



MEMORANDUM

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By Electronic Mail

To: Board of Administration and its Committees
 San José Police & Fire Department Retirement Plan

Date: October 7, 2021

Re: **Board of Administration's Factual Findings for Teleconferencing in Compliance with 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, Governor Gavin Newsom recently signed California Assembly Bill 361 ("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 within 30 days of teleconferencing for the first time after October 1, 2021, and every 30 days thereafter. Gov't Code § 54953(e)(1) & (e)(3). 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 and every 30 days thereafter 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.

I. AB 361's Required Factual Findings

The factual findings a legislative body must make at the first meeting after the expiration of Governor's Executive Order N-29-20 and Executive Order N-08-21 are:

- A state of emergency has been formally proclaimed; *and*

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- ***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.

If a legislative body makes these factual findings based on circumstances at the time of the first meeting, then it will be permitted to continue to meet virtually and remotely under AB 361's abbreviated teleconferencing procedures for 30 days from the date of when the factual findings were made. 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 Considerations to Aid Factual Findings

Enclosed with this memo, 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: AB 361** – text of amendments to the Brown Act that sets forth the requirements and procedures for adopting AB 361's abbreviated teleconferencing procedures.
- **Exhibit B: Order of the Health Officer of the County of Santa Clara Requiring Use of Face Coverings Indoors by All Persons, dated Aug. 2, 2021** – requires all persons, regardless of vaccination status, to wear face coverings indoors and continues to be in effect until it is rescinded, superseded, or amended in writing by the Health Officer. *See* Paragraph 10.
- **Exhibit C: State of California Department of Public Health's Guidance for the Use of Face Coverings, dated July 28, 2021** – recommends universal masking indoors statewide, regardless of vaccination status and continues to be in effect.
- **Exhibit D: Center for Disease Control ("CDC") Webpage, entitled "Your Guide to Masks" and dated Aug. 13, 2021** – provides latest CDC masking guidance.
- **Exhibit E: CDC COVID-19 Data Tracker for Santa Clara County, dated Sept. 27, 2021** – categorizes the community transmission rate of COVID-19 in the United States as "high" and the community transmission rate of COVID-19 in Santa Clara County as "moderate."

- **Exhibit F: 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 G: San Jose City Council Resolution No. 80237** – 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 impose or 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, and meeting in person continues to present imminent risks to the health and safety of attendees. If so determined by majority vote, these factual findings based on the materials presented would allow the Board and its committees to continue to meet virtually and remotely under AB 361’s abbreviated teleconferencing procedures for the next 30 days.

EXHIBIT A



AB-361 Open meetings: state and local agencies: teleconferences. (2021-2022)

As Amends the Law Today

As Amends the Law on Sep 17, 2021

SECTION 1. *Section 89305.6 is added to the Education Code, to read:*

89305.6. *(a) Notwithstanding any other provision of this article, and subject to the notice and accessibility requirements in subdivisions (d) and (e), a legislative body may hold public meetings through teleconferencing and make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the legislative body.*

(b) (1) For a legislative body holding a public meeting through teleconferencing pursuant to this section, all requirements in this article requiring the physical presence of members, the clerk or other personnel of the legislative body, or the public, as a condition of participation in or quorum for a public meeting, are hereby suspended.

(2) For a legislative body holding a public meeting through teleconferencing pursuant to this section, all of the following requirements in this article are suspended:

(A) Each teleconference location from which a member will be participating in a public meeting or proceeding be identified in the notice and agenda of the public meeting or proceeding.

(B) Each teleconference location be accessible to the public.

(C) Members of the public may address the legislative body at each teleconference conference location.

(D) Post agendas at all teleconference locations.

(E) At least one member of the legislative body be physically present at the location specified in the notice of the meeting.

(c) A legislative body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with the notice and accessibility requirements in subdivisions (d) and (e), shall have satisfied any requirement that the legislative body allow members of the public to attend the meeting and offer public comment. A legislative body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

(d) If a legislative body holds a meeting through teleconferencing pursuant to this section and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the legislative body shall also do both of the following:

(1) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and resolving any doubt whatsoever in favor of accessibility.

(2) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to paragraph (2) of subdivision (e).

(e) Except to the extent this section provides otherwise, each legislative body that holds a meeting through teleconferencing pursuant to this section shall do both of the following:

(1) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by this article, and using the means otherwise prescribed by this article, as

applicable.

(2) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in the means of public observation and comment, or any instance prior to the effective date of this section in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of the means of public observation and comment, a legislative body may satisfy this requirement by advertising the means of public observation and comment using the most rapid means of communication available at the time. Advertising the means of public observation and comment using the most rapid means of communication available at the time shall include, but need not be limited to, posting such means on the legislative body's internet website.

(f) All legislative bodies utilizing the teleconferencing procedures in this section are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the otherwise applicable provisions of this article, in order to maximize transparency and provide the public access to legislative body meetings.

(g) This section shall remain in effect only until January 31, 2022, and as of that date is repealed.

SEC. 2. Section 11133 is added to the Government Code, to read:

11133. (a) Notwithstanding any other provision of this article, and subject to the notice and accessibility requirements in subdivisions (d) and (e), a state body may hold public meetings through teleconferencing and make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the state body.

(b) (1) For a state body holding a public meeting through teleconferencing pursuant to this section, all requirements in this article requiring the physical presence of members, the clerk or other personnel of the state body, or the public, as a condition of participation in or quorum for a public meeting, are hereby suspended.

(2) For a state body holding a public meeting through teleconferencing pursuant to this section, all of the following requirements in this article are suspended:

(A) Each teleconference location from which a member will be participating in a public meeting or proceeding be identified in the notice and agenda of the public meeting or proceeding.

(B) Each teleconference location be accessible to the public.

(C) Members of the public may address the state body at each teleconference conference location.

(D) Post agendas at all teleconference locations.

(E) At least one member of the state body be physically present at the location specified in the notice of the meeting.

(c) A state body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with the notice and accessibility requirements in subdivisions (d) and (e), shall have satisfied any requirement that the state body allow members of the public to attend the meeting and offer public comment. A state body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

(d) If a state body holds a meeting through teleconferencing pursuant to this section and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the state body shall also do both of the following:

(1) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and resolving any doubt whatsoever in favor of accessibility.

(2) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to paragraph (2) of subdivision (e).

