

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE FINDING THE CONTINUED EXISTENCE OF THE NEED TO EXTEND AB 361 IMPLEMENTATION AND AMENDING THE CITY'S CONSOLIDATED OPEN GOVERNMENT AND ETHICS RESOLUTION NO. 77135 TO INCORPORATE THE GOVERNOR'S PROCLAIMED COVID STATE OF EMERGENCY TO ALLOW CITY LEGISLATIVE BODIES AND JOINT POWERS AUTHORITY LEGISLATIVE BODIES FOR WHICH THE CITY SERVES AS LEAD STAFFING AGENCY TO HOLD PUBLIC MEETINGS SOLELY BY TELECONFERENCE OR OTHERWISE ELECTRONICALLY PURSUANT TO AB 361; TO MODIFY AGENDA NOTICING AND DOCUMENT POSTING; AND TO INCORPORATE ALL FUTURE GOVERNOR'S EXECUTIVE ORDERS REGARDING THE BROWN ACT INTO THE CITY'S OPEN GOVERNMENT PROCEDURES, AS DEEMED APPROPRIATE BY THE CITY CLERK AND CITY MANAGER, WITHOUT FURTHER COUNCIL ACTION

WHEREAS, the Ralph M. Brown Act (California Government Code Sections 54950, et seq., hereinafter referred to as the "Brown Act") requires that public meeting agendas be posted at least 72 hours prior to a regular meeting and at least 24 hours prior to a special meeting; and

WHEREAS, on August 26, 2014, the Council of the City of San José ("City") adopted Resolution No. 77135 consolidating Open Government and Ethics Provisions, which imposes additional public meeting and document noticing requirements than those imposed by the Brown Act; and

WHEREAS, the Brown Act allows a local legislative body to hold public meetings by teleconference and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to attend and to address the local legislative body, as long as the following requirements are met: (1) each teleconference location from which a member is participating is noticed on the agenda; (2) each

teleconference location is accessible to the public; (3) members of the public must be able to address the body at each teleconference location; (4) at least one member of the legislative body must be physically present at the location specified in the meeting agenda; and (5) during teleconference meetings, at least a quorum of the members of the local body must participate from locations within the local body's territorial jurisdiction; and

WHEREAS, on March 17, 2020, Governor Gavin Newsom issued Executive Order N-29-20 which suspended the Brown Act teleconferencing requirements so that legislative bodies can hold public meetings solely by teleconference, or otherwise electronically, without listing the teleconference locations and without any physical location, as long as the agenda that is posted 72 hours in advance indicates that the members of the legislative body will be participating by teleconference, provides the teleconference or webinar access information by which the public may participate electronically, and lists the procedure for individuals with disabilities to request reasonable accommodations; and

WHEREAS, on April 21, 2020, the City Council, by Resolution No. 79485, incorporated Executive Order N-29-20 into the City's Consolidated Open Government and Ethics (Sunshine) Resolution No. 77135 to allow the City to utilize the suspension of the Brown Act teleconferencing requirements in Executive Order N-29-20; incorporated all future Governor's Executive Orders regarding the Brown Act into the City's Sunshine procedures, as deemed appropriate by the City Clerk and City Manager, without further action from the City Council; allowed public meeting agendas to be posted 72 hours prior to a regular meeting and at least 24 hours prior to a special meeting; allowed documents related to COVID-19, as determined by the City Manager and City Clerk, such as staff reports, ordinances and resolutions, to not be required to be posted 72 hours in advance of the meeting; and allowed documents not related to COVID-19, as

determined by the City Manager and City Clerk, to be posted at least 72 hours prior to a regular meeting and at least 24 hours prior to a special meeting; and

WHEREAS, on June 11, 2021, the Governor issued Executive Order N-08-21, which sunset the Brown Act provisions of Executive Order N-29-20 on September 30, 2021; and

WHEREAS, on September 17, 2021, Governor Newsom signed urgency ordinance AB 361 allowing a local agency to use teleconferencing for public meetings without posting the teleconferencing locations on the agenda and without requiring the teleconference locations to be accessible to the public during a Governor-proclaimed state of emergency pursuant to California Government Code Section 8625 et seq, if the state of emergency continues to directly impact the ability of the members of its legislative bodies to meet safely in person or state or local officials continue to impose or recommend measures to promote social distancing; and

