

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE MODIFYING CITY PUBLIC MEETINGS AND AMENDING THE CITY'S CONSOLIDATED OPEN GOVERNMENT AND ETHICS RESOLUTION NO. 77135 TO INCORPORATE THE GOVERNOR'S EXECUTIVE ORDER N-29-20 TO ALLOW CITY LEGISLATIVE BODIES TO HOLD PUBLIC MEETINGS SOLELY BY TELECONFERENCE OR OTHERWISE ELECTRONICALLY; TO MODIFY PUBLIC MEETINGS, NOTICING AND DOCUMENT POSTING; AND TO INCORPORATE 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 COUNCIL ACTION DURING THIS SOCIAL DISTANCING PERIOD

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 12, 2020, Governor Gavin Newsom issued Executive Order N-25-20 which suspended these teleconferencing requirements during the period in which state or local public officials impose or recommend measures to promote social distancing, as long as public meetings were still noticed within the timeframe prescribed by the Brown Act, and local bodies noticed at least one publicly accessible location from which members of the public could observe the meeting and offer public comment; and

**WHEREAS**, on March 17, 2020, the City Council, by Resolution No. 79444, incorporated Executive Order N-25-20 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-25-20; and

**WHEREAS**, later that day, Governor Newsom issued Executive Order N-29-20, which withdrew and superseded Executive Order N-25-20; and

**WHEREAS**, Executive Order N-29-20 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**, in response to the current threat to the general public of the COVID-19 virus, in order to apply the suspension of the Brown Act teleconferencing requirements in Executive Order N-29-20 to the City's legislative bodies, the City Council desires to adopt a resolution modifying City public meetings to incorporate Paragraph 3 of the Governor's Executive Order N-29-20 regarding suspension of the teleconference requirements in the Brown Act into the City's Consolidated Open Government and Ethics (Sunshine) Resolution No. 77135; and

**WHEREAS**, during this COVID-19 pandemic period, it is anticipated that the Governor may issue additional Executive Orders affecting the Brown Act, and the City Council desires to incorporate 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; and

**WHEREAS**, during this COVID-19 pandemic period, emerging issues require quick action by staff to take items to the City Council and other City legislative bodies for approval, and the City Council desires to modify the agenda and document posting requirements in the City's Sunshine Resolution so that the City would comply with only the public meeting agenda posting requirements under the Brown Act;

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

1. Resolution No. 79444, a resolution of the Council of the City of San José modifying City public meetings and amending the City's Consolidated Open Government and Ethics Resolution No. 77135 to incorporate Section 11 of the

Governor's Executive Order N-25-20 regarding teleconference requirements in the Brown Act, is hereby superseded.

2. City public meetings of the City Council, Council Committees, City Decision-Making Bodies, City Boards, Committees and Commissions, and City Other Advisory Entities are modified as follows:
  - a. The City's Consolidated Open Government and Ethics Resolution No. 77135 is amended to incorporate Paragraph 3 of the Governor's Executive Order N-29-20, attached hereto as Exhibit A, regarding teleconference requirements in the Brown Act to allow City legislative bodies to hold public meetings solely by teleconferencing, or otherwise electronically, 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; and
  - b. 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-; and

c. The City's Consolidated Open Government and Ethics Resolution No. 77135 is amended to modify the public meeting agenda and document posting requirements to comply with only the agenda posting requirements under the Brown Act 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, and documents, such as staff reports, ordinances and resolutions, would not need to be posted 72 hours in advance of the meeting.

3. This resolution will be in effect during the period in which state or local public officials impose or recommend measures to promote social distancing.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk

## EXHIBIT A

### EXECUTIVE DEPARTMENT STATE OF CALIFORNIA

#### EXECUTIVE ORDER N-29-20

**WHEREAS** on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

**WHEREAS** despite sustained efforts, the virus continues to spread and is impacting nearly all sectors of California; and

**WHEREAS** the threat of COVID-19 has resulted in serious and ongoing economic harms, in particular to some of the most vulnerable Californians; and

**WHEREAS** time bound eligibility redeterminations are required for Medi-Cal, CalFresh, CalWORKs, Cash Assistance Program for Immigrants, California Food Assistance Program, and In Home Supportive Services beneficiaries to continue their benefits, in accordance with processes established by the Department of Social Services, the Department of Health Care Services, and the Federal Government; and

