

OFF THE RECORD

SETTLEMENT AGREEMENT

between

CITY OF BOSTON (CITY)

and

AMERICAN FEDERATION OF STATE, COUNTY

AND MUNICIPAL EMPLOYEES, AFL-CIO, COUNCIL 93 (AFSCME Boston Citywide)

(collectively referred to as the Parties)

REGARDING

VACCINE VERIFICATION REQUIREMENT POLICY

February 22, 2022

WHEREAS, the City of Boston and AFSCME Council 93 (Union) are parties to a collective bargaining agreement;

WHEREAS, the City of Boston, based on public health guidance, particularly guidance from the Boston Public Health Commission and the Centers for Disease Control, has determined that a vaccination verification requirement is necessary for all City of Boston employees in order to protect the public health, to protect the safety of the City's employees, and to continue to provide essential services;

WHEREAS, the City of Boston on December 20, 2021, announced an updated Vaccination Verification Requirement Policy (Vaccine Policy);

WHEREAS, the City provided notice to the Union regarding the Vaccine Policy and offered to meet and bargain said Vaccine Policy;

WHEREAS, the Parties have met and bargained such Vaccine Policy;

WHEREAS, due to the collaborative work of the City of Boston and its union partners, over 95% of the City of Boston's employees are currently vaccinated against COVID-19; and

WHEREAS, ensuring that individuals within a workplace are vaccinated is of significant value during periods defined by public health data on hospital capacity, severity of COVID, and how widespread COVID is within the community;

NOW THEREFORE, the Parties agree as follows:

- 1. Vaccine Verification for COVID-19:** The Union agrees to accept the Vaccine Policy in which all covered employees of the City shall be required to verify their vaccination status. The Parties agree to maintain the same Covid-19 sick leave benefits on the terms established in the Parties' September 20, 2021 Memorandum of Agreement Regarding the City of Boston's Vaccine Verification or Required Testing for COVID-19 Policy.
- 2. Dismissal of Challenges:** The Union agrees to withdraw with prejudice and/or not to file any grievances, appeals, or challenges to the provisions of this Agreement or the Vaccine Policy in any

forum. To the extent any such filings exist, the Union shall notify all forums in writing within five (5) business days of the effective date of this Agreement of its withdrawal of any challenges, with prejudice, and shall copy the City on such written notice(s).

3. Requirements for New Employees: The Parties agree that compliance with the Vaccine Policy and its requirement to provide proof of full vaccination shall be a requirement for members hired by the City of Boston on or after December 20, 2021. This requirement became effective on December 20, 2021. For the purposes of this MOA, non-compliant employees of the City that transfer from one City department to another shall be exempt from this requirement for new employees.

4. Definition of a Non-Verified Employee: For purposes of this Agreement, the following employees will be considered Non-Verified:

- a. Employees who have not provided proof of vaccination as of the effective date of this Agreement;
- b. Employees who have requested and not been granted a medical, disability, or religious accommodation. Employees with a pending request for an accommodation will not be subject to the provisions of this Agreement until such a time as an adverse determination has been made.

On or before the date of execution of this Agreement, the City will provide to the Union a list identifying all of their members who are classified as Non-Verified Employees.

5. Factors for Determining Applicability of Surge Status

The public health context for COVID-19 will be determined by looking at three factors. The City will endeavor to give the Union the greatest possible notice of adjustments between levels of pandemic severity, but neither the benchmarks nor the determination that the metrics have exceeded the threshold set forth in this MOA shall be subject to collective bargaining or negotiation.

- The first factor is the capacity of our hospitals to care for individuals with severe illness of any type. A metric for this factor is “ICU Occupancy,” which is the percentage of beds occupied in Intensive Care Units in Boston hospitals (7-day moving average).
- The second factor is the severity of COVID-19. A metric for this factor is “Hospitalizations Per Day” which is the average number of daily cases of adult patients with COVID-19 in Boston hospitals (7-day moving average).
- The third factor is an estimate of disease spread within Boston. A metric for this factor is “Positivity Rate”, which is the number of people who test positive for COVID-19 divided by the total number of people tested in the community (7-day moving average).