WHEREAS, the City Council has made findings, beginning on March 10, 2020 and continuing every 60 days thereafter, most recently by Resolution No. 80262 adopted on October 19, 2021, for the continued proclamation of local emergency based on substantial evidence that the public interest and necessity require the continuance of the proclamation of local emergency related to COVID-19; and

WHEREAS, Resolution No. 80262 continued the proclamation of local emergency until such time as conditions warrant termination of the local emergency by the City Council, in accordance with the Gubernatorial Declaration of Emergency that waived the 60-day renewal requirement under Government Code Section 8630(c); and

WHEREAS, on August 2, 2021, due to the delta variant spike in case numbers and hospitalizations, eight Bay Area Health Officers, including Santa Clara County, issued

Health Orders requiring face coverings indoors in public places, regardless of vaccination status, beginning August 3, 2021; and

WHEREAS, a recent surge in COVID-19 cases has been reported in the Bay Area and across California as well as the country due to the highly contagious delta variant; and

WHEREAS, on August 10, 2021, the re-opening of City Hall with additional staff was postponed. Given masking and vaccination mandates and social distancing recommendations, a pause in the return to onsite work was warranted until the Delta variant (and other variants of concern) trajectories are better understood and the City has completed employee vaccination and testing policy compliance by September 30, 2021; and

WHEREAS, on August 16, 2021, the City's Emergency Operations Center ("EOC") was reactivated at Level IV (lowest level) to support coordination with the County for vaccination support, monitoring conditions, and preparing staff for potential additional response; and

WHEREAS, on September 7, 2021, the EOC activation was increased to Level III to enhance monitoring capabilities, facilitate coordination between departments, and prepare for increased vaccination clinic activities; and

WHEREAS, on September 23, 2021, federal, state and local health officials authorized providing third booster shots for limited categories of vaccinated individuals in light of waning immunity to COVID-19; and

WHEREAS, on September 28, 2021, October 26, 2021, November 16, 2021, December 14, 2021, January 11, 2022, and February 8, 2022, the City Council adopted Resolution Nos. 80237, 80266, 80290, 80323, 80343, and 80363, respectively, amending

Resolution No. 77135 to incorporate the Governor's proclaimed COVID state of emergency to allow City legislative bodies to hold public meetings solely by teleconference or otherwise electronically pursuant to AB361, to modify agenda noticing and document posting, and to incorporate all future Governor's executive orders regarding the Brown Act into the City's open government procedures, as deemed appropriate by the City Clerk and City Manager, without further Council action; and

WHEREAS, the San José-Santa Clara Clean Water Financing Authority, a Joint Powers Authority for which the City serves as lead staffing agency, will consider a Resolution to hold Public Meetings Solely by Teleconference or Otherwise Electronically Pursuant to AB 361 and Delegate the Declaration of Emergency to the San José City Council to adopt the ongoing emergency declarations as it does for all other San José Council Committees, Decision-Making Bodies, Boards, Committees, and Commissions, and Other Advisory Entities; and

WHEREAS, on October 7, 2021, the eight Bay Area Health Officers, including from Santa Clara County, that issued Health Orders requiring face coverings indoors beginning August 3, 2021 reached consensus on criteria each jurisdiction must meet in order to lift its indoor masking requirement in public spaces not subject to state and federal masking rules, which includes: the jurisdiction reaching the moderate (yellow) COVID-19 transmission tier, as defined by the CDC, and remaining there for at least three weeks; COVID-19 hospitalizations in the jurisdiction are low and stable, in the judgment of the health officer; and 80% of the jurisdiction's total population is fully vaccinated with two doses of Pfizer or Moderna or one dose of Johnson & Johnson (booster doses not considered); or eight weeks have passed since a COVID-19 vaccine has been authorized for emergency use by federal and state authorities for 5 to 11-year-olds; and

WHEREAS, on November 2, 2021, federal, state and local health officials authorized emergency use of the Pfizer COVID vaccine for children ages 5-11, and may consider emergency authorization of the COVID vaccine for children under age 5 within the next few months; and

WHEREAS, on November 2, 2021, Santa Clara County and six neighboring Bay Area counties (Santa Cruz, Alameda, San Mateo, San Francisco, Contra Costa and Napa) moved back into the substantial (orange) COVID-19 transmission tier and two Bay Area counties (Sonoma and Solano) moved back into the high (red) COVID-19 transmission tier; and