**WHEREAS** social distancing recommendations or Orders as well as a statewide imperative for critical employees to focus on health needs may prevent Medi-Cal, CalFresh, CalWORKs, Cash Assistance Program for Immigrants, California Food Assistance Program, and In Home Supportive Services beneficiaries from obtaining in-person eligibility redeterminations; and

**WHEREAS** under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567 and 8571, do hereby issue the following order to become effective immediately:

#### IT IS HEREBY ORDERED THAT:

1. As to individuals currently eligible for benefits under Medi-Cal, CalFresh, CalWORKs, the Cash Assistance Program for Immigrants, the California Food Assistance Program, or In Home Supportive Services benefits, and to the extent necessary to allow such individuals to maintain eligibility for such benefits, any state law, including but not limited to California Code of Regulations, Title 22, section 50189(a) and Welfare and Institutions Code sections 18940 and 11265, that would require redetermination of such benefits is suspended for a period of 90 days from the date of this Order. This Order shall be construed to be consistent with applicable federal laws, including but not limited to Code of Federal Regulations, Title 42, section 435.912, subdivision (e), as interpreted by the Centers for Medicare and Medicaid Services (in guidance issued on January 30, 2018) to permit the extension of

otherwise-applicable Medicaid time limits in emergency situations.

2. Through June 17, 2020, any month or partial month in which California Work Opportunity and Responsibility to Kids (CalWORKs) aid or services are received pursuant to Welfare and Institutions Code Section 11200 et seq. shall not be counted for purposes of the 48-month time limit set forth in Welfare and Institutions Code Section 11454. Any waiver of this time limit shall not be applied if it will exceed the federal time limits set forth in Code of Federal Regulations, Title 45, section 264.1.
3. Paragraph 11 of Executive Order N-25-20 (March 12, 2020) is withdrawn and superseded by the following text:

Notwithstanding any other provision of state or local law (including, but not limited to, the Bagley-Keene Act or the Brown Act), and subject to the notice and accessibility requirements set forth below, a local legislative body or state body is authorized to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body or state body. All requirements in both the Bagley-Keene Act and the Brown Act expressly or impliedly requiring the physical presence of members, the clerk or other personnel of the body, or of the public as a condition of participation in or quorum for a public meeting are hereby waived.

In particular, any otherwise-applicable requirements that

- (i) state and local bodies notice each teleconference location from which a member will be participating in a public meeting;
- (ii) each teleconference location be accessible to the public;
- (iii) members of the public may address the body at each teleconference conference location;
- (iv) state and local bodies post agendas at all teleconference locations;
- (v) at least one member of the state body be physically present at the location specified in the notice of the meeting; and
- (vi) during teleconference meetings, at least a quorum of the members of the local body participate from locations within the boundaries of the territory over which the local body exercises jurisdiction

are hereby suspended.

A local legislative body or state body that holds a meeting via teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with the notice and accessibility requirements set forth below, shall have satisfied any requirement that the body allow



members of the public to attend the meeting and offer public comment. Such a body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

Accessibility Requirements: If a local legislative body or state body holds a meeting via teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the body shall also:

- (i) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the Americans with Disabilities Act and resolving any doubt whatsoever in favor of accessibility; and
- (ii) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to subparagraph (ii) of the Notice Requirements below.

Notice Requirements: Except to the extent this Order expressly provides otherwise, each local legislative body and state body shall:

- (i) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by the Bagley-Keene Act or the Brown Act, and using the means otherwise prescribed by the Bagley-Keene Act or the Brown Act, as applicable; and
- (ii) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in such means of public observation and comment, or any instance prior to the issuance of this Order in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of such means, a body may satisfy this requirement by advertising such means using "the most rapid means of communication available at the time" within the meaning of Government Code, section 54954, subdivision (e); this shall include, but need not be limited to, posting such means on the body's Internet website.

All of the foregoing provisions concerning the conduct of public meetings shall apply only during the period in which state or local public health officials have imposed or recommended social distancing measures.



All state and local bodies are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the provisions of the Bagley-Keene Act and the Brown Act, and other applicable local laws regulating the conduct of public meetings, in order to maximize transparency and provide the public access to their meetings.

**IT IS FURTHER ORDERED** that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 17th day of March 2020.

  
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GAVIN NEWSOM  
Governor of California

**ATTEST:**

\_\_\_\_\_  
ALEX PADILLA  
Secretary of State

