

## RESOLUTION NO. 12-2023

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA MAKING FINDINGS AS REQUIRED BY AB 361 TO PERMIT THE CITY COUNCIL AND CITY COMMITTEES AND COMMISSIONS ESTABLISHED BY THE COUNCIL TO CONDUCT TELECONFERENCED MEETINGS DUE TO THE HEALTH AND SAFETY CONCERNS RELATING TO COVID-19

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**WHEREAS**, on March 4, 2020, as part of the State of California's response to address the global COVID-19 outbreak, Governor Gavin Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for broader spread of COVID-19; and

**WHEREAS**, on March 16, 2020, at 12:11 p.m., the City Manager, in his capacity as Director of Emergency Services, proclaimed the existence of local emergency in the City of Pacifica, after determining that the rapidly widespread of COVID-19 is likely to create conditions of disaster or extreme peril which will be beyond the services, personnel and equipment and facilities of the City and executed the "Proclamation of the Existence of a Local Emergency Regarding Novel (new) Coronavirus ("COVID-19")" ("Proclamation"); and

**WHEREAS**, on March 18, 2020, the City Council of the City of Pacifica adopted Resolution No. 18-2020 ratifying the "Proclamation of the Existence of a Local Emergency Regarding Novel (new) Coronavirus ("COVID-19")", which continues to remain in place; and

**WHEREAS**, on March 17, 2020, the Governor of California executed Executive Order N-29-20 which suspended and modified specified provisions in the Ralph M. Brown Act (Government Code Section § 54950 *et seq.*) and authorized local legislative bodies to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and address the local legislative body; and

**WHEREAS**, on June 11, 2021, the Governor of California executed Executive Order N-08-21 which extended the provisions of Executive Order N-29-20 concerning teleconference accommodations for public meetings through September 30, 2021; and

**WHEREAS**, on August 2, 2021, the Health Officer of the County of San Mateo issued Order No. C19-12 mandating the wearing of face coverings when indoors in workplaces and public settings, with limited exceptions due to the COVID-19 Delta variant circulating in San Mateo County and evidence of the Delta variant being highly transmissible in indoor settings; and

**WHEREAS**, on September 16, 2021, the Governor of California signed into law Assembly Bill 361 (AB 361, Rivas) (Stats. 2021, ch. 165) amending Government Code § 54953 and providing alternative teleconferencing requirements to conduct public meetings during a proclaimed state of emergency; and

**WHEREAS**, the City of Pacifica has conducted public meetings of City Council and City Committees and Commissions via teleconference from March 18, 2020, through October 10, 2022, under the modified provisions of the Brown Act as allowed for by Governor's Orders N-29-20, N-08-21 and/or N-15-21 in effect at the time; and

**WHEREAS**, AB 361 (Stats. 2021, ch. 165) imposes requirements to ensure members of the public are able to attend and participate in public meetings conducted via teleconference, including:

- Notice of the means by which members of the public may access the meeting and offer public comment, including an opportunity for all persons to attend via a call-in option or an internet-based service option;
- The legislative body shall take no further action on agenda items when there is a disruption which prevents the public agency from broadcasting the meeting, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments, until public access is restored;
- Prohibits the legislative body from requiring public comments to be submitted in advance of the meeting and specifies that the legislative body must provide an opportunity for members of the public to address the legislative body and offer comments in real time;
- Prohibits the legislative body from closing the public comment period until the public comment period has elapsed or until a reasonable amount of time has elapsed; and

**WHEREAS**, the City has already implemented and is in full compliance with the requirements listed above when conducting public meetings via teleconference, which are now codified in Government Code § 54953(e)(2)(B-G); and

**WHEREAS**, pursuant to Government Code § 54953(e)(B), the legislative body shall hold 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 and safety of attendees. The City Council must make these findings no later than 30 days after the first teleconferenced meeting is held pursuant to AB 361 (Stats. 2021, ch. 165) after September 30, 2021, and must also make these findings every 30 days thereafter, in order to continue to allow teleconference accessibility for conducting public meetings; and

**WHEREAS**, on August 2, 2021, the Health Officer of the County of San Mateo issued Order No. C19-12 mandating the wearing of face coverings when indoors in workplaces and public settings, with limited exceptions. This Order was issued due to evidence of the SARS-CoV-2 B.1.617.2 (Delta) variant circulating in San Mateo County. This variant is highly transmissible in indoor settings. San Mateo County Health Order No. C19-12 was ordered effective at 12:01 am on August 3, 2021; and

