

CITY OF ALAMEDA ORDINANCE NO. \_\_\_\_\_  
New Series

URGENCY UNCODIFIED ORDINANCE REPEALING ORDINANCE NOS. 3267 AND 3272 TO EFFECTUATE THE TERMINATION OF THE LOCAL EMERGENCY WHILE CONTINUING TO PRESERVE CERTAIN ADMINISTRATIVE AUTHORITIES OF THE CITY MANAGER SUCH AS REMOTE WORK FOR EMPLOYEES AND AMENDING ORDINANCE NO. 3271 CONTINUING TO SUSPEND PROVISIONS OF THE CITY'S SUNSHINE ORDINANCE THAT ARE INCONSISTENT WITH ASSEMBLY BILL 361 AND ANY FURTHER LEGISLATION TO ALLOW PUBLIC MEETING TO BE HELD REMOTELY

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, in March 2020, the Governor of the State of California declared a State-wide emergency caused by the COVID-19 pandemic, which declaration remains in effect today, and also issued a number of Executive Orders, including Executive Orders Nos. N-29-20 and N-35-20, pursuant to such emergency, which Executive Orders permitted meetings of the legislative bodies to be conducted "remotely", i.e., by teleconference, rather than in person, so long as certain notice requirements were 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, in March and April 2020, in response to the COVID-19 pandemic, the City Council adopted on an urgency basis Ordinance Nos. 3267 and 3272 declaring a local emergency caused by the COVID-19 pandemic, directing City staff to respond expeditiously to such emergency, and enabling the City Manager with certain spending authority; and

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

WHEREAS, in April 2020, City Council determined that due to those inconsistencies between the Executive Orders and the Sunshine Ordinance, the Sunshine Ordinance could be violated if the inconsistent provisions were not suspended during the

local emergency and therefore adopted Ordinance No. 3271, consistent with the Executive Orders referenced above; and

WHEREAS, AB 361 has been signed into law, remains in effect, and permits the City Council, upon making certain findings, to permit the City's legislative bodies to conduct its meetings by teleconference, rather than in person, so long as certain notice requirements 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, City Council has terminated the declaration of the local emergency but the State-wide emergency still exists; and

WHEREAS, because the local emergency has terminated, there is no further need for Ordinance Nos. 3267 and 3272; and

WHEREAS, City Council has heard from members of the public that they wish to continue to participate in public meetings remotely out of concern that their health or safety may be jeopardized by in person meetings and/or that it is difficult for them to access in person public meetings; and

WHEREAS, City Council members and members of other legislative bodies appointed by the Council may have similar concerns for their health or safety if they are required to attend meetings in person and complying with the Brown Act's other teleconferencing provisions runs the same risk of such members' being exposed to the virus; and

WHEREAS, the City has the technology available to allow City Council members, members of other appointed legislative bodies, and members of the public to attend meetings remotely; and

WHEREAS, City Council has made the necessary findings under AB 361 for meetings of the City's legislative bodies to continue to meet remotely: 1) the City Council has reconsidered the circumstances of the state of emergency; and 2) either the state of emergency continues to directly impact the ability of the members to meet safely in person, or State or local officials continue to impose or recommend measures to promote social distancing; and

WHEREAS, it is imperative for the health, safety and welfare of the residents of Alameda and the general public, that public meetings continue to be conducted remotely consistent with AB 361; and

WHEREAS, due to potential inconsistencies between AB 361 (and any further legislation that would permit public meetings to be conducted remotely) and the Sunshine Ordinance, and because Ordinance No. 3271 would terminate upon the termination of the local emergency, the City Council or City staff could run afoul of the Sunshine Ordinance if the inconsistent provisions of the Sunshine Ordinance were not continued to be suspended consistent with AB 361; 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

WHEREAS, adoption of this ordinance is exempt from review under the California Environmental Quality Act Guidelines: Section 15378 (not a project); and Section 15061(b)(3) (no significant environmental impact); and

WHEREAS, by the staff report, testimony, and documentary evidence presented at the A City Council meeting, the City Council has been provided with additional information upon which the findings and actions set forth in this ordinance are based.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALAMEDA does ordain as follows:

SECTION 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby incorporates them into this ordinance.

SECTION 2. From the effective date of this urgency ordinance, Ordinance Nos. 3267 and 3272 are repealed.

SECTION 3. From the effective date of this urgency ordinance, Section 2 of Ordinance No. 3271 is amended to read as follows:

Those provisions of the City's Sunshine Ordinance, beginning at Section 2-90, Alameda Municipal Code, that are not consistent with, or impose requirements beyond those explicitly waived or waivable by AB 361 and any further State legislation that permits public meetings to be conducted remotely, are suspended until AB 361 and any further State legislation that permits public meetings to be conducted remotely are rescinded.

SECTION 4. The City Manager, and the City Attorney for City Attorney staff, is authorized to continue permitting remote and/or flexible work schedules and redeployment of affected staff, consistent with applicable laws, Council directions, and labor agreements.

SECTION 5. Consistent with the original authorization set forth in Ordinance 3267, any unused the COVID-19 administrative leave authorized by Ordinance 3267 shall be moved to an administrative leave bank for each applicable employee. Such leave may be used in the same manner as floating holiday or vacation leave, and must be used by November 1, 2024. Any such leave not used by November 1, 2024 shall be forfeit. Such leave shall have zero cash-value.

SECTION 6. 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 7. 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 8. 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

\* \* \* \* \*

I certify that the foregoing Ordinance was passed and adopted by the City Council of the City of Alameda at a regular meeting thereof held on this 18th day of October 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 19th day of October 2022.

\_\_\_\_\_  
Lara Weisiger, City Clerk  
City of Alameda

APPROVED AS TO FORM:

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Yibin Shen, City Attorney  
City of Alameda