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MEMORANDUM

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By Electronic Mail

To: Board of Administration and its Committees
Federated City Employees' Retirement System

Date: February 16, 2023

Re: **Board of Administration's Factual Findings for Teleconferencing in Compliance with California Assembly Bill 361 ("AB 361")**

Dear Board and Committee Members:

On September 30, 2021, the Governor's Executive Order N-29-20 and Executive Order N-08-21 that suspended and modified the Ralph M. Brown Act's, Government Code §§ 54950–54963 ("Brown Act"), teleconferencing requirements during the COVID-19 pandemic expired. However, in fall 2021, Governor Gavin Newsom signed AB 361 into law as an urgency bill, which became effective October 1, 2021.

AB 361 allows legislative bodies, such as public retirement boards, to meet virtually and remotely using abbreviated teleconferencing procedures *only if* the legislative bodies make certain factual findings. Gov't Code § 54953(e)(1). Legislative bodies include the full Board and each of its separate standing committees. Gov't Code § 54952. Accordingly, both the full Board and each of its committees must separately make the factual findings specified under AB 361 after October 1, 2021 until January 1, 2024 (the date on which AB 361 sunsets), if the legislative body seeks to avail itself to AB 361's abbreviated teleconferencing procedures.

On January 19, 2023, this Board and its committees determined, by majority vote at their respective public, agendized special meetings, the following factual findings under AB 361: (1) the Governor's Proclamation of State of Emergency due to the ongoing COVID-19 pandemic continued to exist, and (2) the San José City Council's recent Resolution continued to recommend social distancing in City facilities. These factual findings allowed the Board and its committees to meet virtually for the next 30 days.

I. AB 361's Required Factual Findings

To elect to utilize AB 361's abbreviated teleconferencing procedures, the factual findings a legislative body must make every thirty days by majority vote after making sufficient factual findings at the first meeting following the expiration of the Governor's Executive Orders that suspended the Brown Act are:

- A state of emergency has been formally proclaimed; ***and***
- ***Either:***
    - State or local officials have imposed or recommended measures to promote social distancing at the time the legislative body holds the meeting (Gov't Code § 54953(e)(1)(A)); ***or***
    - As a result of proclaimed state of emergency, meeting in person would present imminent risks to the health and safety of attendees (Gov't Code § 54953(e)(1)(B)) and the legislative body makes that determination by majority vote.

The legislative body must continue to make such factual findings by majority vote every 30 days thereafter to justify the continuance of meeting virtually and remotely under AB 361.

II. Materials for Board's Consideration to Aid Factual Findings

Enclosed with this memorandum, we have included the following materials to aid you in making factual findings in light of AB 361's requirements, which provide as follows:

- **Exhibit A: Proclamation of State of Emergency, dated March 4, 2020** – Governor Newsom's proclamation of the state of emergency pursuant to Government Code § 8625 of the California Emergency Services Act.
- **Exhibit B: San José City Council Resolution No. 80262, dated October 19, 2021** – City Council's factual finding that the public interest and necessity require continuing the proclamation of local emergency related to COVID-19.
- **Exhibit C: San José City Council Resolution No. _____, approved at City Council's February 7, 2023 Meeting (Agenda Item No. 2.7) (pending for public posting) –** City Council's factual findings to elect use of AB 361's abbreviated teleconferencing procedures, which:
    - 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, City Boards, Committees and Commissions, and City Other Advisory Entities to meet safely in person; and
    - Specifies that City officials continue to recommend measures to promote social distancing in City facilities.

Based on the above, it appears that the proclaimed state of emergency is ongoing due to the COVID-19 pandemic in the City of San José and the City Council continues to recommend social distancing measures in City facilities.

If these factual findings are accepted and determined by majority vote based on the materials presented, the Board and its committees would be allowed to continue to meet virtually and remotely under AB 361's abbreviated teleconferencing procedures for the next 30 days until March 18, 2023. However, if the Board and/or its committees' next meeting comes after March 18, 2023, then the Board and/or its committees with such meetings must hold a Special Meeting under AB 361 before March 18, 2023 and make additional factual findings to meet virtually after March 18, 2023.

Exhibit A

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

PROCLAMATION OF A STATE OF EMERGENCY

WHEREAS in December 2019, an outbreak of respiratory illness due to a novel coronavirus (a disease now known as COVID-19), was first identified in Wuhan City, Hubei Province, China, and has spread outside of China, impacting more than 75 countries, including the United States; and

WHEREAS the State of California has been working in close collaboration with the national Centers for Disease Control and Prevention (CDC), with the United States Health and Human Services Agency, and with local health departments since December 2019 to monitor and plan for the potential spread of COVID-19 to the United States; and

WHEREAS on January 23, 2020, the CDC activated its Emergency Response System to provide ongoing support for the response to COVID-19 across the country; and

WHEREAS on January 24, 2020, the California Department of Public Health activated its Medical and Health Coordination Center and on March 2, 2020, the Office of Emergency Services activated the State Operations Center to support and guide state and local actions to preserve public health; and

WHEREAS the California Department of Public Health has been in regular communication with hospitals, clinics and other health providers and has provided guidance to health facilities and providers regarding COVID-19; and

WHEREAS as of March 4, 2020, across the globe, there are more than 94,000 confirmed cases of COVID-19, tragically resulting in more than 3,000 deaths worldwide; and

WHEREAS as of March 4, 2020, there are 129 confirmed cases of COVID-19 in the United States, including 53 in California, and more than 9,400 Californians across 49 counties are in home monitoring based on possible travel-based exposure to the virus, and officials expect the number of cases in California, the United States, and worldwide to increase; and

WHEREAS for more than a decade California has had a robust pandemic influenza plan, supported local governments in the development of local plans, and required that state and local plans be regularly updated and exercised; and

WHEREAS California has a strong federal, state and local public health and health care delivery system that has effectively responded to prior events including the H1N1 influenza virus in 2009, and most recently Ebola; and