**WHEREAS**, in December 2021 and January 2022 the COVID-19 Omicron variant has been observed by scientists and medical professionals to spread rapidly amongst some vaccinated individuals and continues to present a health and safety risk to the public; and

**WHEREAS**, effective February 16, 2022, the County of San Mateo Health Officer announced that Health Officer Order No. C19-12 (For The Wearing of Face Coverings In Workplaces And Public Settings issued on August 2, 2021) was rescinded in full; and

**WHEREAS**, the County of San Mateo Health Officer strongly recommends getting vaccinated or boosters for COVID-19, improve ventilation throughout indoor spaces as much as possible, wear a well-fitting mask in crowded indoor public places, and continue to follow State isolation and quarantine guidance to prevent the spread of COVID-19; and

**WHEREAS**, as of the week of February 6, 2023, the County of San Mateo Health Officer and the Centers for Disease Control (CDC) continue to strongly recommend that all persons, regardless of vaccine status, continue to mask in indoor public settings; and

**WHEREAS**, the Centers for Disease Control (CDC) has cautioned that some people and communities, such as our oldest citizens, people who are immunocompromised, and people with disabilities, are at higher risk for serious illness due to COVID-19 and should take additional precautions such as avoiding crowded indoor activities with poor ventilation; and

**WHEREAS**, on May 23, 2022; June 13, 2022; July 11, 2022; August 8, 2022; September 12, 2022; October 10, 2022; November 14, 2022; December 12, 2022; and January 9, 2023; the City Council of the City of Pacifica adopted Resolution Nos. 23-2022, 26-2022, 41-2022, 46-2022, 56-2022, 66-2022, 76-2022, 84-2022, and 02-2023, respectively, making findings as required by AB 361 to permit the City Council and City Committees and Commissions to conduct teleconferenced meetings to due to public health and safety concerns related to COVID-19; and

**WHEREAS**, the City cannot ensure that social distancing can be maintained by Councilmembers, Commissioners, Committee members and/or members of the public in Council Chambers or at other locations where City Committees and Commissions regularly

meet for the duration of meetings in order to safeguard the most vulnerable populations, and COVID-19 variants when transmission rates pose an imminent and serious risk to public health.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Pacifica, California, as follows:

SECTION 1. The City Council hereby declares that the recitals set forth above are true and correct, and incorporated into this resolution as findings of the City Council.

SECTION 2. The City Council hereby declares that a state of emergency as a result of the threat of COVID-19 still exists and continues to impact the ability of members of the public, the City Council, Council appointed Commissions and Committees, City staff and consultants to meet safely in person and would present imminent risks to the health and safety of attendees.

SECTION 3. The State of California and the City of Pacifica continue to follow safety measures in response to COVID-19 as ordered or recommended by the Centers for Disease Control and Prevention (CDC), California Department of Public Health (DPH), and/or County of San Mateo, as applicable, including facial coverings when required. Based upon that guidance, in person attendance indoors at public meetings continues to present a health risk for certain segments of the population, necessitating teleconferencing to allow for meaningful public participation options for all Pacifica constituents.

SECTION 4. The City Council hereby declares that, pursuant to the findings listed in this Resolution, the City Council and Council appointed Commissions and Committees are authorized to utilize teleconferencing to conduct public meetings pursuant to AB 361 and Government Code § 54953, as amended thereby.

SECTION 5. The City Council determines that, every 30 days, it will reconsider the circumstances of the emergency and review whether it continues to directly impact the ability of the Council and appointed Committees and Commissions members to meet safely in person.

SECTION 6. Severability: If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Resolution is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Resolution. The City Council hereby declares that it would have adopted this Resolution and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared unconstitutional.

SECTION 7. Effective Date: This Resolution shall become effective immediately upon adoption.

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PASSED AND ADOPTED at a regular meeting of the City Council of the City of Pacifica, California, held on the 13th day of February, 2023, by the following vote:

**AYES**, Councilmembers: *Beckmeyer, Bier, Bigstycck, Boles, Vaterlaus*

**NOES**, Councilmembers: *n/a*

**ABSENT**, Councilmembers: *n/a*

**ABSTAIN**, Councilmembers: *n/a*

*Tygarjas T. Bigstycck*  
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Tygarjas Twyrils Bigstycck, Mayor

ATTEST:

*Sarah Coffey*  
\_\_\_\_\_  
Sarah Coffey, City Clerk

APPROVED AS TO FORM:

*Michelle Kenyon*  
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Michelle Kenyon, City Attorney