



Agenda Report

22-1341

Agenda Date: 11/1/2022

REPORT TO COUNCIL

SUBJECT

Action on a Resolution Extending AB 361 Implementation to Allow City Legislative Bodies to Hold Public Meetings Solely by Teleconference or Otherwise Electronically During the Governor's Proclaimed COVID State of Emergency

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

On March 17, 2020, Governor Gavin Newsom issued Executive Order N-29-20 which suspended the Brown Act teleconferencing requirements so that legislative bodies could hold public meetings solely by teleconference, or otherwise electronically, without listing the teleconference locations and without any physical location, as long legislative bodies followed a set of requirements for noticing the meeting agenda and public participation, among other things. Subsequently on June 11, 2021, Governor Newsom issued Executive Order N-08-21, which sunset the Brown Act provisions of Executive Order N-29-20 on September 30, 2021.

On September 16, Governor Newsom signed AB 361 into law which allows local agencies to use teleconferencing without complying with specific Brown Act restrictions in certain state emergencies until January 1, 2024, at which point they are to be repealed, and the standard Brown Act teleconference requirements become effective again. The bill was an urgency measure, and it went into effect immediately.

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, and October 4, 2022 the City Council approved Resolution 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, and 22-9145 respectively, to allow City Legislative bodies to hold public meetings solely by teleconference or otherwise electronically pursuant to AB 361.

DISCUSSION

AB 361 amended Government Code Section 54943 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 in certain circumstances.

In order for a local agency to utilize AB 361's exemption to the Brown Act, there must be certain emergency conditions present. These include:

- There being a state-proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.
- The Council is meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, that meeting in person would present imminent risks to the health and safety of attendees; or
- The Council is meeting during a proclaimed state of emergency and has determined, by majority vote, that in-person meetings would pose health and safety risks to attendees.

In order for the City's legislative bodies to continue meeting remotely with the exemptions to the Brown Act provided for under AB 361, the Council is required to take certain actions, most of which the City is already implementing:

- The City must continue providing notice of meetings and continue to post agendas as the Brown Act requires to the agency's website,
- The City must continue allowing for public access to the meeting, while allowing for a public comment period to directly address the legislative body pursuant to Brown Act's other teleconferencing provisions,
- The City must continue giving notice for how the public can access the meeting and provide public comment, including a call-in or internet-based service option (no physical location required),
- The City must continue providing the public with the opportunity to comment in real time (with the option of additionally allowing comments to be submitted in advance, if the agency desires),
- The City must stop the meeting until public access is restored in the event of a service disruption, and
- No later than 30 days after the first teleconferencing meeting and every 30 days thereafter, the Council will have to reconsider the circumstances of the state of emergency to determine if remote meeting procedures need to remain in place.

The legislative body must make certain findings by majority vote every 30 days to continue using the AB 361 Brown Act teleconferencing requirements. Because the City Council approved Resolution No. 22-9145 will expire on November 3, 2022. The City Council must adopt a new resolution in order to allow for its other legislative bodies to continue meeting remotely through December 1, 2022. Failure to approve this resolution would result in City Council, boards, and commissions meetings being unable to meet fully virtual without exposing the locations of each member's location on the posted agendas.

Beginning on March 11, 2020 and continuing every 60 days thereafter, 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 September 21, 2021, the Santa Clara County Public Health Officer recommended that public bodies continue to meet remotely to the extent possible due to the continued threat of COVID-19 to the community, the unique characteristics of public governmental meetings, and the continued increased safety protection that social distancing provides as one means by which to reduce the risk of COVID-19 transmission. On November 2, 2021, emergency use of the Pfizer COVID vaccine was authorized for children ages 5-11. On that same day, Santa Clara county moved back into the substantial (orange) COVID-19 transmission tier. On November 22, 2021, Santa Clara county moved

to the moderate (yellow) 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 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. 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. 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. 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. 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. 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. 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 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. 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. 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. 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. 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. 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. 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. As 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. 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. On August 4, 2022, the CDC continued to classify Santa Clara County in the high community level for coronavirus, in its weekly update. 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. 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. 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. 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. 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. 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. 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 the City's legislative bodies to meet safely in person, and City officials continue to impose or recommend public health safety measures.

It is recommended that the Council adopt a resolution to make requisite findings to allow the City's legislative bodies to hold public meetings solely by teleconference or otherwise electronically so long as the state of emergency and social distancing measures continue. The Council will have to take action on a monthly basis to reassess and reaffirm such findings to continue meeting remotely.

The proposed Resolution is attached.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

There is no fiscal impact other than administrative time and expense.

COORDINATION

This report has been coordinated with the City Manager's Office, City Attorney's Office, and City

Clerk's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Adopt a Resolution finding the existence of the need to extend AB 361 implementation to allow the City's legislative bodies to hold public meetings solely by teleconference or otherwise electronically pursuant to AB 361.

Reviewed by: Nadine Nader, Assistant City Manager

Approved by: Rajeev Batra, City Manager

ATTACHMENTS

1. Resolution