(e) Except to the extent this section provides otherwise, each state body that holds a meeting through teleconferencing pursuant to this section shall do both of the following:

(1) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by this article, and using the means otherwise prescribed by this article, as applicable.

(2) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in the means of public observation and comment, or any instance prior to the effective date of this section in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of the means of public observation and comment, a state body may satisfy this requirement by advertising the means of public observation and comment using the most rapid means of communication available at the time. Advertising the means of public observation and comment using the most rapid means of communication available at the time shall include, but need not be limited to, posting such means on the state body's internet website.

(f) All state bodies utilizing the teleconferencing procedures in this section are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the otherwise applicable provisions of this article, in order to maximize transparency and provide the public access to state body meetings.

(g) This section shall remain in effect only until January 31, 2022, and as of that date is repealed.

SEC. 3. Section 54953 of the Government Code is amended to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivisions (d) and (e). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) (1) A local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:

(A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

(B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:

(A) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(B) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3. In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(C) The legislative body shall conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body of a local agency.

(D) In the event of a disruption which prevents the public agency from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments using the call-in option or internet-based service option, the body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption which prevents the public agency from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(G) (i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (F), to provide public comment until that timed public comment period has elapsed.

(ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (F), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (F), until the timed general public comment period has elapsed.

(3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(ii) State or local officials continue to impose or recommend measures to promote social distancing.

(4) For the purposes of this subdivision, "state of emergency" means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

(f) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 3.1. Section 54953 of the Government Code is amended to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local ~~agency,~~ *agency in person*, except as otherwise provided in this chapter. *Local agencies shall conduct meetings subject to this chapter consistent with applicable state and federal civil rights laws, including, but not limited to, any applicable language access and other nondiscrimination obligations.*

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivisions (d) and (e). The agenda shall provide

an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) (1) A local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:

(A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

(B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:

(A) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(B) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3. In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option. This subparagraph shall not be

construed to require the legislative body to provide a physical location from which the public may attend or comment.

(C) The legislative body shall conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body of a local agency.

(D) In the event of a disruption which prevents the public agency from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments using the call-in option or internet-based service option, the body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption which prevents the public agency from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(G) (i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (F), to provide public comment until that timed public comment period has elapsed.

(ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (F), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (F), until the timed general public comment period has elapsed.

(3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(ii) State or local officials continue to impose or recommend measures to promote social distancing.

(4) For the purposes of this subdivision, "state of emergency" means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

(f) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 4. Section 54953 is added to the Government Code, to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any

meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) This section shall become operative January 1, 2024.

SEC. 4.1. Section 54953 is added to the Government Code, to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, in person except as otherwise provided in this chapter. Local agencies shall conduct meetings subject to this chapter consistent with applicable state and federal civil rights laws, including, but not limited to, any applicable language access and other nondiscrimination obligations.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) This section shall become operative January 1, 2024.

SEC. 5. Sections 3.1 and 4.1 of this bill incorporate amendments to Section 54953 of the Government Code proposed by both this bill and Assembly Bill 339. Those sections of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2022, but this bill becomes operative first, (2) each bill amends Section 54953 of the Government Code, and (3) this bill is enacted after Assembly Bill 339, in which case Section 54953 of the Government Code, as amended by Sections 3 and 4 of this bill, shall remain

operative only until the operative date of Assembly Bill 339, at which time Sections 3.1 and 4.1 of this bill shall become operative.

SEC. 6. *It is the intent of the Legislature in enacting this act to improve and enhance public access to state and local agency meetings during the COVID-19 pandemic and future applicable emergencies, by allowing broader access through teleconferencing options consistent with the Governor's Executive Order No. N-29-20 dated March 17, 2020, permitting expanded use of teleconferencing during the COVID-19 pandemic.*

SEC. 7. *The Legislature finds and declares that Sections 3 and 4 of this act, which amend, repeal, and add Section 54953 of the Government Code, further, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:*

This act is necessary to ensure minimum standards for public participation and notice requirements allowing for greater public participation in teleconference meetings during applicable emergencies.

SEC. 8. (a) *The Legislature finds and declares that during the COVID-19 public health emergency, certain requirements of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) were suspended by Executive Order N-29-20. Audio and video teleconference were widely used to conduct public meetings in lieu of physical location meetings, and public meetings conducted by teleconference during the COVID-19 public health emergency have been productive, have increased public participation by all members of the public regardless of their location in the state and ability to travel to physical meeting locations, have protected the health and safety of civil servants and the public, and have reduced travel costs incurred by members of state bodies and reduced work hours spent traveling to and from meetings.*

(b) *The Legislature finds and declares that Section 1 of this act, which adds and repeals Section 89305.6 of the Education Code, Section 2 of this act, which adds and repeals Section 11133 of the Government Code, and Sections 3 and 4 of this act, which amend, repeal, and add Section 54953 of the Government Code, all increase and potentially limit the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:*

(1) *By removing the requirement that public meetings be conducted at a primary physical location with a quorum of members present, this act protects the health and safety of civil servants and the public and does not preference the experience of members of the public who might be able to attend a meeting in a physical location over members of the public who cannot travel or attend that meeting in a physical location.*

(2) *By removing the requirement for agendas to be placed at the location of each public official participating in a public meeting remotely, including from the member's private home or hotel room, this act protects the personal, private information of public officials and their families while preserving the public's right to access information concerning the conduct of the people's business.*

SEC. 9. *This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:*

In order to ensure that state and local agencies can continue holding public meetings while providing essential services like water, power, and fire protection to their constituents during public health, wildfire, or other states of emergencies, it is necessary that this act take effect immediately.

EXHIBIT B

County of Santa Clara
Public Health Department

Health Officer
976 Lenzen Avenue, 2nd Floor
San José, CA 95126
408.792.3798



**ORDER OF THE HEALTH OFFICER OF THE COUNTY OF SANTA CLARA
REQUIRING USE OF FACE COVERINGS INDOORS BY ALL PERSONS**

DATE OF ORDER: August 2, 2021

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, 120175, AND SANTA CLARA COUNTY ORDINANCE CODE SECTION A18-33, THE HEALTH OFFICER OF THE COUNTY OF SANTA CLARA ("HEALTH OFFICER") ORDERS:

1. **Background.** This Order is made in light of the recent significant increase in COVID-19 cases and hospitalizations in Santa Clara County ("County"), due primarily to the Delta variant of SARS-CoV-2, the virus that causes COVID-19. Emerging evidence indicates that the Delta variant is more transmissible than prior variants of the virus, may cause more severe illness, and that even fully vaccinated individuals can spread the virus to others. The U.S. Centers for Disease Control and Prevention (CDC) and the California Department of Public Health (CDPH) now both recommend that all persons—regardless of vaccination status—wear face coverings indoors. Vaccination remains the best and most effective tool in preventing COVID-19 and its harms; evidence shows that even against the Delta variant, fully vaccinated individuals have substantial protection against severe illness, hospitalization, and death. In considering options to stem the rapid increase in COVID-19 transmission, a continued increase in the proportion of the population vaccinated is the best measure available. However, universal indoor use of face coverings is the least disruptive and most immediately impactful additional measure to take.
2. **Requirement to Wear Face Coverings Indoors.**
 - a. Regardless of vaccination status, all persons must wear face coverings at all times when indoors except:
 - (1) in their own residence or working in a closed room or office alone or with members of their household;
 - (2) when they are actively performing an activity that cannot be done while wearing a face covering (e.g., actively eating or drinking, swimming or showering in a fitness facility, or obtaining a medical or cosmetic service requiring removal of a face covering); or,
 - (3) as specifically exempted from use of face coverings under the guidance of CDPH at <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID->

[19/guidance-for-face-coverings.aspx](#) (e.g., to communicate with someone who is hearing impaired or where a face covering poses a safety risk).

For clarity, this Order does not prohibit any otherwise lawful activity but instead requires the use of face coverings indoors to the maximum extent possible. However, all persons are strongly discouraged from engaging in any activities that require removal of face coverings indoors (e.g., indoor dining), and instead encouraged to choose safer alternatives (e.g., outdoor dining). Even outdoors, individuals are recommended to use face coverings if they are in crowded areas.

- b. All businesses and governmental entities must enforce this face covering requirement for all personnel and for all customers or members of the public entering their facilities, regardless of vaccination status. All businesses and governmental entities must post clearly visible and easy-to-read signage at all entry points for indoor settings to communicate the face covering requirements to all persons entering the facility. In addition, those responsible for indoor public settings are strongly encouraged to provide face coverings at no cost to individuals who do not have one upon entry.
3. **Getting Vaccinated Is the Best Way to Reduce Risk.** Getting vaccinated against COVID-19 is the best way to protect the vaccinated person from infection, hospitalization, or death from COVID-19, as well as to prevent harm to others by reducing the risk of transmission of COVID-19. Therefore, all eligible persons are strongly urged to get vaccinated against COVID-19 as soon as possible.
4. **Recommendations from the Health Officer.** The Health Officer urges all businesses and governmental entities to follow the recommendations set forth below:
- a. Businesses and governmental entities should implement mandatory vaccination requirements for all personnel, subject only to the limited exemptions required by law.
 - b. Businesses and governmental entities should move operations and activities outdoors where possible, where there is significantly less risk of COVID-19 transmission. Where this is not possible, ventilation should be maximized.
 - c. Businesses and governmental entities should prohibit all personnel who are not fully vaccinated from engaging in any work-related travel to places with elevated rates of COVID-19, with widespread circulation of variants of concern, or where community vaccination rates are below the average in the Bay Area region.
 - d. Businesses and governmental entities should require all personnel not fully vaccinated to obtain frequent testing for COVID-19 consistent with current local, state, and federal recommendations. Any person, vaccinated or unvaccinated, who has any symptoms consistent with COVID-19 should be tested immediately.

5. **Definitions.** For purposes of this Order, the following definitions apply:

- a. “Business” includes any for-profit, non-profit, or educational entity, whether a corporate entity, organization, partnership, or sole proprietorship, and regardless of the nature of the service, the function it performs, or its corporate or entity structure. For clarity, “business” also includes a for-profit, non-profit, or educational entity performing services or functions under contract with a governmental agency.
- b. “Face covering” means a face covering that is well-fitted to an individual and covers the nose and mouth especially while talking, consistent with the guidance of the CDPH at <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/guidance-for-face-coverings.aspx>. A face covering does not include a scarf, ski mask, balaclava, bandana, turtleneck, collar, or single layer of fabric or any mask that has an unfiltered one-way exhaust valve.
- c. “Personnel” means the following individuals who provide goods or services or perform operations associated with a business or governmental entity in the County: employees; contractors and sub-contractors (such as those who sell goods or perform services onsite or who deliver goods for the business); independent contractors (such as “gig workers” who perform work via the business’s application or other online interface); vendors who are permitted to sell goods onsite; volunteers; and other individuals who regularly provide services onsite at the request of the business.

6. **Applicability.** All individuals, businesses, and other entities in the County are ordered to comply with the applicable provisions of this Order. For clarity, individuals who do not currently reside in the County must comply with all applicable requirements of the Order when they are in the County. Governmental entities must follow the requirements of this Order applicable to businesses, unless otherwise specifically directed by the Health Officer.


7. **Obligation to Follow Stricter Order.** Where a conflict exists between this Order and any order issued by the State Public Health Officer, the Governor, or a State agency (such as the California Division of Occupational Safety and Health (Cal/OSHA)) related to the COVID-19 pandemic, the most restrictive provision controls. For clarity, all individuals and entities must comply with the State Order, any mandatory guidance issued by the California Department of Public Health, any mandatory orders of the Governor or a State agency, or any other mandatory provision of State law to the extent it is stricter than any provision of this Order. Consistent with California Health and Safety Code section 131080 and the Health Officer Practice Guide for Communicable Disease Control in California, except if the State Health Officer issues an order expressly directed at this Order and based on a finding that a provision of this Order constitutes a menace to public health, any more restrictive measures in this Order continue to apply and control in this County. In addition, to the extent any federal guidelines are inconsistent with this Order, this Order is controlling.

8. **Obligation to Follow Health Officer Directives and Mandatory State Guidance.** In addition to complying with all provisions of this Order, all individuals and entities, including

all businesses and governmental entities, must also follow any applicable directives issued by the County Health Officer and any applicable mandatory guidance issued by the California Department of Public Health. To the extent that provisions in the directives of the County Health Officer and the guidance of the State Health Officer conflict, the more restrictive provisions apply.


9. **Enforcement.** Pursuant to Government Code sections 26602 and 41601, Health and Safety Code section 101029, and Santa Clara County Ordinance Code section A1-34 *et seq.*, the Health Officer requests that the Sheriff, all chiefs of police in the County, and all enforcement officers ensure compliance with and enforce this Order. The violation of any provision of this Order constitutes an imminent threat and menace to public health, constitutes a public nuisance, and is punishable by fine, imprisonment, or both. This Order is also subject to the civil enforcement authority established by Urgency Ordinance No. NS-9.291.
10. **Effective Date.** This Order is effective at 12:01 am on August 3, 2021. This Order shall continue to be in effect until it is rescinded, superseded, or amended in writing by the Health Officer.
11. **Copies.** Copies of this Order shall promptly be: (1) made available at the County Government Center at 70 W. Hedding Street, San José, California; (2) posted on the County Public Health Department's COVID-19 website (covid19.sccgov.org); and (3) provided to any member of the public requesting a copy of this Order.
12. **Severability.** If any provision of this Order or its application to any person or circumstance is held to be invalid, the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

IT IS SO ORDERED:


Sara H. Cody, M.D.
Health Officer of the County of Santa Clara

Dated: Aug. 2, 2021

Approved as to form and legality:


James R. Williams
County Counsel

Dated: Aug. 2, 2021

Order Requiring Use of Face Coverings Indoors
By All Persons (Issued August 2, 2021)

EXHIBIT C



State of California—Health and Human
Services Agency
**California Department of
Public Health**



July 28, 2021

TO: All Californians

SUBJECT: Guidance for the Use of Face Coverings



Note: This guidance is effective July 28, 2021 and supersedes all prior face coverings guidance.

Related Materials: [Face Coverings Q&A](#) | [Face Coverings Fact Sheet \(PDF\)](#) | [Face Mask Tips and Resources](#) | [Face Shields Q&A \(PDF\)](#) | [Safe Schools for All Hub](#) | [More Home & Community Guidance](#) | [All Guidance](#) | [More Languages](#)

Updates as of July 28, 2021:

- Adds recommendation for universal masking indoors statewide
- Adds Adult and Senior Care Facilities to settings where all individuals must wear masks indoors
- References new requirements for unvaccinated workers in the State Health Officer July 26 Order

Guidance For the Use of Masks

Background

The COVID-19 vaccines are effective in preventing serious disease. Unvaccinated persons are more likely to get infected and spread the virus which is transmitted through the air and concentrates indoors. About 15% of our population remains without the option for vaccination (children under 12 years old are not yet eligible) and risk for COVID-19 exposure and infection will remain until we reach full community immunity.

The purpose of this guidance is to provide information about higher risk settings where masks are required or recommended to prevent transmission to persons with higher risk of infection (e.g., unvaccinated or immunocompromised persons), to persons with prolonged, cumulative exposures (e.g., workers), or to persons whose vaccination status is unknown. When people who are not fully vaccinated wear a mask correctly, they protect others as well as themselves. Consistent and correct mask use by people who are not fully vaccinated is especially important indoors.

With the emergence of the more contagious Delta variant in California which now accounts for over 80% of cases sequenced, cases and hospitalizations of COVID-19 are rising throughout the state, especially amongst those that remain unvaccinated.

Despite ongoing outreach and improving COVID-19 vaccine access, as of July 27, 2021, a significant proportion of Californians throughout the state are not yet fully vaccinated. The Delta variant is two times as contagious than early COVID-19 variants, leading to increasing infections.

In California, unvaccinated persons continue to be required to wear masks in all indoor public settings. This guidance is an update, in light of review of the most recent CDC recommendations. To achieve universal masking in indoor public settings, we are recommending that fully vaccinated people also mask in indoor public settings across California. This adds an extra precautionary measure for all to reduce the transmission of COVID-19, especially in communities currently seeing the highest transmission rates. Local health jurisdictions may be more restrictive than this guidance.

In California, fully vaccinated people might choose to wear a mask in indoor non-public settings, particularly if they are immunocompromised or at increased risk for severe disease from COVID-19, or if they have someone in their household who is immunocompromised, at increased risk of severe disease, not fully vaccinated, or not yet eligible for vaccination.

In workplaces, employers are subject to the Cal/OSHA COVID-19 Emergency Temporary Standards (ETS) or in some workplaces the Cal/OSHA Aerosol Transmissible Diseases (ATD) Standard and should consult those regulations for additional applicable requirements.

Masking Requirements

Masks are **required for all individuals** in the following indoor settings, regardless of vaccination status:

- On public transit[1] (examples: airplanes, ships, ferries, trains, subways, buses, taxis, and ride-shares) and in transportation hubs (examples: airport, bus terminal, marina, train station, seaport or other port, subway station, or any other area that provides transportation)
- **Indoors** in K-12 schools[2], childcare[3]
- Emergency shelters[4] and cooling centers[5]

Masks are **required for all individuals**, in the following indoor settings, regardless of vaccination status (and surgical masks are recommended):

- Healthcare settings[6]
- State and local correctional facilities and detention centers[7]
- Homeless shelters[8]
- Long Term Care Settings[9] & Adult and Senior Care Facilities[10]

Additionally, masks are **required* for unvaccinated individuals** in indoor public settings and businesses (examples: retail, restaurants, theaters, family entertainment centers, meetings, state and local government offices serving the public).

See State Health Officer Order, issued on July 26, 2021, for a full list of high-risk congregate and other healthcare settings where surgical masks are required for unvaccinated workers, and recommendations for respirator use for unvaccinated workers in healthcare and long-term care facilities in situations or settings not covered by Cal OSHA ETS or ATD.

For additional information on types of masks, the most effective masks, and ensuring a well-fitted mask, individuals should refer to CDPH Get the Most out of Masking and see CDPH Masking Guidance Frequently Asked Questions for more information.

***Guidance for Businesses, Venue Operators or Hosts**

In settings where masks are required only for unvaccinated individuals, businesses, venue operators or hosts may choose to:

- Provide information to all patrons, guests and attendees regarding vaccination requirements and allow vaccinated individuals to self-attest that they are in compliance prior to entry.
- Implement vaccine verification to determine whether individuals are required to wear a mask.
- Require all patrons to wear masks.

No person can be prevented from wearing a mask as a condition of participation in an activity or entry into a business.

Exemptions to masks requirements

The following **individuals** are exempt from wearing masks at all times:

- Persons younger than two years old. Very young children must not wear a mask because of the risk of suffocation.
- Persons with a medical condition, mental health condition, or disability that prevents wearing a mask. This includes persons with a medical condition for whom wearing a mask could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a mask without assistance.
- Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication.
- Persons for whom wearing a mask would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines.

[1] CDC Requirement for Face Masks on Public Transportation Conveyances and at Transportation Hubs

[2] Interim Public Health Recommendations for Fully Vaccinated People

[3] CDC Guidance for Operating Child Care Programs during COVID-19

[4] CDC Interim Guidance for General Population Disaster Shelters During the COVID-19 Pandemic

[5] CDC Interim Guidance to Reduce the Risk of Introducing and Transmitting SARS COV-2 in Cooling Centers

[6] Healthcare settings includes all settings in Categories A and C of State Health Officer Order, including Residential Substance Use Disorder and Mental Health Facilities, issued on July 26, 2021

- See: CDC Updated Healthcare Infection Prevention and Control Recommendations in Response to COVID-19 Vaccination

[7] CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities

[8] CDC's Interim Guidance for Homeless Service Providers to Plan and Respond to Coronavirus Disease 2019 (COVID-19)

[9] Refer to State Health Officer Order, issued on July 26, 2021 for definition

[10] CDC Interim Infection Prevention and Control Recommendations to Prevent SARS-CoV-2 Spread in Nursing Homes

California Department of Public Health
PO Box, 997377, MS 0500, Sacramento, CA 95899-7377
Department Website (cdph.ca.gov)



EXHIBIT D



COVID-19

Your Guide to Masks

Updated Aug. 13, 2021

[Print](#)

- If you are not fully vaccinated and aged 2 or older, you should wear a mask in indoor public places.
- In general, you do not need to wear a mask in outdoor settings.
 - In areas with [high numbers of COVID-19 cases](#), consider wearing a mask in crowded outdoor settings and for activities with [close contact](#) with others who are not fully vaccinated.
- People who have a condition or are taking medications that weaken their immune system may not be fully protected even if they are fully vaccinated. They should continue to take all [precautions recommended for unvaccinated people, including wearing a well-fitted mask](#), until advised otherwise by their healthcare provider.
- If you are fully vaccinated, to maximize protection from the Delta variant and prevent possibly spreading it to others, wear a mask indoors in public if you are in an area [of substantial or high transmission](#).
- If you are fully vaccinated, see [When You've Been Fully Vaccinated](#).



COVID-19 County Check

Find community transmission levels by county.

Select a Location

State

County

[Wearing a mask over your nose and mouth is required](#) on planes, buses, trains, and other forms of public transportation traveling into, within, or out of the United States and while indoors at U.S. transportation hubs such as airports and stations. Travelers are not required to wear a mask in outdoor areas of a conveyance (like on open deck areas of a ferry or the uncovered top deck of a bus).

How to Select

When selecting a mask, there are many choices. Here are some do's and don'ts.

DO choose masks that



Have two or more layers of washable, breathable fabric



Completely cover your nose and mouth

Fit snugly against the sides of your face and don't have gaps

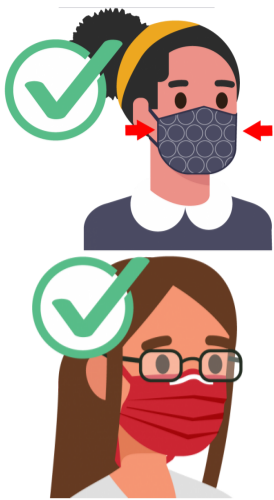
DO NOT choose masks that



Are made of fabric that makes it hard to breathe, for example, vinyl



Have exhalation valves or vents which allow virus particles to escape



Have a nose wire to prevent air from leaking out of the top of the mask



Are prioritized for healthcare workers (e.g., N95 respirators labeled as “surgical” or “medical”)

Special Considerations

Gaiters & face shields



Wear a gaiter with two layers, or fold it to make two layers



Not recommended: Evaluation of face shields is ongoing, but effectiveness is unknown at this time.

Children



Find a mask that is made for children to help ensure proper fit



Check to be sure the mask fits snugly over the nose and mouth and under the chin and that there are no gaps around the sides



Do NOT put on children younger than 2 years old

People with beards

Certain types of facial hair, like beards, can make mask fitting difficult. Masks that fit well protect you better. To have a better fit, people with beards can shave their beards or trim their beards close to the face.

Other ways to improve fit



Use a mask fitter or brace.



Wear one disposable mask underneath a cloth mask that has multiple layers of fabric. The second mask should push the edges of the inner mask against the face and beard.

For people with beards that are not trimmed close to the face, masks may fit loosely around the beard. However, people with beards should still wear a mask. Masks designed for people with beards are being evaluated, and information will be provided when it becomes available.

Wearing a mask does not raise the carbon dioxide (CO₂) level in the air you breathe

Cloth masks and surgical masks do not provide an airtight fit across the face. The CO₂ escapes into the air through the mask when you breathe out or talk. CO₂ molecules are small enough to easily pass through mask material. In contrast, the respiratory droplets that carry the virus that causes COVID-19 are much larger than CO₂, so they cannot pass as easily through a properly designed and properly worn mask.

How to Wear

Wear a mask **correctly** and **consistently** for the best protection.

- Be sure to [wash your hands or use hand sanitizer](#) before putting on a mask.
- Do **NOT** touch the mask when wearing it. If you have to often touch/adjust your mask, it doesn't fit you properly, and you may need to find a different mask or make adjustments.

Do wear a mask that



- Covers your nose and mouth and secure it under your chin.
- Fits snugly against the sides of your face.

How NOT to wear a mask



Around your neck



On your forehead



Under your nose



Only on your nose



On your chin



Dangling from one ear



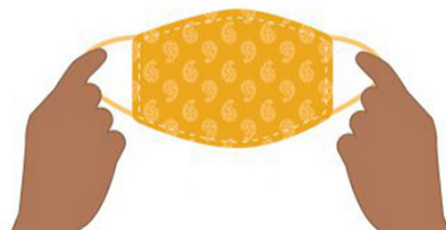
On your arm

How to take off a mask



①

Carefully, untie the strings behind your head or stretch the ear loops



②

Handle only by the ear loops or ties



③

Fold the outside corners together



④

Be careful not to touch your eyes, nose, and mouth when removing and wash hands immediately after removing

How to Clean

Reusable masks should be washed whenever it gets dirty or at least daily. If you have a disposable face mask, throw it away after wearing it once. Always and [wash your hands](#) after handling or touching a used mask.