WHEREAS experts anticipate that while a high percentage of individuals affected by COVID-19 will experience mild flu-like symptoms, some will have more serious symptoms and require hospitalization, particularly individuals who are elderly or already have underlying chronic health conditions; and

WHEREAS it is imperative to prepare for and respond to suspected or confirmed COVID-19 cases in California, to implement measures to mitigate the spread of COVID-19, and to prepare to respond to an increasing number of individuals requiring medical care and hospitalization; and

WHEREAS if COVID-19 spreads in California at a rate comparable to the rate of spread in other countries, the number of persons requiring medical care may exceed locally available resources, and controlling outbreaks minimizes the risk to the public, maintains the health and safety of the people of California, and limits the spread of infection in our communities and within the healthcare delivery system; and

WHEREAS personal protective equipment (PPE) is not necessary for use by the general population but appropriate PPE is one of the most effective ways to preserve and protect California's healthcare workforce at this critical time and to prevent the spread of COVID-19 broadly; and

WHEREAS state and local health departments must use all available preventative measures to combat the spread of COVID-19, which will require access to services, personnel, equipment, facilities, and other resources, potentially including resources beyond those currently available, to prepare for and respond to any potential cases and the spread of the virus; and

WHEREAS I find that conditions of Government Code section 8558(b), relating to the declaration of a State of Emergency, have been met; and

WHEREAS I find that the conditions caused by COVID-19 are likely to require the combined forces of a mutual aid region or regions to appropriately respond; and

WHEREAS under the provisions of Government Code section 8625(c), I find that local authority is inadequate to cope with the threat posed by COVID-19; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Government Code section 8625, **HEREBY PROCLAIM A STATE OF EMERGENCY** to exist in California.

IT IS HEREBY ORDERED THAT:

1. In preparing for and responding to COVID-19, all agencies of the state government use and employ state personnel, equipment, and facilities or perform any and all activities consistent with the direction of the Office of Emergency Services and the State Emergency Plan, as well as the California Department of Public Health and the Emergency Medical Services Authority. Also, all residents are to heed the advice of emergency officials with regard to this emergency in order to protect their safety.

2. As necessary to assist local governments and for the protection of public health, state agencies shall enter into contracts to arrange for the procurement of materials, goods, and services needed to assist in preparing for, containing, responding to, mitigating the effects of, and recovering from the spread of COVID-19. Applicable provisions of the Government Code and the Public Contract Code, including but not limited to travel, advertising, and competitive bidding requirements, are suspended to the extent necessary to address the effects of COVID-19.

3. Any out-of-state personnel, including, but not limited to, medical personnel, entering California to assist in preparing for, responding to, mitigating the effects of, and recovering from COVID-19 shall be permitted to provide services in the same manner as prescribed in Government Code section 179.5, with respect to licensing and certification. Permission for any such individual rendering service is subject to the approval of the Director of the Emergency Medical Services Authority for medical personnel and the Director of the Office of Emergency Services for non-medical personnel and shall be in effect for a period of time not to exceed the duration of this emergency.

4. The time limitation set forth in Penal Code section 396, subdivision (b), prohibiting price gouging in time of emergency is hereby waived as it relates to emergency supplies and medical supplies. These price gouging protections shall be in effect through September 4, 2020.

5. Any state-owned properties that the Office of Emergency Services determines are suitable for use to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services for this purpose, notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.

6. Any fairgrounds that the Office of Emergency Services determines are suitable to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services pursuant to the Emergency Services Act, Government Code section 8589. The Office of Emergency Services shall notify the fairgrounds of the intended use and can immediately use the fairgrounds without the fairground board of directors' approval, and

notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.

7. The 30-day time period in Health and Safety Code section 101080, within which a local governing authority must renew a local health emergency, is hereby waived for the duration of this statewide emergency. Any such local health emergency will remain in effect until each local governing authority terminates its respective local health emergency.

8. The 60-day time period in Government Code section 8630, within which local government authorities must renew a local emergency, is hereby waived for the duration of this statewide emergency. Any local emergency proclaimed will remain in effect until each local governing authority terminates its respective local emergency.

9. The Office of Emergency Services shall provide assistance to local governments that have demonstrated extraordinary or disproportionate impacts from COVID-19, if appropriate and necessary, under the authority of the California Disaster Assistance Act, Government Code section 8680 et seq., and California Code of Regulations, Title 19, section 2900 et seq.

10. To ensure hospitals and other health facilities are able to adequately treat patients legally isolated as a result of COVID-19, the Director of the California Department of Public Health may waive any of the licensing requirements of Chapter 2 of Division 2 of the Health and Safety Code and accompanying regulations with respect to any hospital or health facility identified in Health and Safety Code section 1250. Any waiver shall include alternative measures that, under the circumstances, will allow the facilities to treat legally isolated patients while protecting public health and safety. Any facilities being granted a waiver shall be established and operated in accordance with the facility's required disaster and mass casualty plan. Any waivers granted pursuant to this paragraph shall be posted on the Department's website.

11. To support consistent practices across California, state departments, in coordination with the Office of Emergency Services, shall provide updated and specific guidance relating to preventing and mitigating COVID-19 to schools, employers, employees, first responders and community care facilities by no later than March 10, 2020.

12. To promptly respond for the protection of public health, state entities are, notwithstanding any other state or local law, authorized to share relevant medical information, limited to the patient's underlying health conditions, age, current condition, date of exposure, and possible contact tracing, as necessary to address the effect of the COVID-19 outbreak with state, local, federal, and nongovernmental partners, with such information to be used for the limited purposes of monitoring, investigation and control, and treatment and coordination of care. The

notification requirement of Civil Code section 1798.24, subdivision (i), is suspended.

13. Notwithstanding Health and Safety Code sections 1797.52 and 1797.218, during the course of this emergency, any EMT-P licensees shall have the authority to transport patients to medical facilities other than acute care hospitals when approved by the California EMS Authority. In order to carry out this order, to the extent that the provisions of Health and Safety Code sections 1797.52 and 1797.218 may prohibit EMT-P licensees from transporting patients to facilities other than acute care hospitals, those statutes are hereby suspended until the termination of this State of Emergency.