WHEREAS, on November 5, 2021, COVID-19 cases in California climbed back up to the high (red) COVID-19 transmission tier driven by the Delta variant, waning immunity, and colder temperatures leading to increased indoor gatherings; and

WHEREAS, in light of waning immunity to COVID-19, Santa Clara County health officials on October 22, 2021, California health officials on November 11, 2021, and federal health officials on November 19, 2021, authorized third booster shots for all adults ages 18 years and older who received a Pfizer or Moderna vaccine at least six months after their second dose or who received a Johnson & Johnson vaccine at least two months ago; and

WHEREAS, on November 11, 2021, in preparing California's health care facilities for the approaching flu season and the potential beginning of a new surge in COVID-19 cases, Governor Newsom issued Executive Order N-21-21 extending California's ability to hire out-of-state health care workers and waiving certain licensing requirements through March 31, 2022; and

WHEREAS, on November 22, 2021, Santa Clara County and its neighboring Bay Area counties moved into the moderate (yellow) COVID-19 transmission tier and California moved into the substantial (orange) COVID-19 transmission tier; and

WHEREAS, on November 25, 2021, scientists identified the latest COVID-19 variant, Omicron, which has prompted concern among scientists and public health officials because of an unusually high number of mutations that have the potential to make the virus more transmissible and less susceptible to existing vaccines; and

WHEREAS, on December 1, 2021, the first U.S. Omicron case was reported in San Francisco; and on December 10, 2021, the first Omicron case was reported in Santa Clara County and the California Department of Public Health reported a total of 18 Omicron cases statewide; and

WHEREAS, federal health officials on December 9, 2021, and California health officials on December 10, 2021, authorized Pfizer booster shots for those aged 16 and 17 who completed their initial vaccine series at least six months ago; and

WHEREAS, on December 13, 2021, the California Department of Public Health reinstated its statewide mask mandate, requiring all individuals, regardless of their vaccination status, to wear face coverings (recommending surgical masks or higher-level N-95 respirators) in indoor public settings from December 15, 2021 through January 15, 2022 due to a 47% increase in the statewide seven-day average case rate and 14% increase in hospitalizations since Thanksgiving; and

WHEREAS, at the end of December 2021, several Bay Area counties reported their highest COVID case positivity rates in months due to the Omicron variant, topping the peak in Delta cases over Summer 2021, with hospitalizations sharply rising and Bay Area hospitals canceling many elective surgeries and procedures, reinstating visitor

restrictions, and preparing for a potential surge in hospitalizations, although high vaccination rates appear to have prevented upward spikes in hospitalizations or death rates; and

WHEREAS, spurred by an alarming surge of COVID-19 case rates across the state, the California Department of Public Health amended its existing order on December 22, 2021 to require all workers at health care facilities to get vaccine boosters by February 1, 2022; the University of California and California State University systems also required faculty, staff and students to get boosters; Contra Costa County issued a public health order on December 27, 2021 requiring first responders and other high-risk workers to get their booster shots by January 10, 2022 or face weekly tests; and on December 28, 2021, Santa Clara County issued a public health order requiring workers in health care settings, nursing homes, homeless shelters and correctional facilities in Santa Clara County to obtain boosters by January 24, 2022; and

WHEREAS, on January 3, 2022, the Food and Drug Administration approved the Pfizer booster shots for those aged 12-15 who completed their initial vaccine series at least five months ago; and

WHEREAS, following the school winter break, at-home COVID-19 tests provided by schools turned up hundreds of infections among Bay Area students and teachers, preventing them from returning to school on January 3, 2022; and

WHEREAS, in light of the increasing positivity rate of the highly transmissible Omicron variant and the still present Delta variant, on January 5, 2022, the City announced that it would return to virtual-only City Council meetings, switch the City Hall First Floor City Development Services Permit Center and Cashier Services and the City Hall Fourth Floor Code Enforcement Services to virtual-only appointments, close the in-person City

Hall Eviction Help Center, and reduce Police Department main lobby services until further notice; and

WHEREAS, on January 5, 2022, California Health and Human Services Secretary Dr. Mark Ghaly extended the statewide mask mandate to February 15, 2022; and

