearing is not temporary, but the new normal.*** And is a harbinger of a Huxleyian Brave New World. Inasmuch as Mayor Liccardo admits the proposed San Jose mask-mandate is “largely symbolic,” it seems apparent that its real purpose is, indeed, to “shift the [San Jose] mindset” to accept a “new normal” of additional, more draconian abuses of our liberties by “fiat.” Because wearing a mask is required to signal my consent to this dictatorial “new normal,” ***I refuse to conform, and I urge all San Jose residents to likewise refuse to conform to this proposed unconstitutional and unserious act of virtue-signaling that you have been warned by your police chief cannot be enforced broadly against all of us.*** The People are sovereign, not this City Council. I will not accept a “new normal” in which my civil rights and liberties are abused – perhaps permanently – by a City Council devoid of medical training, and mostly without legal training.

A mask-mandate arguably violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution by mandating that all persons who leave their places of residence must wear a face covering, disproportionately affecting indigent residents of the City of San Jose. Indeed, those without facial coverings cannot exercise fundamental constitutional rights — including leaving their home for essential goods and services — while more affluent individuals may be able to comply. A mask-mandate also violates the Free Speech Clause of the First Amendment of the United States Constitution. ***A prohibition against wearing masks in public has been held to violate free speech. Ghafari v. Municipal Court for City & County of San Francisco***, 87 Cal. App. 3d 258, 260 (1978). ***It follows, then, that a mandate to wear masks in public likewise violates free speech.*** I have a free speech to refuse to wear certain clothing as a form of coerced speech pursuant to state action. (By contrast, mask-mandates imposed by local businesses I ***choose*** to patronize do not implicate state action or, therefore, constitutional concerns). In a May 29, 2020 video-embedded *Newsmax* tweet, attorney Harmeet Dhillon of the Center for American Liberty explains:

“Are face mask orders constitutional?: ‘It’s protected by the first amendment meaning ***neither can the government ban you from wearing a face mask nor could the government force you to wear it,***’ says Dhillon. ***‘You can’t force people to wear it.*** I think it is hard to justify it.”

(Emphasis added).

<https://twitter.com/newsmax/status/1266434129056284673> Dhillon is no academic, but instead a San Francisco litigator who is already spearheading several pending COVID-19-related lawsuits in California. Her interview should not be misconstrued as idle talk. The fact that mask-mandates are already on her radar, awaiting the proper plaintiff, should give the San Jose City Council pause. <https://libertycenter.org/pf/covid-19-litigation/> (“The Center for American Liberty in partnership with other advocates for liberty have spearheaded the challenge to several emergency measures enacted by local and state governments that prevent the free exercise of unalienable rights guaranteed by the Constitution.”) (*listing seven ongoing COVID-19 lawsuits*). “***Dhillon has no plans to stop filing lawsuits,***” the *Seattle Times* reports in a May 28, 2020 *Associated Press* article. “***Until we have some guardrails around this governor [Gavin Newsom], or future governors, and their behavior and their ability to violate our civil rights, we are not going to stop,***’ she said in a recent interview. ‘It’s unacceptable.’” (Emphasis added).

<https://www.seattletimes.com/business/gop-lawyer-fights-california-governor-on-stay-at-home-orders/>

As I’ve shown above and in my May 17 letter, the San Jose mask-mandate is an ineffective – and illegal – solution in search of a largely past problem. The curve has already flattened, per Governor Newsom. Masks don’t work, per the WHO in its April 2020 guidance. There is inherently a less-restrictive alternative than whatever “gaps” this Council seeks to plug in Dr. Cody’s May 22 order – namely said order – unless, of course, the City’s proposed ordinance is merely redundant of hers (as it appears to be). And San Jose’s governmental interest in a mask-mandate is not truly compelling, per Mayor Liccardo, who admits he does not care whether it is actually enforced.

The mayor may not care whether a mask-mandate is enforced, but I do. And quite obviously, from the many emails received from the public opposed to the mask-mandate, so do many others. ***I defy your proposed illegal mask-mandate*** and I urge you not to make an outlaw of me and many other San Jose residents by adopting a measure which is clearly unconstitutional and, in any event, preempted by Dr. Cody's May 22 less-restrictive order.

Respectfully submitted,

/S/

Don Gagliardi

From: Yvette Doublet-Weislak

Sent: Tuesday, June 2, 2020 11:07 AM

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

Subject: June 2, 2020 City Council Meeting Item 3.5 20-611 Companion Ordinance to Require Fabric Face Coverings

Mayor Sam Liccardo and City Council Members,

I am writing to ask you to vote NO regarding the mask mandate. We are out of the flu season. The sun kills viruses. Masks were not required during the peak of the flu season. The incidents of CV-19 and deaths related to CV-19 have declined. The wearing of masks will cause more breathing problems for people as the weather gets hotter in the summer. Please vote NO regarding a mask mandate.

Thank you,

Yvette Weislak

From: KAREN LATTIN

Sent: Tuesday, June 02, 2020 8:29 AM

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

Subject: Item 3.5 20-611 Urgency Ordinance and Companion Ordinance to Require Fabric Face Coverings.

Honorable Mayor and City Council Members;

I am generally supportive of face coverings in public to prevent the spread of Covid-19 and support the the majority of the proposed ordinance. However, when I read this ordinance, there is some language that can be interpreted to include more personal, private contact outside of one's home. I am writing to ask that you modify the language in Item 3.5 Urgency Ordinance and Companion Ordinance to Require Fabric Face Coverings where it says:

"we recommend the wearing of face coverings be mandated when in public and when interacting with others outside of one's home except for the following as guided by the County's Public Health Department"

to state:

"we recommend the wearing of face coverings be mandated when in public and when interacting with others **except family members** outside of one's **private** home **property** except for the following as guided by the County's Public Health Department:

I think the language 'interacting with others outside of one's home' is too vague. This could be interpreted to include while interacting with family members outside of your house. It could mean interacting with a neighbor in your driveway even though you are maintaining proper social distancing. It could even include interacting with a neighbor from across the street. The word "others" can also be construed to include family members.

If the vagueness of the language is meant to discourage large outdoor parties and gatherings at ones home residence without masks, add an additional criteria to the language that states when interacting with more than X people outside of one's home. I think requiring masks on your own personal private home property is overly restrictive and goes far beyond what other Bay Area municipalities have instituted. This is not necessarily the intent of the ordinance, but it is very easily the interpretation of the ordinance based on the language used.

Thank you for your consideration.

Karen Lattin