14. The Department of Social Services may, to the extent the Department deems necessary to respond to the threat of COVID-19, waive any provisions of the Health and Safety Code or Welfare and Institutions Code, and accompanying regulations, interim licensing standards, or other written policies or procedures with respect to the use, licensing, or approval of facilities or homes within the Department's jurisdiction set forth in the California Community Care Facilities Act (Health and Safety Code section 1500 et seq.), the California Child Day Care Facilities Act (Health and Safety Code section 1596.70 et seq.), and the California Residential Care Facilities for the Elderly Act (Health and Safety Code section 1569 et seq.). Any waivers granted pursuant to this paragraph shall be posted on the Department's website.

I FURTHER DIRECT that as soon as hereafter possible, this proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this proclamation.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 4th day of March 2020.

GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State

Exhibit B

RESOLUTION NO. 80262

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE FINDING THE CONTINUED EXISTENCE OF CONDITIONS OF EXTREME PERIL AND CONTINUING THE PROCLAMATION OF EXISTENCE OF A LOCAL EMERGENCY ISSUED BY THE DIRECTOR OF EMERGENCY SERVICES UNTIL TERMINATION

WHEREAS, Section 8.08.210 of Chapter 8.08 of Title 8 of the San José Municipal Code empowers the Director of the Emergency Services (City Manager or Designee) to proclaim the existence or threatened existence of a local emergency if the Council of the City of San José ("City") is not in session, and requires that the City Council shall take action to ratify the proclamation within seven (7) days thereafter, or the proclamation shall have no further force or effect; and

WHEREAS, pursuant to California Government Code Section 8680.9, a local emergency is a condition of extreme peril to persons or property proclaimed as such by the governing body of the local agency affected by a natural or manmade disaster; and

WHEREAS, the purpose of a local emergency proclamation is to provide extraordinary police powers, immunity for emergency actions, authorize issuance of orders and regulations, and activate pre-established emergency provisions; and

WHEREAS, a local emergency proclamation is a prerequisite for requesting state or federal assistance; and

WHEREAS, conditions of extreme peril to the safety of persons and property have arisen within the City, based on the following:

1. A novel coronavirus (named "COVID-19") was first detected in Wuhan City, Hubei Province, China, in December 2019. The Centers for Disease Control and Prevention ("CDC") considers the virus to be a very serious

public health threat with outcomes ranging from mild sickness to severe illness and death. COVID-19 has spread globally to over 85 countries, infected more than 95,000 people, and killed more than 3,000 individuals.

2. On January 31, 2020, the United States Secretary of Health and Human Services declared a Public Health Emergency.

3. In February 2020, the number of cases of COVID-19 in Santa Clara County ("County") increased, causing the County to declare a local health emergency and proclaim a local emergency and the City to gradually increase its Pandemic Response Stage from 1 to 3.

4. By March 4, 2020, the number of confirmed cases of COVID-19 had increased to eleven (11) in the County with confirmed community spread. The California Department of Health Services reported its first death related to COVID-19, and the Governor of California declared a state of emergency.

5. On March 4, 2020, the City partially activated its Emergency Operations Center and began scaling up resources and response in preparation for event and facility closures, increased telecommuting/work-from-home capacity for employees, augmentation of communication to employees and coordination with partner agencies, as well as other work-place and program modifications to ensure the continuity of City operations while protecting the safety of our employees, providing effective communication, and supporting the County.

6. By March 5, 2020, the number of confirmed cases of COVID-19 had increased to twenty (20) in the County, with strong evidence of increasing community spread. The County expanded its guidance and the City escalated its Pandemic Response Stage from 3 to 4.

7. On March 16, 2020, the Santa Clara County Public Health Officer issued a Shelter in Place Order.

8. On March 31, 2020, the Santa Clara County Public Health Officer issued another Order to Continue Sheltering in Place until May 3, 2020.

9. On April 13, 2020, the City began its planning efforts to shift out of Pandemic Response Stage 5, “Extremely High Response,” and into Stage 6, “Initial Re-opening with No Vaccine.”

10. On April 15, 2020, Governor Gavin Newsom released information on criteria that will determine when to lift the state’s shelter-in-place.

11. On April 16, 2020, President Trump released guidelines for a 3 Phased Approach to Opening Up America Again.

12. On May 4, 2020, the Santa Clara County Public Health Officer extended the Shelter in Place Order to May 31, 2020, with some modifications, and Governor Gavin Newsom announced an update on California’s progress toward Stage 2 reopening and updated industry guidance to help drive reopening for some sectors, including retail, manufacturing and logistics, with modifications, beginning May 8, 2020.

13. On May 5, 2020, the Santa Clara County Public Health Officer released information regarding COVID-19 indicators and next steps for reopening.

14. On May 7, 2020, health orders in Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara counties and the City of Berkeley loosened restrictions on construction as well as outdoor activities and businesses, beginning May 8, 2020.

15. On May 18, 2020, the Santa Clara County Public Health Officer announced amendments to the current Shelter in Place Order to allow some businesses to resume operating, with modifications based on significant progress in controlling the spread of COVID-19, and extending the Shelter in Place Order until rescinded or modified.

16. On June 5, 2020, the Santa Clara County Public Health Officer issued an update to the Shelter in Place Order, allowing several new categories of businesses and activities to reopen, subject to conditions and limitations, while keeping key restrictions in place, requiring people to stay in their homes except when engaging in certain essential or allowed activities.

17. On July 2, 2020, the Santa Clara County Public Health Officer issued a new Risk Reduction Order that puts in place long-term risk reduction measures, allowing certain additional activities to resume, but also putting in place significant additional containment measures to control the spread of COVID-19, effective July 13, 2020.

18. On July 12, 2020, Santa Clara County was added to the State of California's ("State") Monitoring list, and on July 13, 2020, Governor Gavin Newsom announced that counties on the State's Monitoring List for three consecutive days must close some indoor business operations. In light of the Governor's announcement, Santa Clara County ordered appropriate businesses and operations to close effective July 15, 2020 at 12:01 a.m.

19. On August 28, 2020, Governor Gavin Newsom unveiled a new State framework to replace the former State County Monitoring List and Variance Processes effective Monday, August 31, 2020. This blueprint provided a new color coded four-tier framework, with different restrictions on activity for each tier.

20. On August 31, 2020, a new State framework went into effect with revised criteria for either loosening or tightening restrictions on business-related activities. This "Blueprint for a Safer Economy" creates a tiered system of COVID-19 restrictions that all counties in California must follow.

21. On September 8, 2020, the County moved to Tier 2 (Red), per the State's Blueprint for a Safer Economy, which allows for personal care businesses to operate indoor and an increased capacity allotment for specific businesses.

22. On September 30, 2020, the State added a COVID-19 Equity requirement to its Blueprint for a Safer Economy framework. Under this new state requirement, counties with more than 106,000 residents must bring infections down in these places and invest heavily there in testing, contact tracing, outreach and providing means for infected people to isolate. The measure is designed to ensure that test positivity rates in the most disadvantaged neighborhoods do not significantly exceed a county's overall rate. Counties will not be permitted to reopen their economies further unless they reduce coronavirus infections in the hardest-hit places where the poor, African American, Latinos, Pacific Islanders, and essential workers live.

23. On October 13, 2020, as the County's COVID-19 case positivity rate continue to steadily decline, the State authorized the County to move to Tier Three (Orange Tier) of the State's Blueprint for a Safer Economy, the County revised its Public Health Order on October 14, 2020 to reflect the changes. All Santa Clara County residents and businesses must follow both the State and County Health Officer Orders, and where there is a conflict between the two, the stricter Order must be followed.

24. On October 20, 2020, the City officially moved to Stage 8 - Substantial Reopening of its Pandemic Recovery to Resilience Plan. The City adjusted

its response, messaging, and priorities to best suit the needs of the community, adapting to the progressive modifications made by the Office of the Governor and the Public Health Officer to the Shelter-in-Place Order as well as recent reopening guidance.

25. On November 14, 2020 as COVID-19 cases continue to increase across the country, California Governor Gavin Newsom, Oregon Governor Kate Brown and Washington Governor Jay Inslee issued travel advisories urging visitors entering their states or returning home from travel outside these states to self-quarantine to slow the spread of the virus.

26. On November 16, 2020 just as the County was preparing to return to the Red Tier of COVID restrictions, California Governor Newsom announced that along with most California counties, Santa Clara County would be required to go back to the restrictions of the most severe tier – Purple, in an effort to control the increasingly rapid spread of COVID-19.

27. On November 19, 2020, considering unprecedented, rapid increases in COVID-19 cases across California, Governor Gavin Newsom, and the California Department of Public Health ("CDPH") announced a limited Stay at Home Order which required that non-essential work, movement and gatherings stop between 10 PM and 5 AM in counties in the purple tier.

28. On November 28, 2020, the Santa Clara County Public Health Officer announced a mandatory directive related to travel which will require people to quarantine for 14 days upon return to the county from travel of more than 150 miles.

29. On December 2, 2020, the Santa Clara County Public Health Officer ordered more restrictions for residents and businesses, which went into effect at 12 a.m. on Monday, November 30 and will stay in effect through December 21, 2020.

30. On December 3, 2020, the State saw that COVID-19 case rates and hospitalizations continue to rise at an alarming pace and threaten to overwhelm the health care delivery system. California health officials announced a Regional Stay at Home Order that will be triggered if hospital Intensive Care Unit capacity drops below fifteen percent (15%) in a given region.

31. On December 4, 2020, the Santa Clara County Health Department, along with four other counties and the City of Berkeley, announced that they would begin the State of California's regional stay-at-home order on Sunday, December 6, at 10 P.M., which will stay in effect until January 4, 2020.

32. On December 11, 2020, the U.S. Food and Drug Administration issued the first emergency use authorization for the Pfizer-BioNTech COVID-19 Vaccine to be distributed in the U.S. Santa Clara County confirmed receiving the first batch of Pfizer's COVID-19 vaccine on December 15, 2020 which will be distributed to people in the highest risk categories.

33. On January 5, 2021, the State required some non-essential and non-life-threatening surgeries to be delayed in counties with ten percent (10%) or less of Intensive Care Unit ("ICU") capacity under the Regional State at Home Order where the regional ICU capacity is at zero percent (0%). This health order was amended to provided additional clarification on January 6, 2021.

34. On January 9, 2021, the State extended the Regional State at Home Order, which was originally set to expire on January 8, 2021, due to the region's ICU bed capacity remaining below fifteen percent (15%). This health order was modified on January 25, 2021.

35. As of February 2021, vaccine distribution efforts are ongoing with the County in the lead and the City providing assistance.

36. On February 25, 2021, Governor Newsom announced a set-aside of at least 10% of vaccines for childcare and K-12 teachers and staff by truing-up local efforts to the 10% minimum through dedicated access to Myturn.gov.

37. On March 2, 2021, Santa Clara County moving into Red Tier of State's Blueprint for a Safer Economy. The County of Santa Clara Health Officer announced that Santa Clara County has met the requirements to move into the red tier and that the County will align with the State's framework and allow expanded activities to open.

38. On March 4, 2021, Governor Newsom announces statewide vaccine equity plan which would set aside 40 percent of vaccine doses for the hardest hit communities and establish a vaccine equity metric. The plan had a negative impact on the vaccine supply available for Santa Clara County, redirecting vaccines primarily to Southern California. The City has collaborated with the County to continue to prioritize vaccines for the hardest impact areas.

39. On March 4, 2021, Governor Newsom signs Executive Order to extend the commercial eviction moratorium extending authorization for local governments to halt evictions for commercial renters impacted by the COVID-19 pandemic through June 30, 2021.

40. On March 5, 2021, The City of San Jose collaborated with Asian Americans for Community Involvement (AACI) to conduct a vaccination event in the Buena Vista area, targeting vulnerable census tracks with high COVID-19 Positivity Rates and low vaccination rates. This partnership successfully administered 250 vaccinations to vulnerable residents in the area.

41. On March 11, 2021, President Biden signs $1.9 trillion American Rescue Plan with additional funding for COVID mitigation and response by developing a national vaccination program; increases COVID-19 testing, tracing and treatment; changes employment regulations; and addresses the negative financial impacts of the pandemic.

42. On April 1, 2021, The U.S. Department of Commerce's Economic Development Administration (EDA) announced approval of the City of San José's grant application for the City's Small Business and Manufacturing Recovery Initiative. The $1.17 Million in CARES Act Recovery Assistance will be managed by the Office of Economic Development and will allow the City of San Jose to provide more support to small businesses and manufacturers in underserved areas hit hardest by the pandemic.

43. On April 1, 2021, Kaiser Permanente and the City of San José opened a new vaccine clinic at the city's Vietnamese American Cultural Center (VACC). The clinic will provide eligible residents with accessibility to the vaccine, particularly residents in census tracts within a 5 mile radius of the center, who have also been heavily impacted by COVID-19 infections.

44. On April 6, 2021, Governor Newsom announced that by June 15th full statewide reopening date if 1) vaccine supply is sufficient for everyone 16 years and older who want a vaccine, and 2) hospitalization rates are stable and low.

45. On April 10, 2021, the City of San Jose collaborated with Safeway, San Andreas Regional Center, Parents Helping Parents, Healthier Kids Foundation, Silicon Valley Independent Living Center to put on a vaccination event at the San Andreas Regional Center for persons with

disabilities and those with other access and functional needs. Successfully administered 300 doses.

46. On April 13, 2021, due the significant increase in vaccine supplies coming in directly to the County of Santa Clara Health System from the Federal government under a program operated by the Federal Health Resources & Services Administration ("HRSA"), the County is opening vaccine eligibility to all individuals age 16 or older who live or work in Santa Clara County.

47. On May 18, 2021, the Santa Clara County Public Health Officer issued a new Public Health Order establishing focused safety measures designed to reduce the spread of COVID-19. The new Order requires employers to determine who in a workplace has been fully vaccinated in order to comply with current and anticipated County and State rules related to COVID-19 safety in the workplace.

48. On May 19, 2021, the new Santa Clara County Public Health Order went into effect when the county entered into the Yellow Tier of the State's Blueprint for a Safer Economy. The new Order replaced the prior restrictions on activities with a few focused requirements related to vaccination, face coverings, and case reporting.

49. On May 26, 2021, Santa Clara County eased local COVID-19 restrictions weeks before the state is set to fully reopen. The limited local health order will:

    a. Require employers to determine the vaccination status of employees within 14 days.
    b. Define safety rules for unvaccinated employees or those not eligible for inoculation.
    c. Require workplaces and schools to continue reporting positive cases to the Santa Clara County Public Health Department.

50. On June 15, 2021, the State of California terminated the color-coded tier system for directing public health operations.

51. On June 17, 2021, Governor Newsom signed an Executive Order expediting Cal/OSHA's revised COVID-19 regulations to ensure consistency with public health guidance based on guidelines issued by the Centers for Disease Control and Prevention regarding face coverings and eliminating physical distancing requirements, except for certain employees during outbreaks.

52. On June 28, 2021, Governor Newsom signed legislation to extend the state's eviction moratorium through September 30, 2021 and provide rental assistance funds.

53. On July 26, 2021, Governor Newsom announced that the State of California is implementing a first-in-the-nation standard to require all state workers and workers in health care and high-risk congregate settings to either show proof of full vaccination or be tested at least once per week, and encouraged all local government and other employers to adopt a similar protocol.

54. 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.

55. 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.

56. 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.

57. On August 24, 2021, the City Council adopted an Urgency Ordinance requiring all attendees and staff at events at City facilities, such as the SAP Arena, Convention Center, and Center for Performing Arts, to demonstrate proof of vaccination prior to entry in a gathering of any substantial size, such as 50 or more persons.

58. 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.

59. On September 21, 2021, the City Council approved the COVID-19 Recovery Task Force membership to work with the community to "think about the future" as it relates to two key areas: 1) stabilizing and strengthening families, and 2) supporting small businesses.

60. The efforts required to prepare for, respond to, mitigate, and recover from the emergency conditions caused by COVID-19 have imposed and will continue to impose extraordinary requirements and expenses on the City.

WHEREAS, on March 10, 2020, the City Council ratified the Director of Emergency Services' March 6, 2020 proclamation of the existence of a local emergency within the City; and

WHEREAS, on May 5, 2020, the City Council adopted Resolution No. 79502 continuing the proclamation of local emergency; and

WHEREAS, on June 23, 2020, the City Council adopted Resolution No. 79623 continuing the proclamation of local emergency; and

WHEREAS, on August 18, 2020, the City Council adopted Resolution No. 79685 continuing the proclamation of local emergency; and

WHEREAS, on September 22, 2020, the City Council adopted Resolution No. 79728 continuing the proclamation of local emergency; and

WHEREAS, on November 17, 2020, the City Council adopted Resolution No. 79791 continuing the proclamation of local emergency; and

WHEREAS, on January 12, 2021, the City Council adopted Resolution No. 79860 continuing the proclamation of local emergency; and

WHEREAS, on March 2, 2021, the City Council adopted Resolution No. 79912 continuing the proclamation of local emergency; and

WHEREAS, on April 27, 2021, the City Council adopted Resolution No. 79979 continuing the proclamation of local emergency; and

WHEREAS, on June 22, 2021, the City Council adopted Resolution No. 80111 continuing the proclamation of local emergency; and

WHEREAS, on August 17, 2021, the City Council adopted Resolution No. 80180 continuing the proclamation of local emergency; and

WHEREAS, Government Code Section 8630(c) requires that the City Council review the need for continuing the local emergency at least once every sixty (60) days until the

governing body terminates the local emergency, however the Gubernatorial Declaration of Emergency waives the 60-day renewal requirement and the City Council may extend the local emergency until such time as conditions warrant termination; and

WHEREAS, the associated emergency conditions are on-going and the emergency should not be terminated at this time and if approved, the extension will be in effect until staff returns to City Council to request termination of the local emergency;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

1. The City Council has reviewed the need for continuing the proclamation of local emergency and finds based on substantial evidence that the public interest and necessity require the continuance of the proclamation of local emergency related to COVID-19.

2. Said local emergency shall be deemed to continue to exist until terminated by the City Council of the City of San José.

3. The Director of Emergency Services is authorized to request from the Governor of the State of California assistance including, but not limited to, California Disaster Assistance Act (“CDAA”) funding to assist with emergency responses required by and within the City because locally available resources are inadequate to cope with the local emergency.

4. The Director of Emergency Services is hereby directed to report to the City Council at such time as conditions warrant termination of the local emergency.

ADOPTED this 19TH day of October, 2021, by the following vote:

AYES:	CARRASCO, COHEN, DAVIS, ESPARZA, FOLEY, JONES, JIMENEZ, MAHAN, PERALEZ, LICCARDO.
NOES:	NONE.
ABSENT:	ARENAS.
DISQUALIFIED:	NONE.

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

Exhibit C

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE FINDING THE CONTINUED EXISTENCE OF THE NEED TO EXTEND AB 361 IMPLEMENTATION AND 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 AND JOINT POWERS AUTHORITY LEGISLATIVE BODIES FOR WHICH THE CITY SERVES AS LEAD STAFFING AGENCY 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

WHEREAS, the Ralph M. Brown Act (California Government Code Sections 54950, et seq., hereinafter referred to as the "Brown Act") requires that public meeting agendas be posted at least 72 hours prior to a regular meeting and at least 24 hours prior to a special meeting; and

WHEREAS, on August 26, 2014, the Council of the City of San José ("City") adopted Resolution No. 77135 consolidating Open Government and Ethics Provisions, which imposes additional public meeting and document noticing requirements than those imposed by the Brown Act; and

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

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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; and

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; and

WHEREAS, on April 21, 2020, the City Council, by Resolution No. 79485, incorporated Executive Order N-29-20 into the City's Consolidated Open Government and Ethics (Sunshine) Resolution No. 77135 to allow the City to utilize the suspension of the Brown Act teleconferencing requirements in Executive Order N-29-20; incorporated all future Governor's Executive Orders regarding the Brown Act into the City's Sunshine procedures, as deemed appropriate by the City Clerk and City Manager, without further action from the City Council; allowed public meeting agendas to be posted 72 hours prior to a regular meeting and at least 24 hours prior to a special meeting; allowed documents related to COVID-19, as determined by the City Manager and City Clerk, such as staff reports, ordinances and resolutions, to not be required to be posted 72 hours in advance of the meeting; allowed documents not related to COVID-19, as determined by the City Manager and City Clerk, to be posted at least 72 hours prior to a regular meeting and at least 24 hours prior to a special meeting; allowed only the City

Manager to place an item on the City Council Agenda after the Rules and Open Government Committee meeting, but at least 72 hours prior to the meeting, in compliance with a two-thirds (2/3) vote of Council to add items after Rules; and allowed the Mayor and Councilmembers to place an item on the City Council Agenda after the Rules and Open Government Committee meeting, but at least 72 hours prior to the meeting, if the Mayor, City Manager and City Attorney concur that the item requires immediate action, and Council authorizes its addition by a two-thirds vote; to be in effect while state or local public officials impose or recommend measures to promote social distancing; and

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

WHEREAS, on September 17, 2021, Governor Newsom signed urgency ordinance AB 361 allowing 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; and

WHEREAS, the City Council has made findings, beginning on March 10, 2020 and continuing every 60 days thereafter, most recently by Resolution No. 80262 adopted on October 19, 2021, for the continued 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; and

WHEREAS, Resolution No. 80262 continued the proclamation of local emergency until such time as conditions warrant termination of the local emergency by the City Council, in accordance with the Gubernatorial Declaration of Emergency that waived the 60-day renewal requirement under Government Code Section 8630(c); and

WHEREAS, the San José-Santa Clara Clean Water Financing Authority, a Joint Powers Authority for which the City serves as lead staffing agency, has adopted a Resolution to hold Public Meetings Solely by Teleconference or Otherwise Electronically Pursuant to AB 361 and Delegate the Declaration of Emergency to the San José City Council to adopt the ongoing emergency declarations as it does for all other San José Council Committees, Decision-Making Bodies, Boards, Committees, and Commissions, and Other Advisory Entities; and

WHEREAS, since September 21, 2021, "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;" and

WHEREAS, on August 9, 2022, August 30, 2022, September 27, 2022, October 25, 2022, November 15, 2022, December 13, 2022, and January 10, 2023, the City Council adopted Resolution Nos. 80628, 80659, 80685, 80724, 80758, 80809, and RES2023-1, respectively, amending 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 AB361, 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; and

WHEREAS, effective May 6, 2022, due to an increase in positive COVID-19 cases in the City employee workforce and local community, the City reinstated the mandatory mask mandate for all City employees; and

WHEREAS, since May 9, 2022, the Santa Clara County Superior Court has had in effect a General Order reiterating and emphasizing that all persons, including Court staff and judicial officers, must wear a proper face covering in all areas of the court open to the public, or when members of the public are present; and

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; and

WHEREAS, since June 28, 2022, California's COVID-19 positivity rate has continued to climb, surpassing anything the state has seen this year, as new, more transmissible variants grow throughout the state; the fast-spreading omicron subvariants BA.4 and BA.5 can partially evade immunity and are 10% more transmissible than the earlier BA.2 subtype; and

WHEREAS, as of July 6, 2022, the entire nine-county Bay Area is at the high community risk level for COVID-19 at which federal regulators recommend everyone wear face masks indoors as newer and more immunity-evasive versions of the omicron variant spread; in addition, Bay Area health officials said infections remain at February 2022 elevated levels with no signs of declining, with COVID hospitalizations including significant numbers admitted for other health issues whose COVID infections were found through routine screening tests; and

WHEREAS, as of July 17, 2022, COVID hospitalizations have more than quadrupled in the past three months, up to 4,432 patients from a low of 949 on April 16; and

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; and

WHEREAS, as of August 1, 2022, data from California's public health department show that in the first three weeks of July, there were more than 50,000 documented reinfections, accounting for 1 in 7 (14%) of new COVID cases; and

WHEREAS, as of August 3, 2022, the Centers for Disease Control and Prevention reported that nationwide, only 4% of the 19 million U.S. children under age 5 have received a first dose of the Pfizer or Moderna vaccines since the agency recommended the shots on June 18; and

WHEREAS, as of August 5, 2022, data from California's public health department show that California crossed over 10 million official COVID cases, but there have been likely 44.6 million to 52 million unofficial COVID cases since early 2020 due to undercount with many positive at-home test results going unreported; and

WHEREAS, as of August 10, 2022, while COVID-19 death rates have fallen consistently over the last two and a half years, COVID-19 is still about three times deadlier than official flu rates and COVID-19 is the third-leading cause of death in the U.S. this year; and

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; and

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; and

WHEREAS, on August 31, 2022, the U.S. Food and Drug Administration authorized Moderna (for individuals 18 years of age and older) and Pfizer-BioNTech (for individuals 12 years of age and older) Bivalent COVID-19 vaccines for use as a single booster dose at least two months following primary or booster vaccination; and

WHEREAS, as of September 5, 2022, COVID-19 transmission rates remain high throughout the Bay Area and 89% of U.S. counties, according to the Centers for Disease Control and Prevention, though community risk levels reflecting the virus' burden on hospitals have fallen to low levels in the Bay Area's largest counties; and

WHEREAS, on September 10, 2022, as COVID-19 positive cases trended downward in Santa Clara County and among City of San Jose employees, and COVID-19 related hospitalizations remained relatively low and stable, the City lifted its mandatory masking requirement to only strongly recommending that employees continue to wear masks in all indoor public spaces; and

WHEREAS, as of September 15, 2022, Moderna's bivalent booster supply had been temporarily delayed to nonprofit and private pharmacies like Kaiser, CVS and Safeway which are directly supplied by the federal government, while Santa Clara County's health system had supplies available in part because they are supplied by both the state and federal governments; and

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; and

WHEREAS, on September 22, 2022, BART's Board of Directors voted to end its mandatory face covering policy effective October 1, 2022 and authorized its general manager with future masking authority upon certain conditions being met, including COVID-19 cases surging locally or nationwide, or if mask mandates are reinstated in any of the give Bay Area counties in which BART operates; and

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; and

WHEREAS, as of September 23, 2022, COVID-19 cases and hospitalizations are increasing in Northern Europe where colder and wetter weather is first being felt, with Belgium's health authority saying its modeling points to a new COVID-19 wave hitting in mid-October, though data published that same day suggests the first ripples of this wave have already arrived; and

WHEREAS, on September 26, 2022, and effective immediately, the Santa Clara County Superior Court rescinded its General Order requiring face coverings in courthouses, leaving to judicial officers the discretion in their individual courtrooms to require the use of face coverings and to allow persons to remove their own face coverings for periods of time to ensure the court reporter and/or electronic recording device can clearly report or record the proceedings and any other communication that occurs in the courtroom; and

WHEREAS, on September 29, 2022, and effective immediately, Governor Newsom signed AB 152 extending the requirement for all California employers with more than 25 employees to provide COVID-19 Supplemental Paid Sick Leave through December 31, 2022; and

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 and Santa Clara County Public Health Director Dr. Sara Cody urging residents to get an updated COVID-19 booster update if they are eligible to do so as the holiday season approaches; and

WHEREAS, as of October 25, 2022, a tripledemic comprising of the flu, coronavirus, and Respiratory Syncytial Virus (RSV) is putting some U.S. hospitals in crisis mode due to running out of pediatric Emergency Room beds; and

WHEREAS, as of November 8, 2022, an expansive new study shows that people who took the antiviral drug Paxlovid soon after infection can prevent disabling Long COVID, including fatigue, brain fog, or cardiac symptoms, with 26% less likely to have symptoms, but not enough patients were taking it due to physicians not prescribing the medication and too much media focus on the caveats and concerns of the medication; and

WHEREAS, as of November 10, 2022, the United States is heading into its third COVID-19 winter without some of the tools it has relied on in prior points in the pandemic, such as free at-home tests, and free COVID-19 vaccines and treatments will stop sometime in 2023; and

WHEREAS, as of November 10, 2022, with U.S. hospitals overwhelmed by the tripledemic comprising of the flu, coronavirus, and Respiratory Syncytial Virus (RSV), officials in some areas are launching drive-through testing sites for all three illnesses; and

WHEREAS, as of November 21, 2022, according to California Health and Human Services Secretary Dr. Mark Ghaly, transmission of the flu, COVID-19 and RSV have

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been increasing statewide simultaneously, with COVID test positivity and case rates climbing by roughly 25 percent over the prior two weeks with evidence of increased transmission in the state's wastewater systems; and

WHEREAS, as of November 29, 2022, Bay Area hospitals have 613 patients with confirmed COVID-19, marking the first time since August that the figure topped 600, according to state data, with San Francisco, Marin, Sonoma, Alameda and Santa Clara counties reporting the steepest rises in hospitalizations; in addition, according to an analysis conducted by the Kaiser Family Foundation, most COVID deaths now occur in vaccinated people, highlighting the need to get regular booster shots to keep one's risk of death from the coronavirus low, especially for the elderly; and

WHEREAS, COVID infections and hospitalizations are increasing in the wake of the Thanksgiving holiday and U.S. health officials are strongly encouraging everyone who is eligible to get vaccinated against COVID and the flu as respiratory viruses surge this season, putting strain on hospital emergency departments; and

WHEREAS, at a December 6, 2022 briefing, Santa Clara County Public Health Officer Dr. Sara Cody stated that COVID numbers are "skyrocketing" in Santa Clara County wastewater and RSV is filling up pediatric beds with only two available pediatric intensive care beds and only six available pediatric hospital beds in Santa Clara County; and

