



# City of Sunnyvale

## Agenda Item-No Attachments (PDF)

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### REPORT TO COUNCIL

#### **SUBJECT**

Reconsider and Affirm Resolution No. 1089-21; and Make Findings Pursuant to Government Code Section 54953(e) (AB 361) to Continue Virtual Public Meetings for the City Council and Boards, Commissions and Council Subcommittees During the COVID-19 State of Emergency

#### **BACKGROUND**

On March 17, 2020, Governor Gavin Newsom issued Executive Order No. N-29-20, which suspended portions of the Ralph M. Brown Act (California Government Code Sections 54950-54963) that limit the use of teleconferencing for public meetings; the Order was scheduled to sunset when the COVID-19 Pandemic ends. The Ralph M. Brown Act places strict requirements on local legislative bodies regarding the posting, access and physical location of voting members during public meetings.

Beginning with the March 31, 2020 Council meeting, the City has conducted public meetings utilizing teleconferencing technology to provide for members of the public, staff, and public officials (Councilmembers and board or commission members) to participate without in-person participation.

On June 11, 2021, Governor Gavin Newsom issued Executive Order No. N-08-21, which among other things rescinded his prior Executive Order No. N-29-20 and set a date of October 1, 2021 for local government agencies (local bodies) to transition back to public meetings held in full compliance with the Brown Act.

On August 10, 2021, Council provided direction regarding the format of future public meetings, including continuing virtual-only meetings as long as this model is allowable (RTC No. 21-0718).

On September 16, 2021, the Governor signed AB 361, which took effect immediately as an urgency statute. AB 361 allows for similar teleconferencing exemptions to continue after the September 30, 2021 sunset of Executive Order No. N-08-21, if one of the following circumstances applies:

1. State or local officials have imposed or recommended measures to promote social distancing.
2. The legislative body is meeting to determine whether, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
3. The legislative body has determined that, as a result of the emergency, meeting in person presents imminent risks to the health or safety of attendees.

AB 361 requires that a legislative body revisit the state of emergency every 30 days to reevaluate if the circumstances continue to meet one of the conditions listed above.

On September 20, 2021, Governor Newsom issued Executive Order No. N-15-21 clarifying that local agencies could continue to rely on Executive Order No. N-08-21 until September 30, 2021.

On September 21, 2021, Santa Clara County Public Health Officer Dr. Sara Cody issued guidance to public meeting bodies such as the Sunnyvale City Council and the City's Boards, Commissions and Council Subcommittees to continue meeting remotely (via teleconference) due to the COVID-19 emergency.

On October 6, 2021, the City Council held a Special Joint meeting with the Santa Clara Valley Water District Board of Directors; the first Sunnyvale meeting conducted under the provisions of Government Code (G.C.) Subdivision 54953 (e) (AB 361). Council made the necessary findings included in Government Code Section 54953 (e) within 30 days on October 26, 2021 by adopting Resolution No. 1089-21 (Attachment 1).

On October 7, 2021, eight Bay Area Health Officers, including Santa Clara County, issued criteria for lifting COVID-19 indoor masking requirements:

- The jurisdiction reaches the moderate (yellow) COVID-19 transmission tier, as defined by the Centers for Disease Control & Prevention (CDC), and remains there for at least three weeks; and
- COVID-19 hospitalizations in the jurisdiction are low and stable, in the judgment of the health officer; and
- 80% of the jurisdiction's total population is fully vaccinated with two doses of Pfizer or Moderna or one dose of Johnson & Johnson (booster doses not considered) or eight weeks have passed since a COVID-19 vaccine has been authorized for emergency use by federal and state authorities for 5- to 11-year-olds.

## **EXISTING POLICY**

California Government Code Sections 54950-54963 (Ralph M. Brown Act)

Sunnyvale Resolution No. 1089-21 (Attachment 1)

Sunnyvale Emergency Resolution Nos. 979-20, 981-20, 994-20, 1010-20, 1016-20, 1025-20, 1036-20, 1042-21, 1045-21, 1057-21, 1069-21, 1078-21 and 1088-21 (Attachment 2)

## **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" with 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.

## **DISCUSSION**

The indoor masking mandate in Sunnyvale remains in place because Santa Clara County has not met the criteria outlined by the County Health Officer to lift COVID-19 indoor masking requirements. As of November 8, 2021, the vaccination rate in Santa Clara County was 73.4%, less than the 80% required for the County Health Officer to consider lifting the indoor masking mandate (See Attachment 3). City officials continue to impose or recommend measures to promote social distancing in City facilities.

Returning to in-person public meetings for the City Council and the City's Boards, Commissions and

Council Subcommittees would put members of the public, staff, and public officials at a greater risk of exposure to COVID-19.

Reaffirming Resolution No. 1088-21 and making findings consistent with Government Code Section 54953(e) due to the ongoing COVID-19 emergency, conducting public meetings in-person would present imminent risks to the health or safety of attendees, including members of the public, staff, and public officials (Councilmembers and board or commission members) would allow City Council and the City's Boards, Commissions and Council Subcommittees to continue conducting public meetings utilizing teleconferencing technology without providing for in-person participation.

Staff will return to Council within 30 days to allow Council an opportunity to reevaluate if the circumstances continue to meet one of the conditions outlined in Government Code Section 54953 (e). This reevaluation and any subsequent reevaluations would refer back to Resolution No. 1089-21 and would also apply to public meetings of the City's Boards, Commissions and Council Subcommittees.

### **FISCAL IMPACT**

There is no fiscal impact associated with this report.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, Sunnyvale Public Library and Department of Public Safety. In addition, the agenda and report are available at the Office of the City Clerk and on the City's website.

### **RECOMMENDATION**

Affirm Resolution 1088-21; and make findings pursuant to Government Code Subdivision 54953(e) (AB 361) to continue virtual public meetings for the City Council and Boards, Commissions and Council Subcommittees during the COVID-19 State of Emergency:

1. The City Council hereby finds that the state of emergency conditions related to COVID-19, as set forth in Resolution No. 1088-21 adopted on October 26, 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; and
3. The City Council finds that the state of emergency continues to directly impact the ability of members of the City Council, Council Standing Committees, and City Boards and Commissions to meet safely in person.

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Reviewed by: Teri Silva, Assistant City Manager  
Approved by: Kent Steffens, City Manager

### **ATTACHMENTS**

1. Resolution No.1088-21
2. Resolution No.1089-21
3. Santa Clara County Resident Vaccination Rate - November 8, 2021