WHEREAS, on January 12, 2022, the City Council adopted a new ordinance requiring all of its employees to get a booster shot in addition to the initial vaccine doses mandated earlier, and requiring visitors of large, indoor events held at public facilities within the City of San José to show proof they received a booster shot, or submit a negative COVID-19 test before entering; and

WHEREAS, on January 12, 2022, joining other Bay Area courts limiting public access, the Santa Clara County Superior Court announced that it is closing public counters and restricting courthouse entry because of staffing absences driven by the rapidly spreading Omicron variant of COVID-19 through January 31, 2022; and

WHEREAS, on January 12, 2022, due to the surge of the COVID-19 Omicron variant in the community, and to ensure the safety of staff, volunteers and members of the public, City Library indoor programs were temporarily paused until further notice; and

WHEREAS, on January 13, 2022, in response to the current surge of COVID-19 cases fueled by the super-contagious Omicron variant, San Jose State University, located close to San Jose City Hall, joined a growing list of public and private universities delaying in-person classes until February 14, 2022; and

WHEREAS, on January 25, 2022, Governor Newsom and state lawmakers announced the return of supplemental paid sick leave through September 30, 2022 to provide up to

two weeks of leave to full-time workers at businesses with at least 26 employees to cover workers who are sick with COVID-19 or caring for loved ones with COVID-19; and

WHEREAS, as of January 27, 2022, COVID-19 deaths in California reached a new high surpassing the surges of Delta last summer or the virus' initial waves in early 2020, but less than last winter's deadly surge before vaccines became widespread; and

WHEREAS, as of February 2, 2022, although case numbers continue a trend of improvement from the peak of the Omicron surge, California COVID-19 deaths continue to rise and hospitalizations remain elevated; and

WHEREAS, on February 7, 2022, while California remained in the red "high" COVID-19 transmission level, the California Department of Public Health announced that as of February 16, 2022, only vaccinated individuals will be able to enter indoor public settings without a face covering, except on public transit, hospitals, skilled-nursing facilities, jails, K-12 schools and child care facilities; and

WHEREAS, on February 9, 2022, Santa Clara County Health Officer Dr. Cody explained that case rates remained too high, at 1,900 cases a day, to justify easing the indoor mask requirement in Santa Clara County; and

WHEREAS, on February 11, 2022, the U.S. Food and Drug Administration announced that after reviewing new trial information, it needed more data and would postpone authorizing use of a COVID-19 vaccine for infants and children 6 months through 4 years of age for at least two months; and

WHEREAS, on February 15, 2022, the Centers for Disease Control and Prevention reported that hospitalization rates from July 3, 2021 to January 22, 2022 for children under age 4 were about five times higher during the peak Omicron week than during the

Delta peak and children ages 5-11 who were unvaccinated had hospitalization rates about six times those of fully vaccinated adolescents; and

WHEREAS, as of February 18, 2022, while California’s COVID-19 case rates decreased nearly 90% from a month earlier, COVID-19 deaths are peaking from the prior month’s surge from the Omicron variant; and

WHEREAS, on February 24, 2022, due to the County’s seven-day average number of COVID-19 cases dropping to 504, Santa Clara County health officials lifted its indoor mask mandate for vaccinated individuals for restaurants, stores and other indoor places as of March 2, 2022; and

WHEREAS, on February 25, 2022, the Centers for Disease Control and Prevention overhauled its recommended guidance for when people should wear face masks to avoid COVID-19 infection, including in K-12 school settings, based on weekly cases and positive rates, with most of California in the High (Mask Indoors) risk level, some of the Bay Area in the Low (Mask Optional) risk level, and Santa Clara County in the Medium (Mask if Immunocompromised) risk level; and

WHEREAS, on February 28, 2022, the California Department of Public Health announced it will end the statewide mask mandate for K-12 schools on March 12, 2022, and deferring to local school districts and health officials the decision of whether to maintain tougher face covering rules than the State, and that the mask requirement for unvaccinated people would also be dropped starting March 1, 2022 although they will be “strongly recommended for all individuals in most indoor settings”; and

WHEREAS, on March 1, 2022, the San José City Council repealed its requirement for proof of booster shots to enter City-owned facilities such as the SAP Center and Center for Performing Arts, deferring to California’s “mega-event” directive requiring attendees of events with 1,000 or more people to show proof that they are fully vaccinated with the two shots of the Pfizer or Moderna vaccine or one dose of the Johnson & Johnson vaccine, or provide a negative COVID-19 test taken within two days of the event; and