More information about these three factors and definitions are available on the Boston Public Health Commission’s COVID Data Dashboard accessible at:

<https://bphc-dashboard.shinyapps.io/BPHC-dashboard/>

Each of these measures is tracked on a weekly basis and reported by the Boston Public Health Commission. Based on these measures and relevant other public health factors, the Boston Public Health Commission will define the COVID-19 context for a particular week. The Boston Public Health Commission will use the tables below as a framework for making a determination of whether the application of the provisions of Section 7 is necessary.

6. Surge Status Levels and Thresholds

Red Zone Threshold

As of February 15, 2022, the City remains in the “Red Zone” for the Winter 2021-2022 Surge. The parties agree that to drop from the current Red Zone into Yellow Zone all three metrics must fall below the following thresholds. On February 8, 2022, the City announced the use of identical metrics to lift the indoor proof-of-vaccination requirement for certain businesses open to the public.

ICU Occupancy: $\geq 95\%$
Hospitalizations Per Day: ≥ 200
Community Positivity Rate: $\geq 5\%$

Yellow Zone Threshold

When all three metrics have fallen below these levels, the City will enter a “Yellow Zone” and will no longer be in the Red Zone.

Green Zone Threshold

When the Boston Public Health Commission’s Order Requiring Face Coverings in Certain Indoor Public Spaces is rescinded, the City will enter a “Green Zone” status. The City will move from Green Zone back to Yellow Zone in the event that the face coverings order is reinstated.

Subsequent Red Zone Threshold Metrics

In the event of a subsequent COVID-19 surge, the Boston Public Health Commission may determine that the City has reentered a Red Zone. The Boston Public Health Commission will not declare a Red Zone until the following minimum metrics are met:

ICU Occupancy: $\geq 90\%$
Hospitalizations Per Day: ≥ 150
Community Positivity Rate: $\geq 4\%$

Nothing in this Agreement shall be construed to interfere with the Boston Public Health Commission’s authority to protect public health.

7. Requirements for Non-Verified Employees During Any Red Zone: During any Red Zone, Non-Verified Employees must either submit proof of vaccination into the City’s online portal or will be placed on unpaid administrative leave and not allowed in the workplace. To prevent being placed on unpaid administrative leave, Non-Verified Employees can choose to use accrued vacation, compensatory or personal time as an alternative. Employees who choose to use accrued vacation, compensatory or personal time are not allowed in the workplace and are prohibited from working for the City in any capacity. The unpaid administrative leave is not disciplinary and shall not, either in whole or in part, be subject to any contractual grievance or arbitration processes. No member will be subject to discipline for

not being vaccinated against COVID-19.

If accrued vacation, compensatory or personal time is exhausted, an unverified employee may elect to use accumulated, unused sick days to be paid at a rate of 40% while on leave up to the following caps:

Union members with fewer than 10 years of service: Can use up to 25 accumulated, unused sick days paid at a rate of 40%, for a total of up to 10 paid days.

Union members with 10 years of service or more: Can use up to 100 accumulated, unused sick days paid at 40% rate, for a total of up to 40 paid days.

Union members must notify their direct supervisor and the Office of Human Resources via email [to (insert name)] within 48 hours of receiving notice that they are being transitioned to leave status if they would like to use their accumulated, unused personal and sick time to be compensated during their leave. Use of paid time as set forth above must be continuous during any Red Zone until the unverified member has exhausted the accumulated personal and sick leave available under the cap.

The Employer will continue to pay the employer's portion of healthcare during unpaid leave.

8. Requirements for Non-Verified Employees During Any Yellow Zone: Within the first five work days of the announcement of entering any Yellow Zone, Non-Verified Employees are required to submit proof two (2) times per calendar week of a negative COVID-19 screening test. Employees may make use of City testing locations that are open and available to all City employees; additional tests required as a part of this policy must be obtained at the employees' own expense and on their non-work time. The City's current Temporary COVID-19 Paid Leave for Testing and Vaccination policy provides one hour per week of paid time off for testing, and testing is generally available to all City employees. This Temporary COVID-19 Paid Leave for Testing and Vaccination policy shall remain in effect until no later than December 31, 2022, unless renewed by the City.

9. Requirements for Non-Verified Employees During Any Green Zone: If and when the City of Boston lifts all its requirements for public indoor masking, then Non-Verified Employees will have no additional requirements on their employment related specifically to this Agreement, barring any exigent public health circumstances identified by the Boston Public Health Commission. They will, however, continue to be required to comply with all other City policies and requirements.