WHEREAS, as of December 7, 2022, as COVID-19, flu and RSV cases rise heading into winter, parents are having a difficult time treating their children at home as over-the-counter medications become harder to find on store shelves; and

WHEREAS, on December 8, 2022, the Food and Drug Administration authorized COVID-19 vaccine boosters that target the Omicron variant for children as young as six months old; and

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WHEREAS, on December 9, 2022, much of California, including the entire Bay Area, the Central Valley, and Southern California, entered the CDC's high transmission level for COVID-19, and Santa Clara County, San Benito County and Santa Cruz County reached the high community risk level, which reflects the COVID-19 impact on local hospitals; California's COVID hospitalizations have reached the peak seen over the summer, but case counts are not capturing the current spike because so many are testing at home; and

WHEREAS, as of December 13, 2022, Santa Clara County, Alameda County, Contract Costa County, Solano County and Napa County, require masks for jails, prisons, detention centers, homeless or emergency shelters, and cold-weather shelters, because those counties have reached the CDC medium or high community risk level, at which state law requires masks in such high-risk settings; and

WHEREAS, on December 14, 2022, Bay Area hospitals are dealing with the third largest wave of COVID positive patients (940), with the flu and RSV adding to surges at medical facilities; and

WHEREAS, as of December 23, 2022, COVID-19 cases and deaths are at a fraction of the levels seen around the same time in 2020 and 2021; and

WHEREAS, as of January 5, 2023, due to the surge of COVID-19 cases in China, the United States will require all travelers from China to show a negative COVID-19 test result before flying to the United States, and passengers flying to the U.S. from China will need to present proof of a negative COVID-19 test taken less than two days before flying; and

WHEREAS, on January 5, 2023, the World Health Organization is warning that a new Omicron subvariant known as XBB.1.5 is the most transmissible strain to date, making up about 75% of new cases in the Northeast United States; preliminary research

indicates that this new subvariant may be more immune evasive and contagious than previous Omicron variants; and

WHEREAS, effective December 29, 2022, the Santa Clara County Public Health Officer's Recommendation regarding continued public meetings of governmental entities was rescinded; and

WHEREAS, effective January 10, 2023, Santa Clara County eliminated hybrid services for every committee meeting, with only the general Board of Supervisors meetings still having the virtual option; and

WHEREAS, on February 1, 2023, Santa Clara County announced it would dismantle its three remaining COVID-19 vaccination and testing sites by the end of the month, which will mean that vaccines and testing will be available primarily through private healthcare providers and pharmacies, though Santa Clara County will still provide vaccines on a smaller scale at its clinics and hospitals for mostly low-income residents; and

WHEREAS, many state-run testing and vaccination operations will also shutter in the coming weeks in response to the end of the California state of emergency on February 28, 2023; and

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 the Governor terminates the state of emergency; and

WHEREAS, the associated emergency conditions are on-going and there is a need to implement 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 if approved, will be in effect and will expire on February 28, 2023 unless the Governor extends and COVID-19 State of Emergency and staff returns to City Council on or before February 28, 2023 to request to continue the need for teleconferencing;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

1. The City Council hereby finds that the state of emergency conditions related to COVID-19, as set forth in Resolution No. 80262 adopted on October 19, 2021 and incorporated herein by reference, are on-going.

2. The City Council finds that there is a need to implement 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.

3. 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, City Boards, Committees and Commissions, City Other Advisory Entities, and Joint Power Authority legislative bodies for which the City serves as lead staffing agency, to meet safely in person.

4. City officials continue to recommend measures to promote social distancing in City facilities, and meeting in person would present imminent risks to the health and safety of attendees due to COVID-19.

5. Members of the City Council, Council Committees, City Decision-Making Bodies, City Boards, Committees and Commissions, City Other Advisory Entities, and Joint Power Authority legislative bodies for which the City serves as lead staffing

agency, 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).

6. The City's Sunshine procedures are amended to incorporate all future Governor's Executive Orders regarding the Brown Act, as deemed appropriate by the City Clerk and City Manager, without further action from the City Council.

7. The City's Consolidated Open Government and Ethics Resolution No. 77135 is amended to modify the public meeting agenda and document posting requirements such that public meeting agendas would be posted at least 72 hours prior to a regular meeting and at least 24 hours prior to a special meeting; documents related to COVID-19, as determined by the City Manager and City Clerk, such as staff reports, ordinances and resolutions, would not need to be posted 72 hours in advance of the meeting; and documents not related to COVID-19, as determined by the City Manager and City Clerk, would need to be posted at least 72 hours prior to a regular meeting and at least 24 hours prior to a special meeting.

8. The City's Consolidated Open Government and Ethics Resolution No. 77135 is amended to provide that only the City Manager—not Mayor and Council

Offices—can request the City Clerk place an item on the City Council Agenda after the date of the hearing of the Rules and Open Government Committee, but at least 72 hours prior to the meeting, in compliance with the Rules of Conduct Resolution No. 79870 Rule 3(d) which requires a two-thirds (2/3) vote of Council to add items after Rules during the current Governor-proclaimed COVID-19 state of emergency.

9. The City's Consolidated Open Government and Ethics Resolution No. 77135 is amended to provide that the Mayor and Councilmembers can request the City Clerk place an item on the City Council Agenda after the date of the hearing of the Rules and Open Government Committee, but at least 72 hours prior to the meeting, if the City Clerk utilizes the procedures authorized in the City's Consolidated Open Government and Ethics Resolution No. 77135, Section 2.3.2.1.E to allow items to be so added if the Mayor, City Manager, and City Attorney concur that the item requires immediate action, and Council authorizes its addition by a two-thirds (2/3) vote during the current Governor-proclaimed COVID-19 state of emergency.

10. The City Clerk is hereby directed to report to the City Council 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 if the Governor extends his proclaimed COVID-19 State of Emergency beyond February 28, 2023.

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ADOPTED this _____ day of _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk