COUNCIL AGENDA: 10/26/2021
FILE NO: 21-2208
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: October 15, 2021

SUBJECT: Extension of AB 361 Implementation to Allow Teleconferenced Public Meetings to Continue through November 25, 2021 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 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 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 through November 25, 2021 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, the City Council approved Resolution No. 80237 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.

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. 80237 on September 28, 2021, the next Council meeting in order to extend is October 26, 2021. Failure to approve this extension would result in Boards and Commissions being unable to meet fully virtual without exposing the locations of each Board and Commission member's 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 the Resolution to be 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, and are currently considering third booster shots for the general public. 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, and City Other Advisory Entities 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 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 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 October 26, 2021.

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.