

CITY OF ALAMEDA ORDINANCE NO. _____
New Series

AN UNCODIFIED URGENCY ORDINANCE CONTINUING SUSPENSION DURING THE LOCAL EMERGENCY DUE TO THE COVID-19 PANDEMIC OF CERTAIN PROVISIONS OF THE CITY'S "SUNSHINE ORDINANCE" TO THE EXTENT INCONSISTENT WITH ASSEMBLY BILL NO. 361 AND EXECUTIVE ORDER N-08-21 OF THE GOVERNOR OF THE STATE OF CALIFORNIA ARISING FROM THE STATE OF EMERGENCY CAUSED BY THE COVID-19 PANDEMIC

WHEREAS, Section 3-12 of the City Charter authorizes the City Council, with a 4/5 vote, to adopt, as an urgency measure, an ordinance for the immediate preservation of the public health or safety without following the procedures otherwise required prior to adoption of an ordinance; and

WHEREAS, Government Code Section 36937 allows a city, including a charter city, to adopt an urgency ordinance to take effect immediately upon its adoption for the preservation of the public peace, health or safety upon a finding of facts constituting the urgency thereof; and

WHEREAS, conditions of extreme peril to the health, safety and welfare of persons have arisen in the world, the nation, the State, the County of Alameda and the City of Alameda due to the following:

A novel coronavirus (named the COVID-19 virus by the World Health Organization, hereinafter "COVID-19") was first detected in December 2019. The Center for Disease Control and Prevention (CDC) has stated that COVID-19 is a serious public health threat, based on current information. Cases of COVID-19 have been diagnosed throughout the world, the United States, the State of California, the County of Alameda and the City of Alameda.

The exact modes of transmission of COVID-19, the factors facilitating human to human transmission, the extent of asymptomatic viral shedding, the groups most at risk of serious illness, the attack rate, and the case fatality rate all remain active areas of investigation. The CDC believes, at this time, the symptoms appear two to fourteen days after exposure. Currently, there are no vaccine or specific anti-viral treatment for COVID-19.

Actions are being taken to protect public health and limit the spread of COVID-19 but the whether those actions will be successful is unknown at this time.

Due to the COVID-19 pandemic, the President of the United States had declared a national emergency, the Governor of the State of California had declared a State of Emergency for the State and issued numerous Executive Orders to protect the public, County Health Officers throughout the State, including the County of Alameda, have also issued orders and directives in an effort to protect the public, and, on March 17, 2020, in response to the COVID-19 pandemic, the City Council of the City of Alameda declared a local emergency as set forth in Ordinance No. 3267; and

WHEREAS, Executive Order N-29-20, issued by Governor Newsom on March 17, 2020 had suspended certain provisions of the State's Open Meeting Law (the Brown Act) so that meetings of local legislative body may conduct its meetings by teleconference, rather than in person, so long as certain notice requirement are met, such as giving notice of the time of, and posting the agenda for, public meetings according to the timeframes prescribed by the Brown Act, and giving notice of the means by which members of the public may observe the meeting and offer public comment; and

WHEREAS, Executive Order N-35-20, issued by Governor Newsom on March 21, 2020 permits City staff to meet with the full City Council, without complying with the Brown Act, in order to "provide updates relevant to the declared emergency (including, but not limited to, updates concerning the impacts of COVID-19, the government's response to COVID-19, and any other aspects relevant to the declared emergency) from federal, state, and local officials", provided that Council not deliberate or take action without compliance with the Brown Act (for example, City staff could do a conference call with all Council members for the purpose of providing updates on COVID-19, Council may ask questions, but Council would not deliberate or take action; and

WHEREAS, Executive Order N-08-21, issued by Governor Newsom on June 11, 2021, rolled back certain provisions of the Governor's COVID-19-related Executive Orders and clarified that other provisions remained necessary to help California respond to, recover from, and mitigate the impacts of the COVID-19 pandemic; and

WHEREAS, in paragraph 42 Executive Order N-08-21, the Governor waived and set forth certain requirements related to public meetings of local legislative and state bodies, and specified that it would be valid through September 30; and

WHEREAS, on September 16, 2021, Governor Newsom signed law Assembly Bill No. 361 ("AB 361"), relating to the same subject matter as Paragraph 42 of Executive Order N-08-21, which took effect immediately pursuant to an urgency clause, and which may, in some instances, have different substantive provisions than the provisions contained in Paragraph 42 of Executive Order N-08-21; and

WHEREAS, Executive Order N-15-21, issued by Governor Newsom on September 20, 2021, provides clarity around the applicable procedures governing

meetings of local legislative and state bodies, and specifically stating, in part, that the provisions of teleconferencing are suspended until September 30, 2021, unless a local legislative body, pursuant to Government Code Section 54953(e)(1), meets during a proclaimed state of emergency and determines by a majority vote that as a result of the emergency meeting in person, would present imminent risks to the health or safety of attendees; and

WHEREAS, the City's Sunshine Ordinance, codified in the Alameda Municipal Code beginning at Section 2-90, contains provisions that may be inconsistent with the provisions of the Executive Orders set forth above; and

WHEREAS, it is imperative for the health, safety and welfare of the residents of Alameda and the general public, that public gatherings, such as a City Council meeting, not be permitted during the local emergency so long as members of the public may view the City Council meeting and/or submit comments on agenda item; and

WHEREAS, it is imperative for the health, safety and welfare of the residents of Alameda and the general public that City staff keep the full City Council fully informed of all aspects relevant to the declared emergency from the COVID-19 pandemic, so long as the City Council does not deliberate or take action outside a noticed meeting; and

WHEREAS, due to potential inconsistencies between the applicable state law and Executive Orders, on the one hand, and the Sunshine Ordinance, on the other, the City Council or City staff could run afoul of the Sunshine Ordinance if the inconsistent provisions were not suspended during the state of local emergency; and

WHEREAS, for reasons set forth above, this ordinance is declared by the City Council to be necessary for preserving the public welfare, health, or safety and to avoid a current, immediate and direct threat to the health, safety, or welfare of the community, and the recitals above taken together constitute the City Council's statements of the reasons constituting such necessity and urgency; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALAMEDA DOES ORDAIN AS FOLLOWS:

Section 1: RECITALS

The City Council finds and determines the foregoing recitals to be true and correct and hereby incorporates them into this ordinance.

Section 2: URGENCY

This ordinance is enacted pursuant to the City of Alameda's general police powers, Section 3-12 of the Charter of the City of Alameda, Article XI of the California Constitution, and Government Code Section 36937.

Section 3: CEQA DETERMINATION

The City Council finds and determines that the adoption of this ordinance is exempt from review under the California Environmental Quality Act (CEQA) pursuant to the following, each a separate and independent basis: CEQA Guidelines, Section 15378 (not a project) and Section 15061(b)(3) (no significant environmental impact).

Section 4: SEVERABILITY

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

Section 5: EFFECTIVE DATE

As an emergency ordinance, this Ordinance becomes effective immediately upon its adoption at a first reading by a four-fifths vote of the City Council.

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk

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I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the 5th day of October 2021, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 6th day of October 2021.

Lara Weisiger, City Clerk
City of Alameda

Approved as to form:

Yibin Shen, City Attorney
City of Alameda