

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 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. _____ 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. _____ 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 are currently considering third booster shots for the general public; and

WHEREAS, on September 28, 2021, the City Council adopted Resolution No. 80237 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, 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 November 25, 2021 unless staff returns to City Council on or before November 16, 2021 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. _____ 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, and City Other Advisory Entities 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, and City Other Advisory Entities 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 _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk