

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 ended. 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 virtually.

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 allowed (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 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. Although the Public Health Officer issued a new order on September 12, 2022 rescinding

a number of orders, it did not rescind this recommendation and continues to strongly recommend that people take precautions in indoor settings and that governments require people to wear masks indoors. In addition, the County Board of Supervisors has indicated that it will likely continue to hold meetings virtually into October.

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 Section 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 November 16 and December 14, 2021, and January 4 and 25, February 22, March 22, April 5, May 3, May 24, June 21, July 12, August 9 and August 30, 2022, the City Council reconsidered and affirmed Resolution No. 1089-21; and made 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 (See Attachment 4 for draft excerpt Council meeting minutes).

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, 1088-21, 1099-21, 1106-22, 1110-22, 1115-22, 1130-22 and 1139-22 (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

On September 12, 2022, Dr. Cody issued an updated public health order (Attachment 3). This Order, among other guidance, includes a strong recommendation to continue universal use of face coverings indoors.

On September 13, 2022, the Santa Clara County Board of Supervisors adopted Resolution No. BOS-2022-138 continuing virtual public meetings for the Board, along with all other Santa Clara County commissions and advisory bodies. The Board's Resolution incorporated Dr. Cody's September 21, 2021, recommendation for public bodies to continue meeting remotely.

On May 10, 2022, Santa Clara County Public Health issued a press release titled "With COVID-19 Cases on the Rise, County of Santa Clara Health Officials Remind the Public: The Pandemic is Not Over," that included a recommendation to avoid gathering in large groups unless in a well-ventilated space or outside. As of September 15, Santa Clara County COVID-19 test positivity rates remained high, declining from last month with the 7-day average decreasing from 10.9% on August 15 to 6.8% on September 7.

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. 1089-21 and making findings consistent with Government Code Section 54953(e) 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.

Staff will work with the Mayor to schedule future agenda item(s) addressing the transition to hybrid in-person/virtual public meetings.

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, at the Sunnyvale Public Library, Senior Center, Community Center and in the Department of Public Safety Lobby. In addition, the agenda and report are available at the Sunnyvale Public Library, Office of the City Clerk, and on the City's website.

RECOMMENDATION

Affirm Resolution 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:

1. The City Council hereby finds that the state of emergency conditions related to COVID-19, as set forth in Resolution No. 1139-22 adopted on August 9, 2022 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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ATTACHMENTS

1. Resolution No. 1089-21
2. Resolution No. 1139-22
3. Health Officer Order - September 12, 2022
4. Draft Excerpt Council Meeting Minutes - August 30, 2022