10. Definition of Vaccination: Employees must verify their full vaccination status by uploading a copy of their COVID-19 vaccination card, other confirmation from a health care provider, or approved alternate documentation into the City's COVID Compliance online portal in compliance with the standards on the City's COVID Compliance online portal.

Until further notice, the definition of vaccination, and what number and type of vaccines are required and compliance deadlines will be as set forth in the Vaccine Policy. Namely, to be fully vaccinated under the existing policy, all employees are required to comply with this policy on the following schedule:

- On or before January 15, 2022: All employees must upload proof of at least one dose of a one- or two-dose vaccine.
- On or before March 7, 2022: All employees must upload proof of two doses of a two-dose vaccine.
- All vaccines authorized by the U.S. Food and Drug Administration (FDA) or the World Health Organization (WHO) will meet the City's vaccine verification requirement.

Employees who fail to maintain compliance with this schedule are Non-Verified. For the purposes of this Agreement, vaccine booster shots are not included in the definition of fully vaccinated.

Employees who have the required vaccines but are unable to obtain and upload a copy of their COVID-19 vaccination card or other vaccination verification documentation may upload a signed statement from a medical provider verifying their fully vaccinated status.

11. Definition of Testing: Either a PCR (Polymerase Chain Reaction) test or an antigen test will be accepted as proof of a negative COVID-19 screening test during any period where testing is required; antibody tests will not be accepted.

12. Rehiring

- a. Employees who resign or retire based on their refusal to comply with the Vaccine Policy or this Agreement and who then come into compliance with the Vaccine Policy on or before March 15, 2022 will be rehired without back pay or reinstatement of any benefits paid out upon separation or loss of benefits due to separation such as sick leave and floating holidays, upon their request, into the position from which they resigned if the position remains vacant, they meet the Department's requirements regarding return, continue to meet minimum requirements for the position, and provided they sign an agreement waiving their right to challenge their separation from employment.
- b. To the extent reasonable and practicable, all rehiring decisions will be made

consistent with seniority practices and protocols.

- c. Any employee who is rehired relative to paragraph (a) shall retain their seniority and level of pay and benefits.

13. Waiver: The Union agrees not to grieve, appeal, or otherwise challenge the provisions of this Agreement or the Vaccine Policy or its implementation via the Parties' collective bargaining agreement, through the contractual grievance process, through the Department of Labor Relations, at the Civil Service Commission, or in any other forum, except to enforce its terms.

14. Bargaining Obligation: The Union agrees that the City has met any and all bargaining obligations it may have regarding the Vaccine Policy and this Agreement. Should the City determine that changes to the Vaccine Policy, or this MOA, are necessary, it shall notify the Union of any such changes and meet any bargaining obligation it may have regarding such changes.

15. No Admission: It is understood and agreed that this Agreement does not constitute an admission of wrongdoing by the Parties.

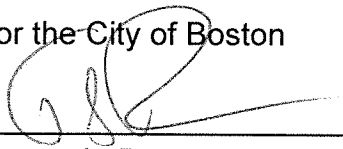
16. No Practice or Precedent: The Parties agree that this Agreement shall not be used to demonstrate a practice or create a precedent as between the Parties for any other matter. Nothing in this agreement diminishes any of the Parties' rights with respect to M.G.L. c. 41. c. 31 or the provisions of the collective bargaining agreement.

17. Severability: If any term(s) or provisions(s) of this Agreement shall be held to be invalid or unenforceable for any reason by a court of competent jurisdiction, the validity or enforceability of the remaining terms and provisions shall not be affected, and such invalid and/or unenforceable term(s) and/or provision(s) shall be deemed modified to the extent necessary to make it or them enforceable.

18. Effective Date. This Agreement shall become effective on the date that a successor collective bargaining agreement between AFSCME and the City is ratified by the Union.

Agreed to by the Parties on the date(s) indicated below.

