COUNCIL AGENDA: 5/3/2022
FILE NO: 22-011
ITEM : 2.7

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: TONI J. TABER, CMC CITY CLERK

SUBJECT: **SEE BELOW**

DATE: April 27, 2022

SUBJECT: Extension of AB 361 Implementation to Allow Teleconferenced Public Meetings and Modified COVID Sunshine Resolution and Procedures to Continue through June 2, 2022 during the Governor's Proclaimed COVID State of Emergency.

RECOMMENDATION

Adopt a resolution of the Council of the City of San José finding the continued existence of the need to extend AB 361 implementation and amending 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, 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 continue holding meetings via video teleconference, and continues modified COVID Sunshine procedures through June 2, 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 adopts a resolution every 30 days finding 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.

On September 28, 2021, October 26, 2021, November 16, 2021, December 14, 2021, January 11, 2022, February 8, March 8, 2022, and April 5, 2022, the City Council approved Resolution Nos. 80237, 80266, 80290, 80323, 80343, 80363, 80400, and 80445, respectively, 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 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.

ANALYSIS

AB 361, an urgency measure that was effective October 1, 2021, amends 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 every 30 days to continue using the relaxed Brown Act teleconferencing requirements. Because the City Council approved Resolution No. 80445 on April 5, 2022, the next Council meeting in order to extend is May 3, 2022. Failure to approve this extension would result in Council Committees, Boards, Commissions, and Other Advisory Entities 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, 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.

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. 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. 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. 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.

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. 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.

On November 2, 2021, emergency use of the Pfizer COVID vaccine was authorized for children ages 5-11. On that same day, Santa Clara, Santa Cruz, Alameda, San Mateo, San Francisco, Contra Costa and Napa Counties moved back into the substantial (orange) COVID-19 transmission tier while Sonoma and Solano Counties moved back into the high (red) COVID-19 transmission tier. On November 5, 2021, California moved back into the high (red) COVID-19 transmission tier driven by the Delta variant, waning immunity, and colder temperatures leading to increased indoor gatherings. 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. 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. 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. 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.

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. 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. On December 13, 2021, the California Department of Public Health reinstituted 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.

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. 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.

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. 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. 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. On January 5, 2022, California Health and Human Services Secretary Dr. Mark Ghaly extended the statewide mask mandate to February 15, 2022. 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. 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. 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. 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. 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 last 26 employees to cover workers who are sick with COVID-19 or caring for loved ones with COVID-19. 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.

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. 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. 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. 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. 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. 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. 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. 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. 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."

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. 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. 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. On March 6, California data revealed that deaths among the vaccinated rose sharply, three times more, with the Omicron variant compared to the Delta variant due to the Omicron variant afflicting those with weakened immune systems to severe illness than those who were otherwise healthy, leading Santa Clara County Health Officer Dr. Sara Cody to note that vaccination alone is not enough for older or higher risk people and the reason to continue strongly recommending the indoor masking requirement in Santa Clara County. On March 7, Santa Clara County announced it would be relaxing its booster mandate that required all high-risk workers like nurses and correctional officers to get the vaccine, by allowing employees with exemptions to remain in their current jobs with weekly testing, bringing it in line with the state's rules. On March 14, nine out of 10 kids at San Jose Unified School District opted to keep masks on even though the school district had adopted the state's mask-optional guidance. On March 16, while COVID cases, hospitalizations and deaths continue their descent after the deadly Omicron variant surge in December and January, a new wave of infections is spreading in Asia and Europe, blamed on loosening restrictions, waning immunity and growing prevalence of a more transmissible form of the Omicron variant called BA.2, accounting for 23% of all U.S. infections and reflected in an

uptick of the variant found in some U.S. wastewater systems. On March 22, new data from the Centers for Disease Control and Prevention showed that the BA.2 subvariant is about 30% more transmissible than BA.1, the Omicron strain that drove this past winter's massive case surge. On March 28, the City lifted its mandatory masking requirement for employees and guests in City facilities to strongly recommended. On March 29, the FDA and CDC approved a second booster of the Pfizer or Moderna vaccine for all people ages 50 or older four months after their last shot coinciding with reports that the BA.2 Omicron subvariant now accounts for 54.9% of U.S. COVID cases.

Effective April 1, the state requirement for vaccine verification or proof of negative tests for attendees at Indoor Mega Events moved to a strong recommendation. On April 5, the City Council rescinded its Municipal Code requiring the wearing of face coverings within the City of San José.

On April 11, San Jose State University Interim President Steve Perez announced it would continue its indoor mask policy through May 27, the end of the semester. On April 13, citing concerns about an upturn in COVID-19 cases in the Northeast, the Centers for Disease Control and Prevention extended the mask mandate for airlines and public transportation that was set to expire on April 18, 2022 until at least May 3. On April 18, a federal judge in Florida ruled the national COVID-19 mask mandate for airlines and public transportation exceeded U.S. health officials' authority, and later that evening, Transportation and Security Administration (TSA) issued a statement saying it would no longer be enforcing the mask rule effective immediately, though reminding the public that the "CDC continues to recommend that people wear masks in indoor public transportation settings at this time." On April 19, the Santa Clara Valley Transportation Authority, Caltrain, and San Francisco Municipal Transportation Agency announced masks will remain required, while AC Transit, Golden Gate Bus, Golden Gate Ferry, Bay Area Rapid Transit, SMART train, and Santa Cruz Metro made masks optional. On April 20, the Santa Clara Valley Transportation Authority, Caltrain, Bay Area Rapid Transit and San Francisco Municipal Transportation Agency announced they were dropping their mask requirements aboard buses, trains and paratransit vehicles and at facilities, however, they encouraged riders to continue wearing masks. As of April 27, COVID-19 levels in wastewater concentrations in the greater Bay Area from Sacramento to Yolo, San Francisco and Santa Clara County and San Mateo County, were similar to what they were during the Delta surge in the summer of 2021, indicating another wave of the pandemic, although not resulting in an increase in hospitalizations. On April 28, Bay Area Rapid Transit reinstated its mask mandate effective immediately through July 18, which impacts the system's 50 stations in five Bay Area counties. On April 29, faced with a "significant increase" in COVID-19 infections attributed in part to "post-spring break exposures and attendance at indoor events and gatherings without masks," Marin County public health officials issued new safety guidelines to schools for high school proms and other large end-of-year gatherings by advising school officials to consider requiring proof of vaccination, proof of a negative rapid at-home antigen test and masks for indoor gatherings of more than 50 people, while some Marin County schools reinstated its indoor mask mandate for a few weeks.

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, and City officials continue to impose or recommend measures to promote social distancing in City facilities.

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 May 3, 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.

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

TONI J. TABER, CMC
City Clerk

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