



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** TONI J. TABER, CMC  
CITY CLERK

**SUBJECT:** SEE BELOW

**DATE:** July 29, 2022

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**SUBJECT:** Implementation of AB 361 to Allow Teleconferenced Public Meetings and Modified COVID Sunshine Resolution and Procedures through September 8, 2022 during the Governor's Proclaimed COVID State of Emergency.

## **RECOMMENDATION**

Adopt a resolution finding the need to implement AB 361 and amend the City's Consolidated Open Government and Ethics (Sunshine) Resolution No. 77135 to incorporate the Governor's proclaimed COVID state of emergency to allow City legislative bodies and Joint Power 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.

## **OUTCOME**

By adopting the attached resolution, effective immediately, the City Council incorporates provisions from AB 361 allowing for meetings of Joint Power Authority legislative bodies for which the City serves as lead staffing agency and City legislative bodies, including City Council, Council Committees, City Decision-Making Bodies, City Boards, Committees and Commissions, and City Other Advisory Entities, to hold meetings via video teleconference, and continues modified COVID Sunshine procedures through September 8, 2022 due to the proclaimed COVID state of emergency.

## **BACKGROUND**

On September 17, 2021, Governor Newsom signed AB 361 amending Government Code Section 54953 to allow a local agency to use teleconferencing for public meetings without requiring the teleconference location to be accessible to the public or a quorum of the members of the legislative body of the agency to participate from locations within the boundaries of the agency's jurisdiction during a Governor-proclaimed state of emergency as long as the legislative body finds that 1) meeting in person would present imminent risks to the health or safety of attendees, or 2) state or local officials have imposed or recommended measures to promote social distancing. In such circumstances, a legislative body is not required to make available a

physical location from which members of the public may observe the meeting and offer public comment.

Since September 28, 2021, and effective through July 28, 2022, the City Council adopted Resolution Nos. 80237, 80266, 80290, 80323, 80343, 80363, 80400, 80445, 80481, 80507, 80576, and 80609, amending the City's Consolidated Open Government and Ethics Resolution No. 77135 to incorporate the Governor's proclaimed COVID state of emergency to allow all City legislative bodies 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.

Additionally, because the City's Modified COVID Sunshine Resolution No. 79485 for the placement of Council agenda items after Rules Committee was only in effect while social distancing is recommended or imposed, staff recommends that the substance of that resolution stay in effect during the Governor's proclaimed COVID state of emergency.

The City-wide AB 361 Resolution allowing all City legislative bodies to have teleconferenced meetings expired on July 28, 2022. Therefore, this action is needed to be adopted by majority vote to allow members of City legislative bodies to attend via teleconference without posting the locations of each member's teleconferenced location on the posted agenda.

## **ANALYSIS**

AB 361, an urgency measure that was effective October 1, 2021, amended Government Code Section 54953 to allow a local agency to use teleconferencing for public meetings without requiring the teleconference location (physical location of a participating member) be accessible to the public or a quorum of the members of the legislative body of the agency participate from locations within the boundaries of the agency's jurisdiction in the following circumstances:

- The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.
- The legislative body holds a meeting during a proclaimed state of emergency to determine, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees; or
- The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

The legislative body must make certain findings by majority vote to use the relaxed Brown Act teleconferencing requirements. Failure to adopt this resolution would result in Boards, Commissions, Other Advisory Entities, and Joint Power Authority legislative bodies for which

the City serves as lead staffing agency being unable to meet fully virtual without exposing the locations of each member's teleconferenced location on the posted agendas.

An additional provision of AB 361 states that in the event of a disruption that prevents the local agency from broadcasting the remote meeting, or in the event of a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body is prohibited from taking any further action on items appearing on the meeting agenda until public access to the meeting via the call-in or internet-based options is restored.

These new provisions are only operative until January 1, 2024, at which point they are repealed, and the standard Brown Act teleconferencing requirements become effective again.

Beginning on March 10, 2020 and continuing every 60 days thereafter, most recently Resolution No. 80180 adopted on August 17, 2021, and Resolution No. 80262 adopted on October 19, 2021, the City Council has continued its 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.