For the City of Boston



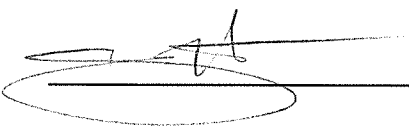
Tammy L. Pust, Director of Labor Relations

Date: 2/22/22

For AFSCME, AFL-CIO, Council 93






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~~Albert Lewis Hall~~ 1845

Stephenson 1892

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The End

Jim

Richard Donahue

KB

William M. Jones

OFF THE RECORD PROPOSAL

Memorandum of Agreement
Between
The City of Boston and
American Federation of State, County, and Municipal
Employees (AFSCME), AFL-CIO, Council 93 Boston Citywide

February 22, 2022

This Memorandum of Agreement was reached in off-the-record negotiations and shall remain off the record for all purposes including bargaining history until it is ratified by the Union membership, approved by the Mayor, and funded by the City Council.

The City of Boston (“City”) and the American Federation of State, County, and Municipal Employees, AFL-CIO, Council 93 (“Union” or “AFSCME”), agree to a collective bargaining agreement (“CBA”) from July 1, 2020 through June 30, 2023 with the following terms. All existing provisions in the parties’ July 1, 2017-June 30, 2020 CBA not expressly amended or deleted by this Memorandum of Agreement shall be included in the July 1, 2020 - June 30, 2023 CBA.

1. Wages

Bargaining unit members employed on the date this Memorandum of Agreement is funded by the City Council shall receive the following:

- Effective First Pay Period (FPP) October 2020 - Salary increase of 2%
- Effective First Pay Period (FPP) October 2021 - Salary increase of 1.5%
- Effective First Pay Period (FPP) October 2022 - Salary increase of 2%

Retroactive pay shall be limited to employees of the City on the date that the Union ratifies this Memorandum of Agreement. Employees who separated from employment for any reason prior to the date the Union ratifies this Memorandum shall not be eligible for retroactive pay.

Section 1A. In recognition for the hard work during the COVID-19 pandemic, bargaining unit members employed on the date this Memorandum of Agreement is funded by the City Council shall receive a one-time lump sum payment of one thousand Dollars (\$1,000.00), minus standard deductions, effectuated within ninety days from City Council funding.

2. Article 15, Add New Section 10 as follows:

Wellness Days: On a one-time only, non-precedent setting basis, the City will award two (2) Wellness Days for use during calendar year 2022 to regular full-time active

status Union members hired before the execution of this Agreement who: (1) are or become fully vaccinated, or (2) have or receive a documented and approved medical or religious accommodation and are in compliance with submitting weekly negative COVID-19 tests. These two (2) Wellness Days must be taken in full shift increments. No employee is allowed to work overtime on a day they are using a Wellness Day. This benefit is awarded on a "one-time basis" for calendar year 2022, and will expire on December 31, 2022, and does not establish precedent or practice. These Wellness days shall not carry over into Calendar Year 2023 under any circumstances; nonuse of any or all of these days shall not entitle an employee to any extra leave or compensation on the basis of nonuse and is not subject to any annual buy back, rollover or severance.

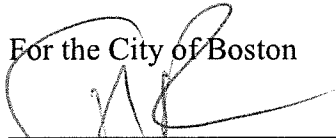
3. Article 12. (Holidays) – Amend Section 1 to include:

Juneteenth

4. The parties acknowledge and agree that they have met any and all bargaining obligations regarding the December 20, 2021 Vaccine Verification Policy, and that the settlement agreement they reached in connection with said Policy shall take effect, upon ratification of this MOU, however such agreement shall in no way be incorporated in to the parties' collective bargaining agreement.

This Memorandum of Agreement is subject to ratification by the Union membership, approval by the Mayor, and funding by the City Council.


For the City of Boston

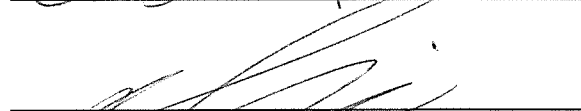


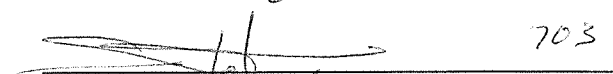
Tammy L. Pust, Director of Labor Relations

Date: 2/24/22

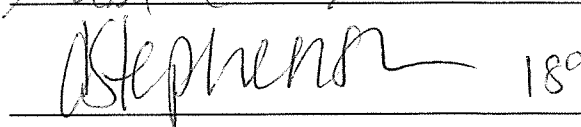
For AFSCME, AFL-CIO, Council 93





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A-D-K

Fred Beck

JFH

Delores H. Crabb

SP

William P.