

RESOLUTION NO. 23-9178

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA,
FINDING THE EXISTENCE OF THE NEED TO EXTEND AB 361
IMPLEMENTATION TO ALLOW CITY LEGISLATIVE BODIES TO
HOLD PUBLIC MEETINGS SOLELY BY TELECONFERENCE OR
OTHERWISE ELECTRONICALLY PURSUANT TO AB 361**

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, the City of Santa Clara is committed to preserving and nurturing public access and participation in meetings of the City's City Council, Council Committees, City Decision-Making Bodies (including Santa Clara Stadium Authority Board, Sports and Open Space Authority, Housing Authority, Successor Agency to the City of Santa Clara Redevelopment Agency, Bayshore North Project Enhancement Authority, and Public Facilities Financing Corporation), City Boards, Committees and Commissions, Taskforces, and Other City Advisory Entities;

WHEREAS, all meetings of City of Santa Clara's legislative bodies are open and public, as required by the Ralph M. Brown Act (California Government Code Sections 54950, et seq., hereinafter referred to as the "Brown Act"), so that any member of the public may attend, participate, and watch the City's legislative bodies conduct their business;

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;

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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;

WHEREAS, on June 11, 2021, Governor Newsom issued Executive Order N-08-21, which sunsets the Brown Act provisions of Executive Order N-29-20 on September 30, 2021;

WHEREAS, on September 16, 2021, Governor Newsom signed urgency ordinance AB 361 which allows 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;

WHEREAS, 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, as outlined in their “Recommendation Regarding Continued Remote Public Meetings of Governmental Entities” issued on September 21, 2021;

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WHEREAS, on October 19, 2021, November 16, 2021, December 14, 2021, January 11, 2022, February 8, 2022, March 8, 2022, April 5, 2022, May 10, 2022, June 7, 2022, July 5, 2022, July 12, 2022, August 16, 2022, September 13, 2022, October 4, 2022, November 1, 2022, November 15, 2022, and December 13, 2022 the City Council approved Resolutions Nos. 21-9013, 21-9023, 21-9038, 22-9042, 22-9051, 22-9058, 22-9067, 22-9087, 22-9096, 22-9115, 22-9124, 22-9135, 22-9142, 22-9145, 22-9160, and 22-9175 respectively, to allow City Legislative bodies to hold public meetings solely by teleconference or otherwise electronically pursuant to AB 361;

WHEREAS, on November 2, 2021, federal, state and local health officials authorized emergency use of the Pfizer COVID vaccine for children ages 5-11, and may consider emergency authorization of the COVID vaccine for children under age 5 within the next few months;

WHEREAS, on November 22, 2021, Santa Clara County moved into the moderate (orange) COVID-19 transmission tier;

WHEREAS, 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;

WHEREAS, on December 13, 2021, the California Department of Public Health reinstated its statewide mask mandate, requiring all individuals, regardless of their vaccination status, to wear face coverings 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;

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WHEREAS, in light of the rapid surge in cases due to the Omicron variant, on December 28, 2021, the County of Santa Clara Health Officer issued a health order requiring up-to-date COVID-19 vaccination for workers in certain higher-risk settings. The new order builds on recent changes in the State Health Officer’s vaccination requirements by mandating up-to-date vaccination by workers in certain healthcare and long-term care settings;

WHEREAS, as of February 3, 2021, new daily Covid-19 cases are on the decline since the surge from the Omicron variant. However, California Covid-19 deaths continue to rise and hospitalizations remain elevated;

WHEREAS, on February 27, 2022, the Santa Clara County Public Health Officer rescinded the health order requiring the use of face covering indoors effective March 2, 2022. However, the Santa Clara County Public Health Officer continues to recommend that all persons continue to wear face coverings when indoors. The California Department of Public Health continues to require masking in higher-risk settings such as public transit, healthcare facilities, shelters, jails, and long-term care facilities. While Santa Clara County has met the required masking metrics (80% of the population vaccinated, COVID-19 hospitalizations in the jurisdiction are low and stable, seven consecutive days with the seven-day rolling average of new cases at 550 or below) to transition to a strong recommendation for indoor masking, the county remains in the “medium” level of the Centers for Disease Control and Prevention’s new COVID-19 community level framework;

WHEREAS, as of March 26, 2022, the Omicron subvariant BA.2 is now the dominant variant in the US accounting for nearly 55% of new COVID-19 cases in the U.S.;

WHEREAS, on March 29, 2022, the FDA authorized a second booster dose of the COVID-19 vaccines for people 50 years of age and older and some immunocompromised people;

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WHEREAS, 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;

WHEREAS, 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;

WHEREAS, on May 10, 2022, Santa Clara County's Health Officer Dr. Sara Cody warned that COVID case counts and hospitalizations are on the increase, with a weekly average of 552 cases and 80 to 100 people currently hospitalized, and urged everyone to consider wearing masks in high-risk settings, keep a stockpile of tests, and exercise caution when socializing indoors;

WHEREAS, on May 13, 2022, Bay Area health officers from the counties of Alameda, Contra Costa, Marin, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Sonoma and the City of Berkeley urged residents to wear face masks in indoor public settings as COVID-19 infections driven by highly contagious virus variants multiply throughout the region;

WHEREAS, as of May 31, 2022, new coronavirus cases in California increased 13.2% from the prior week and California ranked 10th among the states where coronavirus was spreading the fastest on a per person basis;

WHEREAS, on June 3, 2022, due to the continued increase in positive COVID-19 cases in the City employee workforce and local community, the City extended the mandatory mask mandate for all City employees, regardless of vaccination status, through July 1, 2022;

WHEREAS, as of June 13, 2022, new COVID-19 cases in California rose 32.3% from the prior week with 128,893 new cases, with California ranking fourth among the states where COVID-19 was spreading the fastest on a per-person basis, and Santa Clara County with the highest worst weekly outbreaks on a per-person basis;

WHEREAS, on June 15, 2022, an advisory panel to the FDA voted unanimously to recommend the Pfizer and Moderna COVID-19 vaccines for children ages five and younger;

WHEREAS, on June 18, 2022, the CDC and federal regulators authorized the Pfizer-BioNTech vaccine for children ages six months through four years old and the Moderna vaccine for children ages six months through five years old starting June 21, 2022;

WHEREAS, as of July 5, 2022, the new omicron subvariant known as BA.5 now comprises a majority of U.S. COVID-19 cases, according to data released from the Centers for Disease Control and Prevention (CDC). The BA.5, along with a related subvariant known as BA.4, has mutations that have shown an increased ability to evade the protection from vaccines and previous infection;

WHEREAS, as of July 6, 2022, all nine local counties are back in the CDC's high-risk category for COVID-19 community levels, and the highly-transmissible BA.5 subvariant of the virus that causes COVID-19 is quickly taking over;

WHEREAS, on July 28, 2022, Bay Area Rapid Transit reinstated its mask mandate effective immediately through October 1, 2022, which impacts the system's 50 stations in five Bay Area counties;

WHEREAS, on August 4, 2022, the CDC continued to classify Santa Clara County in the high community level for coronavirus, in its weekly update;

WHEREAS, on August 11, 2022, the Centers for Disease Control and Prevention streamlined its guidance for COVID exposure to recommending that everyone, regardless of vaccination or past infection, wear a high-quality mask for 10 days and get tested on day five after exposure to the virus;

WHEREAS, as of August 24, 2022, as California schools reopen for the fall semester with loosened COVID-19 protocols and low student vaccination rates among younger children, health experts are watching to see how schools do in the coming weeks as some experts expect another rise in cases when winter arrives;

WHEREAS, as of September 20, 2022, a new more transmissible COVID strain, BF.7, short for BA.5.2.1.7, is outpacing nearly all other variants of interest that scientists are tracking in the U.S. this fall;

WHEREAS, as of September 22, 2022, although daily death rates from COVID-19 have ticked down slightly from August, updated federal data shows that the U.S. is still losing on average 350 Americans to COVID-19 every day, and 225,000 people in the U.S. have been lost to the virus since the start of 2022;

WHEREAS, on October 4, 2022, the County Health Officer provided that while COVID-19 cases in Santa Clara County have trended down over the summer, that the level of virus circulating locally is likely higher than the county's case count;

WHEREAS, as of October 17, 2022, in Santa Clara County, only 12% of eligible people have received the updated booster since it was first offered in early September to fight the highly transmissible omicron variants leading to public health official fears of a winter surge with lagging booster vaccination rates;

WHEREAS, as of November 8, 2022, the U.S. daily average has increased 6% from two weeks ago, as 33 states and Washington D.C., have seen cases rise over the same time;

WHEREAS, on December 6, 2022, the Santa Clara County health leaders said there is a clear sign that COVID rates are rising, adding the county may see even more people contract coronavirus than what was reported during the omicron peak in January;

WHEREAS, on January 4, 2023, the World Health Organization raised a warning regarding a new omicron subvariant XBB.1.5 that is the most transmissible strain to date and made up of the 75% of the new cases in the Northeastern United States;

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 teleconference 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 February 9, 2023 unless staff returns to City Council on or before February 9, 2023 to request to continue the need for teleconferencing.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. That the City Council hereby finds that the state of emergency conditions related to COVID-19, as set forth in Resolution No. 22-9175 adopted on December 13, 2022 and incorporated herein by reference, are on-going.
2. That the City Council finds that there is a need to teleconference 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. That 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 (including Santa Clara Stadium Authority, Sports and Open Space Authority, Housing Authority, Successor Agency to the City of Santa Clara Redevelopment Agency, Bayshore North Project Enhancement Authority, and Public Facilities Financing Corporation), City Boards, Committees and Commissions, Taskforces, and Other City Advisory Entities to meet safely in person.
4. That City officials continue to impose or recommend measures to promote social distancing in City facilities.

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5. That members of the City Council, Council Committees, City Decision-Making Bodies, City Boards (including Santa Clara Stadium Authority Board, Sports and Open Space Authority, Housing Authority, Successor Agency to the City of Santa Clara Redevelopment Agency, Bayshore North Project Enhancement Authority, and Public Facilities Financing Corporation), Committees and Commissions, Taskforces, and Other City 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).

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6. That the Assistant 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.

7. Effective Date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 10TH DAY OF JANUARY, 2023, BY THE FOLLOWING VOTE:

AYES:	COUNCILORS:	Becker, Chahal, Hardy, Jain, Park, Watanabe, and Mayor Gillmor
NOES:	COUNCILORS:	None
ABSENT:	COUNCILORS:	None
ABSTAINED:	COUNCILORS:	None

ATTEST: 
NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None