Using a washing machine



- Include your mask with your regular laundry.
- Use regular laundry detergent and the appropriate settings according to the fabric label.

By hand



- Wash your mask with tap water and laundry detergent or soap.
- Rinse thoroughly with clean water to remove detergent or soap.

Dry your mask

Dryer

- Dry your mask completely in a warm or hot dryer



By hand

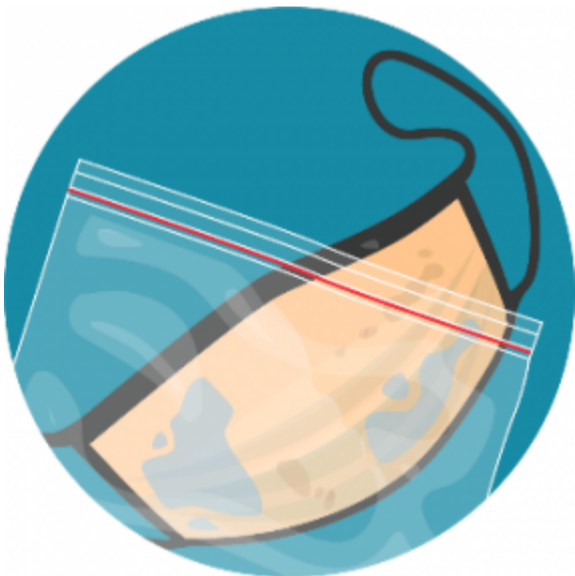


- Hang your mask in direct sunlight to dry completely. If you cannot hang it in direct sunlight, hang or lay it flat and let it dry completely.

For information on the sources for our mask guidance, see [Recent Studies](#).

How to Store

Store wet or dirty masks in a plastic bag



If your mask is wet or dirty from sweat, saliva, make-up, or other liquids or substances, keep it in a sealed plastic bag until you can wash it. Wash wet or dirty masks as soon as possible to prevent them from becoming moldy. Wet masks can be hard to breathe through and are less effective than dry masks.

Store masks that are not wet or dirty in a paper bag



You can store your mask temporarily to reuse later. [Remove your mask correctly](#) and [wash your hands](#) after touching a used mask. Keep it in a dry, breathable bag (like a paper or mesh fabric bag) to keep it clean between uses. When reusing your mask, keep the same side facing out.

If you are taking off your mask to eat or drink outside of your home, you can place it somewhere safe to keep it clean, such as your pocket, purse, or paper bag. Make sure to wash or sanitize your hands after removing your mask. After eating, put the mask back on with the same side facing out. Be sure to wash or sanitize your hands again after putting your mask back on.

EXHIBIT E

COVID Data Tracker


United States at a Glance

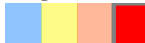
Collapse —

United States
At a Glance

Deaths Total 689,534
Last 30 Days 

Cases Total 43,051,429
Last 30 Days 

77.1% of Adults with At Least
One Vaccination 

Community High
Transmission 

Data Tracker Home

COVID Data Tracker Weekly
Review

Your Community —

County View

Forecasting

Vaccinations in the US

Community Profile Report

State Profile Report

Pandemic Vulnerability Index

Health Equity Data

Pediatric Data

Vaccinations +

Cases, Deaths, and Testing +

COVID-19 Integrated County View

Maps, charts, and data provided by CDC, updates daily by 8 pm ET[†]

This site provides an integrated, county view of key data for monitoring the COVID-19 pandemic in the United States. It allows for the exploration of standardized data across the country.* The footnotes describe each data source and the methods used for calculating the metrics. For the most complete and up-to-date data for any particular county or state, visit the relevant health department website. Additional data and features are forthcoming.

*County level data are not available for territories. Territory level data is available under the [Cases, Deaths, and Testing tab](#). Data presented here for District of Columbia may differ from those presented on the [Cases, Deaths, and Testing tab](#) due to reporting differences for each tab. For CDC's most up to date data for District of Columbia, select District of Columbia in the dropdown on this tab or see the map below.

How to Find a COVID-19 Vaccine

State or territory:

California ▼

County or metro area:

Santa Clara County ▼

[Reset Selections](#)

Time Period: Tue Sep 21 2021 - Mon Sep 27 2021

Demographic Trends +

Health Care Settings +

Genomic Surveillance +

Seroprevalence +

People at Increased Risk +

Multisystem Inflammatory
Syndrome in Children (MIS-C)

Prevention Measures and
Social Impact +

Additional COVID-related
Data

Communications Resources

COVID-19 Home

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Sign up to receive the COVID
Data Tracker Weekly Review.

Email Address:

Email Address

[What's this?](#)

Submit

Santa Clara County, California

[State Health Department](#) 

7-day Metrics | [7-day Percent Change](#)

Community Transmission

● Moderate

Unvaccinated people in **Santa Clara County, California** should wear a mask in public, indoor settings. Mask requirements might vary from place to place. Make sure you follow local laws, rules, regulations or guidance.

[How is community transmission calculated?](#)

September 29, 2021

Cases	779
% Positivity	1.54%
Deaths	<10
% Eligible Population Fully Vaccinated	85.9%
New Hospital Admissions	109

On this page:

[Cases & Deaths](#)

[Testing](#)

[Vaccinations](#)

[Hospitalizations](#)

[Community Characteristics](#)

[Data Downloads and Footnotes](#)

Data Type:

Level of Community Transmission ▼

Map Metric:

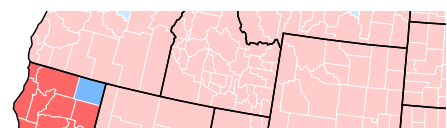
Level of Community Transmission ▼

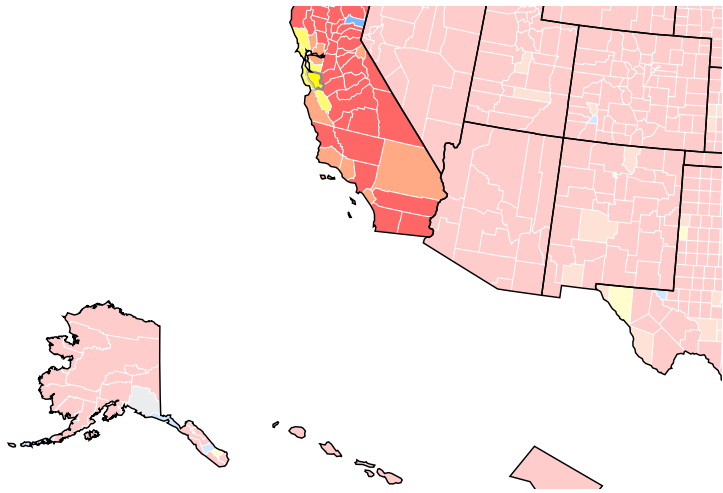
View a Time Lapse

Download Image

+

-



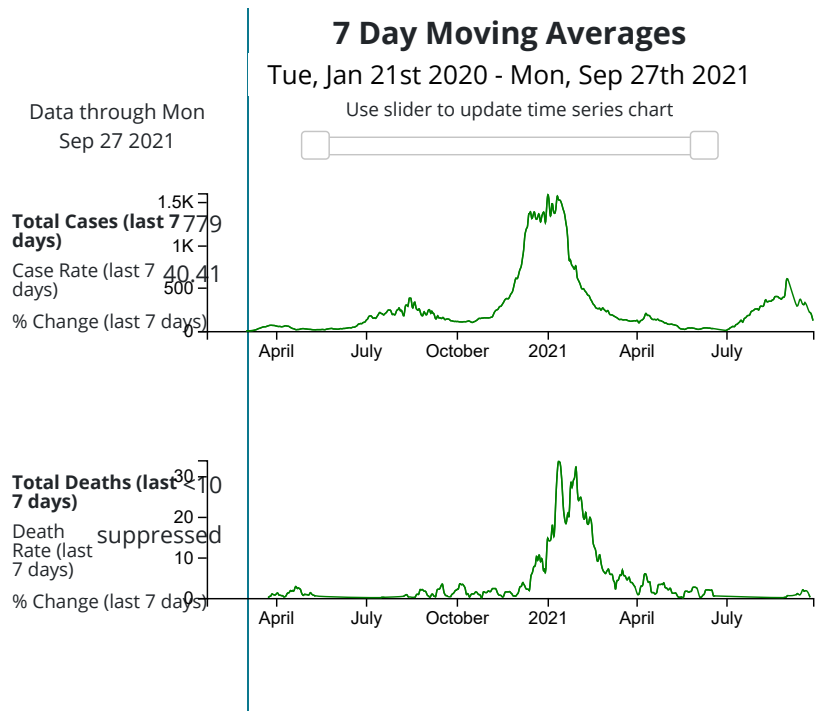


● High ● Substantial ● Moderate ● Low ● No Data

Current 7-days is Tue Sep 21 2021 - Mon Sep 27 2021 for case rate and Sun Sep 19 2021 - Sat Sep 25 2021 for percent positivity. The percent change in counties at each level of transmission is the absolute change compared to the previous 7-day period.

Cases & Deaths in Santa Clara County, California

Download Image

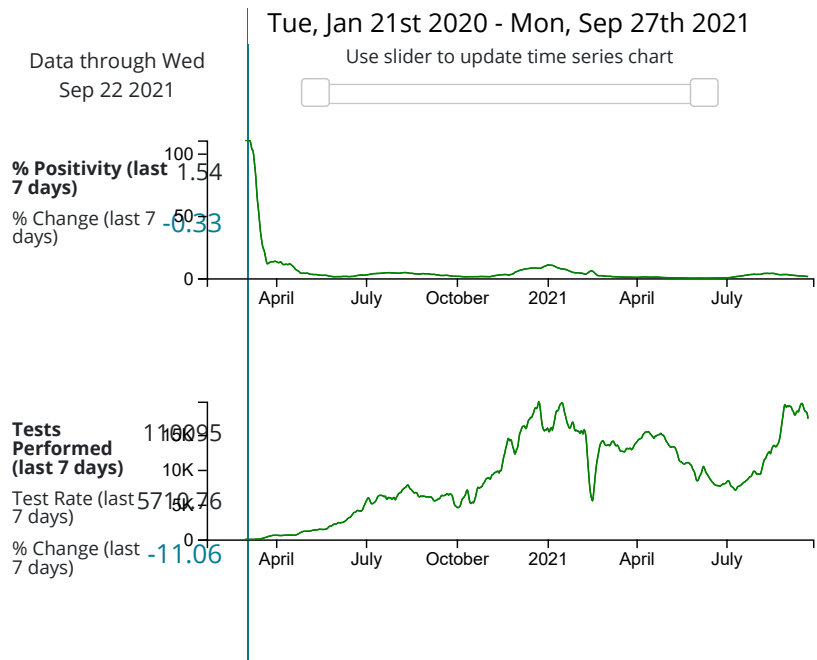


[Top of Page](#)

Testing in Santa Clara County, California

Download Image

7 Day Moving Averages



Learn more about [testing for COVID-19](#).

[Top of Page](#)

Vaccinations in Santa Clara County, California

Percent of California's fully vaccinated recipients with valid county of residence: **97.4%**

States with lower percentages for valid county of residence should be interpreted with caution.

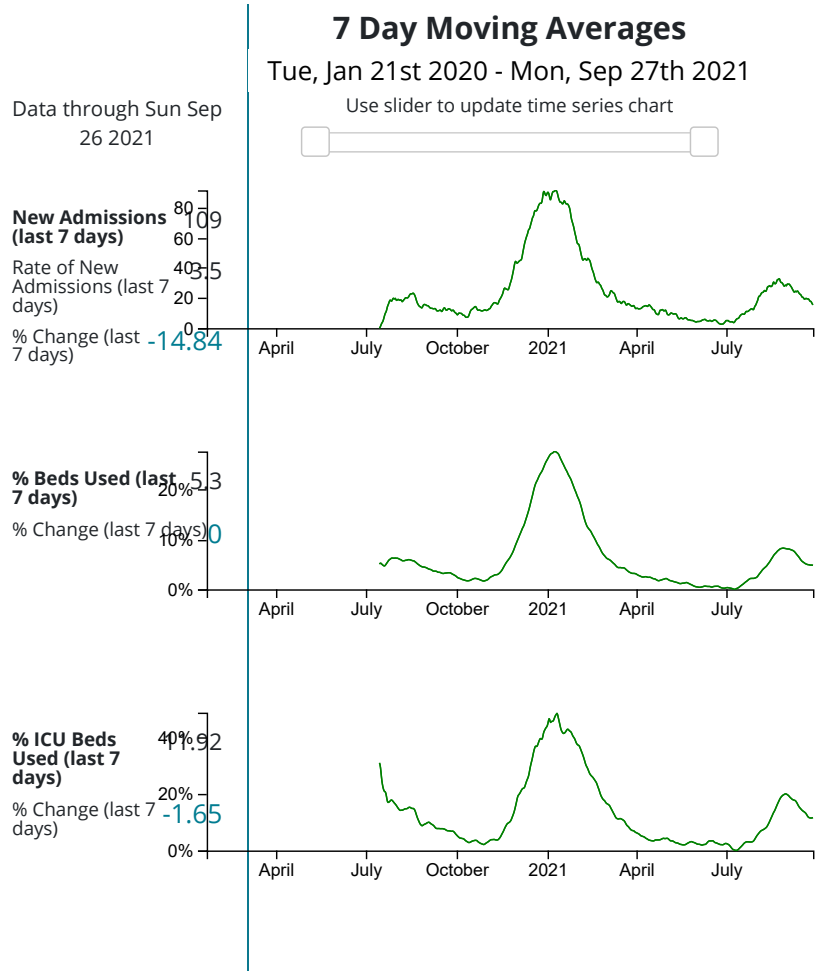
People Vaccinated	At Least One Dose	Fully Vaccinated
Total	1,560,196	1,425,649
% of Total Population	80.9%	74%
Population ≥ 12 Years of Age	1,553,663	1,420,923
% of Population ≥ 12 Years of Age	93.9%	85.9%
Population ≥ 18 Years of Age	1,429,727	1,304,091
% of Population ≥ 18 Years of Age	94.6%	86.3%
Population ≥ 65 Years of Age	264,588	239,182
% of Population ≥ 65 Years of Age	98.7%	89.2%

Learn more about the [COVID-19 Vaccine](#).

[Top of Page](#)

Hospitalizations in Santa Clara County, California

Download
Image



[Top of Page](#)

Community Characteristics for Santa Clara County, California

Characteristic	County Estimate	Statewide Estimate	US Total Estimate
Population:	1,927,852	39,512,223	331,996,199
Population density (people per sq. mile):	1,493.2	253.64	94
Household size:	2.97	2.96	2.52
Percent uninsured:	4.8	8.5	9.2
Percent living in poverty:	7.9	14.3	10.5
Percent population 65yrs and over:	13.91	14.78	16.3
-----	-----	-----	-----

CDC Social Vulnerability Index (SVI):	0.3557	N/A	N/A
COVID-19 Community Vulnerability Index (CCVI):	0.15	N/A	N/A
Metropolitan Classification:	Metro	N/A	N/A
NCHS Urban/Rural Classification:	Large central metro	N/A	N/A
Rural-Urban Continuum Code Classification:	Counties in metro areas of 1 million population or more	N/A	N/A

[Top of Page](#)

Data Downloads and Footnotes

Expand each accordion to view data table and download data

County Level Vaccination Data for California	+
County Level Latest Data for California	+
County Level Timeseries Data for California	+
View Historic Vaccination Data	Top of Page
Footnotes	+

How do levels of community transmission affect schools?

See guidance for COVID-19 prevention in K-12 schools

How does this data compare to states?

Find case and death counts [by state](#)

[View and Download COVID-19 Case Surveillance Public Use Data with Geography](#)

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Email CDC-INFO



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EXHIBIT F

**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 G

RESOLUTION NO. 80237

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE 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 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 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; and 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; and

WHEREAS, on June 11, 2021, the Governor issued Executive Order N-08-21, which sunsets 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 which allows a local agency to use teleconferencing for public meetings without posting the teleconferencing locations on the agenda and without requiring the teleconference locations to be accessible to the public during a Governor-proclaimed state of emergency pursuant to California Government Code Section 8625 et seq, if the state of emergency continues to directly impact the ability of the members of its legislative bodies to meet safely in person or state or local officials continue to impose or recommend measures to promote social distancing; and

WHEREAS, the City Council has made findings, beginning on March 10, 2020 and continuing every 60 days thereafter, most recently by Resolution No. 80180 adopted on August 17, 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, 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; and

WHEREAS, a recent surge in COVID-19 cases has been reported in the Bay Area and across California as well as the country due to the highly contagious delta variant; and

WHEREAS, federal, state and local health officials are considering the appropriateness of third booster shots for vaccinated individuals in light of waning immunity to COVID-19; 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 Governor terminates the state of emergency; and

WHEREAS, the 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 and if approved, will be in effect for 30 days and will expire on October 28, 2021 unless staff returns to City Council on or before October 26, 2021 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. 80180 adopted on August 17, 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.
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, and City Other Advisory Entities to meet safely in person.

4. City officials continue to impose or recommend measures to promote social distancing in City facilities.
5. Members of the City Council, Council Committees, City Decision-Making Bodies, City Boards, Committees and Commissions, and City Other Advisory Entities are authorized to use teleconferencing, or other electronic means, to hold its public meetings without noticing the teleconferenced locations on the agenda, without making teleconferenced or physical locations accessible to the public, without posting agendas at teleconferenced locations, without requiring members of the legislative bodies to be physically present at the meeting, and without requiring a quorum of the members of the legislative body to participate from locations with the City's jurisdiction, as long as the agenda that is posted at least 72 hours in advance indicates that members of the legislative body may be participating electronically, provides the teleconference or webinar access information by which the public may participate electronically, and lists the procedure for individuals with disabilities to request reasonable accommodations, in compliance with AB 361, Government Code Section 54953(e).
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 Clerk is hereby directed to report to the City Council within thirty (30) days on the need to further continue teleconferencing for public meetings without posting the teleconferencing locations on the agenda and without requiring the teleconference locations to be accessible to the public during the current Governor-proclaimed COVID-19 state of emergency.

ADOPTED this 28th day of September, 2021, by the following vote:

AYES: ARENAS, CARRASCO, COHEN, DAVIS, ESPARZA,
FOLEY, JONES, JIMENEZ, MAHAN, PERALEZ,
LICCARDO.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.

ATTEST:



TONI J. TABER, CMC
City Clerk



SAM LICCARDO
Mayor