City of Arts & Innovation

City Council Memorandum

TO: **HONORABLE MAYOR AND CITY COUNCIL** **DATE: JANUARY 10, 2023**

FROM: **CITY ATTORNEY'S OFFICE** **WARDS: ALL**

SUBJECT: **PURSUANT TO GOVERNMENT CODE 54953(e)(3), RECONSIDER THE CIRCUMSTANCES OF THE STATE OF EMERGENCY AND MAKE FINDINGS REGARDING STATE OF EMERGENCY DUE TO THE SARS-CoV-2 (COVID-19) PANDEMIC**

ISSUES:

Reconsider the circumstances of the state of emergency and make findings that either the state of emergency continues to directly impact the ability of its members to safely meet in person, or that state and/or local officials continue to recommend or impose social distancing measures.

RECOMMENDATIONS:

That the City Council:

1. Reconsider the circumstances of the state of emergency; and

2. Make a finding (1) that the state of emergency continues to directly impact the ability of its members to safely meet in person, and (2) that state and/or local officials continue to recommend or impose social distancing measures to continue to meet via teleconference.

LEGISLATIVE HISTORY:

Assembly Bill (AB) 361, effective October 1, 2021, signed by Governor Gavin Newsom on September 16, 2021, amending the Brown Act, CA Government Code § 54950, *et seq*. AB 361 will sunset on January 1, 2024, or when the state of emergency expires, whichever occurs first. The state of emergency is currently scheduled to be lifted on February 28, 2023. Therefore, it is anticipated that AB 361 will sunset on that same day.

BACKGROUND:

The Brown Act, found in CA Government Code Section 54950, *et seq*., defines "teleconference" as "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." Gov. C. § 54953(a)(4). The Brown Act

was recently amended to add requirements for entities that conduct meetings via teleconference during a state of emergency.

Now, every 30 days the legislative body must reconsider the circumstances of the state of emergency and make findings that either (1) the state of emergency continues to directly impact the ability of its members to safely meet in person, or (2) that state and/or local officials continue to recommend or impose social distancing measures to continue to meet via teleconference.

DISCUSSION:

Government Code Section 54953 was amended to add subdivisions (e) and (f). (Attachment 1).

Section 54953 subdivision (e) paragraph (3) requires the legislative body to make findings, no later than 30 days after the first teleconference and every 30 days thereafter, that (1) the body has reconsidered the circumstances of the state of emergency and (2) the state of emergency continues to directly impact the ability of its members to safely meet in person, or that state or local officials continue to recommend or impose social distancing measures.

Satisfying this requirement will ensure compliance with AB 361 and allows the continued utilization of teleconferencing without having to publish each location from which a member attends via teleconference and granting physical access of that location to the public during the state of emergency.

As of the date of this report, the State of California is still under a declared state of emergency. Although, as of Saturday February 19, 2022, masks are no longer required for fully vaccinated employees and visitors to most City facilities and will be in alignment with the County of Riverside and State of California guidelines, it is strongly recommended that all individuals regardless of vaccination status wear masks indoors and while on public transit and in public transit hubs. The County of Riverside Public Health website refers and defers to the California Department of Public Heath "Guidance for the Use of Face Masks" at https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/guidance-for-face-coverings.aspx. For employees in work environments, the guidelines of Cal/OSHA controls.

As of the date of this report's submittal, Cal/OSHA still recommends all individuals wear face coverings while indoors, and -- for certain individuals -- require social distancing under certain situations. (See https://www.dir.ca.gov/title8/3205.html). Cal/OSHA rules require unmasked persons who are not fully vaccinated to maintain social distancing of at least 6 feet apart from all other persons. (See Cal/OSHA Regulations Title 8 Subchapter 7 Section 3205(c)(6)(F)).

Given the ongoing state of emergency due to COVID-19 and the current recommendations and policies of various state and local agencies, the City Council may make the finding(s) that state and/or local officials continue to recommend social distancing measures and/or that the state of the emergency continues to directly impact the ability of the members to meet safely in person. Such a finding will permit the meetings to continue in the currently hybrid format of in-person and teleconferenced meetings where members of City Council, Boards, and Commissions and the public may participate in one of several available methods without, among other things, publishing and giving public access to the address of each member attending meetings by teleconference.

Should the City Council decide not to make such a finding, the open and public meetings of the City will no longer give members of the body/City Council/Boards/Commissions the ability to utilize

the teleconferencing option without compliance with the publication and public access requirements of the California Government Code Section 54953 subsections (a),(b), and (c).

STRATEGIC PLAN ALIGNMENT:

1. **Community Trust** – Riverside is transparent and makes decisions based on sound policy, inclusive community engagement, involvement of City Boards & Commissions, and timely and reliable information. Activities and actions by the City serve the public interest, benefit the City's diverse populations, and result in greater public good. The ability to continue to conduct business via teleconference during the state of emergency has permitted the City to continue meeting during the emergency and provide call-in public comment and other internet-based broadcasting and attendance capabilities, which all enhance communications between the City Council, its Boards and Commissions, and promote public participation.

2. **Equity** – Riverside is supportive of the City's racial, ethnic, religious, sexual orientation, identity, geographic, and other attributes of diversity and is committed to advancing the fairness of treatment, recognition of rights, and equitable distribution of services to ensure every member of the community has equal access to share the benefits of community progress. The continued ability to utilize teleconferencing allows safer participation by those who would otherwise take on additional risk of in-person attendance during the state of emergency, such as those in higher risk categories due to age or health conditions.

3. **Sustainability & Resiliency** – Riverside is committed to meeting the needs of the present without compromising the needs of the future and ensuring the City's capacity to persevere, adapt and grow during good and difficult times alike. The utilization of teleconferencing and internet-based platforms encourages greater public participation and enables the City Council to respond to the need for safe remote attendance and participation in meetings during a state of emergency where in-person attendance of its members and the public may pose a risk to attendees. Remote participation means fewer attendees need to physically be present at the City Council chambers, thereby reducing the risk of infections and simultaneously reducing carbon emissions.

FISCAL IMPACT:

There is no fiscal impact for this item.

Prepared by:	Phaedra A. Norton, City Attorney
Certified as to availability of funds:	Edward Enriquez, Chief Financial Officer/Treasurer
Approved by:	Michael D. Moore, Interim City Manager
Approved as to form:	Phaedra A. Norton, City Attorney

Attachments:

1. California Government Code Section 54953