Since September 21, 2021, "in light of the continued state of emergency related to COVID-19, the [Santa Clara] County Public Health Officer continues to recommend that public bodies meet remotely to the extent possible, specifically including use of newly enacted AB 361 to maintain remote meetings under the Ralph M. Brown Act and similar laws."<sup>1</sup>

Effective May 6, 2022, due to an increase in positive COVID-19 cases in the City employee workforce and local community, the City reinstated the mandatory mask mandate for all City employees. Since May 9, 2022, the Santa Clara County Superior Court has had in effect a General Order reiterating and emphasizing that all persons, including Court staff and judicial officers, must wear a proper face covering in all areas of the court open to the public, or when members of the public are present. Since June 28, 2022, California's COVID-19 positivity rate has continued to climb, surpassing anything the state has seen this year, as new, more transmissible variants grow throughout the state. The fast-spreading omicron subvariants BA.4 and BA.5 can partially evade immunity and are 10% more transmissible than the earlier BA.2 subtype. As of July 6, 2022, the entire nine-county Bay Area is at the high community risk level for COVID-19 at which federal regulators recommend everyone wear face masks indoors as newer and more immunity-evasive versions of the omicron variant spread. Bay Area health officials said infections remain at February 2022 elevated levels with no signs of declining, with COVID hospitalizations including significant numbers admitted for other health issues whose COVID infections were found through routine screening tests. As of July 17, 2022, COVID hospitalizations have more than quadrupled in the past three months, up to 4,432 patients from a

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<sup>1</sup> "Recommendation Regarding Continued Remote Public Meetings of Governmental Entities," (County of Santa Clara Public Health Department, Issued by Health Officer Sept. 21, 2021, *available at* <https://covid19.sccgov.org/sites/g/files/exjcpb766/files/documents/health-officer-recommendation-re-public-governmental-meetings-09-21-21.pdf>).

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low of 949 on April 16. On July 28, 2022, Bay Area Rapid Transit reinstated its mask mandate effective immediately through October 1, 2022.

These 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. The state of emergency continues to directly impact the ability of 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 to meet safely in person. City officials continue to impose or recommend measures to promote social distancing in City facilities, and meeting in person would present imminent risks to the health and safety of attendees due to COVID-19.

### **EVALUATION AND FOLLOW-UP**

Approval of this resolution allows the Joint Power Authority legislative bodies for which the City serves as lead staffing agency, City of San José's City Council, Council Committees, City Decision-Making Bodies, City Boards, Committees and Commissions, and City Other Advisory Entities to meet virtually through the COVID-19 state of emergency as declared by the Governor, provided the public has the ability to participate virtually, and the City Council adopts a resolution every 30 days to continue using the relaxed Brown Act teleconferencing requirements. City staff recommends moving forward with Joint Power Authority legislative bodies for which the City serves as lead staffing agency, Council Committees, City Decision-Making Bodies, City Boards, Committees and Commissions, and City Other Advisory Entities remaining fully virtual, with City Council meetings continuing with the hybrid meetings. Recognizing the health risks posed to our immunocompromised officials should the state emergency declaration expire before the spread of COVID-19 is significantly controlled, staff will continue legislative advocacy efforts to extend the remote meeting exemption for immunocompromised individuals beyond the expiration of a statewide emergency declaration.

### **PUBLIC OUTREACH**

This memo and resolution will be posted with the agenda for August 9, 2022.

### **COORDINATION**

Preparation of this report has been coordinated with the City Attorney's Office and City Manager's Office.

### **CLIMATE SMART SAN JOSE**

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

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**COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

**COST SUMMARY/IMPLICATIONS**

Approval of this resolution may result in a small cost savings from staff and equipment required for in person hybrid meetings.

**CEQA**

Not a Project, File No. PP17-010, City Organizational and Administrative Activities resulting in no changes to the physical environment

A handwritten signature in brown ink, appearing to read "Toni J. Taber". The signature is stylized and cursive.

TONI J. TABER, CMC  
City Clerk

If you have any questions, please contact the Office of the City Clerk at 408-535-1260.