WHEREAS, on March 2, Santa Clara County health officials lifted its indoor mask mandate for both vaccinated and unvaccinated individuals in most indoor settings, and announced it would be dropping masking requirements for K-12 schools once the State lifted its order on March 12, but strongly recommended indoor masking to protect the more vulnerable such as young children who are not yet eligible to be vaccinated, people who are immunocompromised or who have other health conditions, or anyone who is not getting adequate protection from the vaccination; and

WHEREAS, on March 2, due to moderately high case rates, the City continued its mask mandate for all City employees and for all visitors and members of the public entering City facilities, regardless of vaccination status, continued elevator capacity limits and encouraging employees and visitors to observe social distancing, and recommending meetings to be held virtually or hybrid to allow for social distancing; and

WHEREAS, Government Code Section 54953(e)(3) requires that the City Council review the need and make findings for continuing the teleconferencing without complying with the agenda posting and public comment requirements at least once every thirty (30) days until Governor terminates the state of emergency; and

WHEREAS, the associated emergency conditions are on-going and there is a need to continue teleconferencing for public meetings without posting the teleconferencing locations on the agenda and without requiring the teleconference locations to be

accessible to the public during the current Governor-proclaimed COVID-19 state of emergency and if approved, will be in effect for 30 days and will expire on April 7, 2022 unless staff returns to City Council on or before April 5, 2022 to request to continue the need for teleconferencing;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

1. The City Council hereby finds that the state of emergency conditions related to COVID-19, as set forth in Resolution No. 80262 adopted on October 19, 2021 and incorporated herein by reference, are on-going.
2. The City Council finds that there is a need to continue teleconferencing for public meetings without posting the teleconferencing locations on the agenda and without requiring the teleconference locations to be accessible to the public during the current Governor-proclaimed COVID-19 state of emergency.
3. The City Council finds that the state of emergency continues to directly impact the ability of members of the City's City Council, Council Committees, City Decision-Making Bodies, City Boards, Committees and Commissions, City Other Advisory Entities, and Joint Power Authority legislative bodies for which the City serves as lead staffing agency, to meet safely in person.
4. City officials continue to impose or recommend measures to promote social distancing in City facilities.
5. Members of the City Council, Council Committees, City Decision-Making Bodies, City Boards, Committees and Commissions, City Other Advisory Entities, and Joint Power Authority legislative bodies for which the City serves as lead staffing agency, are authorized to use teleconferencing, or other electronic means, to

hold its public meetings without noticing the teleconferenced locations on the agenda, without making teleconferenced or physical locations accessible to the public, without posting agendas at teleconferenced locations, without requiring members of the legislative bodies to be physically present at the meeting, and without requiring a quorum of the members of the legislative body to participate from locations with the City's jurisdiction, as long as the agenda that is posted at least 72 hours in advance indicates that members of the legislative body may be participating electronically, provides the teleconference or webinar access information by which the public may participate electronically, and lists the procedure for individuals with disabilities to request reasonable accommodations, in compliance with AB 361, Government Code Section 54953(e).

6. The City's Sunshine procedures are amended to incorporate all future Governor's Executive Orders regarding the Brown Act, as deemed appropriate by the City Clerk and City Manager, without further action from the City Council.
7. The City's Consolidated Open Government and Ethics Resolution No. 77135 is amended to modify the public meeting agenda and document posting requirements such that public meeting agendas would be posted at least 72 hours prior to a regular meeting and at least 24 hours prior to a special meeting; documents related to COVID-19, as determined by the City Manager and City Clerk, such as staff reports, ordinances and resolutions, would not need to be posted 72 hours in advance of the meeting; and documents not related to COVID-19, as determined by the City Manager and City Clerk, would need to be posted at least 72 hours prior to a regular meeting and at least 24 hours prior to a special meeting.
8. The City Clerk is hereby directed to report to the City Council within thirty (30) days on the need to further continue teleconferencing for public meetings without posting the teleconferencing locations on the agenda and without requiring the

teleconference locations to be accessible to the public during the current Governor-proclaimed COVID-19 state of emergency.

ADOPTED this _____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk