



# City of Culver City

## Staff Report

File #: 22-757, Version: 1

Item #: A-3.

**CC - (1) Discussion of Whether to Return to In-Person City Council, Commission, Board, and Committee Meetings and Whether to Require COVID-19 Vaccination Verification for In-Person Attendance at Such Meetings; or (2) Adoption of a Resolution to Continue the Ability to Hold Teleconference Meetings for City Council and all City Commissions, Boards and Committees, as Required by AB361 Every 30 Days, During the COVID-19 Proclaimed Local Emergency and California State of Emergency; and (3) Provide Other Direction to the City Manager if Deemed Appropriate.**

**Meeting Date:** February 14, 2022

**Contact Person/Dept:** Jesse Mays/Assistant City Manager  
Lisa Vidra/Assistant City Attorney

**Phone Number:** City Manager's Office - (310) 253-6000  
City Attorney's Office - (310) 253-5660

**Fiscal Impact:** Yes  No  **General Fund:** Yes  No

**Public Hearing:**  **Action Item:**  **Attachments:**

**Commission Action Required:** Yes  No  **Date:**

**Public Notification:** (E-Mail) Meetings and Agendas - City Council (02/09/2022);

**Department Approval:** John M. Nachbar, City Manager (02/08/2022)

### **RECOMMENDATION**

Staff recommends the City Council (1) discuss whether to return to in-person City Council, Commission, Board, and Committee Meetings, and whether to require COVID-19 vaccination verification for in-person attendance at such meetings; or (2) adopt a Resolution to continue the ability to hold teleconference meetings for City Council and all City Commissions, Boards and Committees (CBC), as required by AB361 every 30 days, during the COVID-19 proclaimed Local Emergency and California State of Emergency; and (3) provide other direction to the City Manager if deemed appropriate.

### **BACKGROUND**

***Proclamation of Local Emergency***

On March 4, 2020, as a result of the spread of coronavirus respiratory disease (“COVID-19”), the Governor of the State of California declared a State of Emergency, and the Los Angeles County Director of Public Health and the Chair of the Los Angeles County Board of Supervisors each declared a local health emergency on that same date. On March 14, 2020, pursuant to the authority granted by Culver City Municipal Code (“CCMC”) Section 3.09.020.B.1.a, the City Manager, as the Director of Emergency Services, issued a Proclamation of Local Emergency due to the outbreak and spread of COVID-19 (Attachment 1). The Local Emergency was ratified by City Council on March 18, 2020, as required by California Government Code Section 8630(b).

Between March 14, 2020 and January 10, 2022, City Council has conducted 10 periodic reviews of the Local Emergency and determined each time there was an ongoing need for the Local Emergency to continue. The 11th review of the Local Emergency will be conducted at the first City Council meeting in March 2022.

***Governor Newsom Executive Orders Regarding Public Meetings during the COVID-19 Pandemic***

Prior to temporary amendments made on September 16, 2021, the Ralph M. Brown Act (Brown Act) required that all meetings of a legislative body of a local agency be open to the public and that all persons be permitted to attend and participate, with no conditions precedent, except under specified exceptions.

The Brown Act also authorizes the legislative body of a local agency to 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, provided that the teleconferenced meeting or proceeding complies with the notice and posting requirements and all otherwise applicable requirements and provisions of law as set forth in the Government Code.

In an effort to reduce the spread of COVID-19 at public meetings, on March 17, 2020, Governor Gavin Newsom issued Executive Order N-29-20 which allowed local or state legislative bodies to hold meetings via teleconference and to make meetings accessible electronically without violating the open meeting laws found in the Brown Act. On June 11, 2021, Governor Newsom extended the applicability of his Executive Orders related to the COVID-19 pandemic. In particular, Executive Order N-08-21 extended application of Executive Order N-29-20, which allowed public agencies to hold teleconference meetings until September 30, 2021.

***Assembly Bill 361-September 16, 2021***

With the surge of COVID-19 delta variant cases and Executive Order N-08-21 sunseting on September 30, 2021, Assembly Bill 361 (“AB 361”) was signed by the Governor into law on September 16, 2021. AB 361 provides an alternative to the teleconferencing requirements of Government Code Section 54953(b)(3) as long as there is a state of emergency, and the legislative body makes certain factual findings regarding the state of emergency. When there is a continuing state of emergency, or when state or local officials have imposed or recommended measures to promote social distancing, AB 361 requires a legislative body to make specified findings not later than 30 days after the first teleconferenced meeting pursuant to AB 361, and to make those findings

every 30 days thereafter, in order to continue to meet under these abbreviated teleconferencing procedures.

Pursuant to AB 361, on October 26, 2021, City Council adopted a resolution to continue the ability to teleconference for City Council, and for all City CBCs, during the COVID-19 proclaimed Local Emergency and State of Emergency.

On November 18, 2021, December 13, 2021, and January 10, 2022 City Council again considered the circumstances of the local emergency and adopted a Resolution again making the required findings. In compliance with Government Code section 54953(e)(3), this matter is being brought forward on February 14, 2022 to reconsider the circumstances of the state of emergency and determine under the circumstances, where state and local officials continue to impose or recommend public health safety measures and measures to promote social distancing, if City Council finds it necessary to continue to hold virtual or hybrid teleconference meetings for City Council and all CBCs in the City.

### ***Improving Public Health Conditions***

According to the Los Angeles County Public Health on February 7, 2022, “the county continues to make steady progress decreasing transmission rates associated with the Omicron surge.” The latest available statistics for Los Angeles County are as follows:

- Testing Positivity (7-day daily average):
  - 5% on February 6, 2022
  - Omicron peak: 22.5% on January 2, 2022
  - Pre-Omicron low: 0.8% on October 16, 2021
  - Baseline (pre-Delta) low: 0.4% on June 1, 2021
  
- Hospitalization (number of people):
  - 2,841 on February 6, 2022
  - Omicron peak: 4,706 on Jan. 23, 2022
  - Pre-Omicron low: 558 on November 27, 2021
  - Baseline (pre-Delta) low: 263 on June 1, 2021
  
- Case Rate (7-day cumulative, per 100,000 people):
  - 1,400 on February 3, 2022
  - Omicron peak: 3,198 on January 10, 2022

- Pre-Omicron low: 62 on October 13, 2021
- Baseline (pre-Delta) low: 11 on June 1, 2021

Although the point-in-time COVID-19 data is still poor compared to what Public Health considers baseline data (June 1, 2021, before Delta or Omicron) the trajectory of the data is very encouraging. The improving public health situation has resulted in the State of California lifting the mask mandate for vaccinated residents in indoor public places during the week of February 14, 2022. This does not apply in Los Angeles County, which has its own more restrictive mask mandate, due to, among other reasons, higher COVID indicators than many other less densely populated counties. However, Los Angeles County Public Health has also recently released its plan for reducing post-surge restrictions.

### ***Los Angeles County Public Health Targets***

Los Angeles County Public Health officials announced targets on February 3, 2022 for when public health rules would change based on improving data:

- Hospitalization: below 2,500 for 7 straight days:
  - Mask requirement lifted at outdoor mega events (5,000+ attendees), outdoor spaces at schools.
- Case rates: below 50 weekly cases per 100,000 people, and
- Testing Positivity: below 8% for two consecutive weeks, and:
- No emerging reports of significantly circulating new variants of concern that threaten vaccine effectiveness:
  - Masks will no longer be required at indoor establishments and events.
  - Masks will continue to be required indoors at schools, and on public transit.

After the last large COVID-19 wave, in January 2021, it took two months for case rates to drop below 50 per 100,000 people. If the trajectory after this surge is consistent, the expected date for case rates to reach the <50 threshold would be in late March or early April.

## **DISCUSSION**

### ***Returning to In-Person City Council, Commission, Board and Committee Meetings***

After considering the improving public health conditions, and taking into consideration the logistical and legal challenges presented, staff recommends City Council move to the following meeting format, which balances public health and transparency:

- In-person City Council meetings in the Mike Balkman Council Chambers, with both the City Council and members of the public present.
- City Council Members and members of the public required to remain masked during the

meeting with a high-quality mask (such as a surgical, KN95, or N95), in alignment with LA County Public Health recommendations.

- Members of the public also able to participate remotely via WebEx.
- Vaccination status will not be verified for members of the public attending the meeting.
- City staff members will present in-person for action items and other items with a presentation, and virtually for consent items.
- No limitation on the number of people in chambers, except that no standing will be allowed.

If City Council desires to pursue this option, staff would be ready to support this meeting format as soon as the February 28, 2022 City Council meeting.

The following are some of the special considerations upon which staff recommendations are based:

#### Spacing Requirement Considerations

Staff is not recommending a limitation on the number of people in Mike Balkman Council chambers, or requiring specific distancing between individuals. The CDC recommends masking, vaccination, and boosting as the best way to avoid COVID-19 infection, although it still recommends that those who are not up to date on COVID-19 vaccines stay at least six feet away from other people indoors in public, especially if at a high risk of getting very sick with COVID-19. It is anticipated that members of the public will self-separate in seats throughout the chambers, and that with the option to attend virtually, there will be fewer in-person attendees for meetings. Staff will be encouraged to wait for their agenda items in their office or outside of Council chambers, to further limit the number of people present. It is recommended that no standing be allowed, in order to prevent the unlikely event of extreme crowding.

#### Separate Outdoor Meeting Location

Staff does not recommend creating a separate outdoor meeting space for simultaneous broadcast and participation in City Council or other CBC meetings, due to the logistical, technological, and staffing challenges presented by this option, which will likely not attract a significant number of participants. Those persons who are at higher risk from COVID-19, including unvaccinated persons, will be encouraged to use the virtual option to participate in the meeting.

#### Vaccine Verification for Public Meeting and Other City Facilities

The 38<sup>th</sup> Supplement to Public Order (Public Order), issued by the City Manager on October 26, 2021, requires proof of COVID-19 vaccination to enter a variety of locations, including restaurants, fitness facilities, personal care businesses, and City facilities, beginning November 29, 2021. Although not specifically noted in the Public Order, the requirement would include Mike Balkman Council Chambers, which is an indoor City facility. To date, the City has enforced the vaccination verification requirement at City facilities. The City has not had the opportunity to enforce the requirement at public meetings, however, because to date the City has not allowed members of the public to attend in-person.

Should City Council decide to resume in-person City Council meetings with members of the public

present, the Council would have to decide whether to enforce the City's vaccine verification requirement for in person meeting attendance, or to direct the City Manager to modify the Public Order to remove the vaccine verification requirement for all City Council, Commission, Board and Committee meetings. There are logistical challenges involved with verifying vaccination status for City Council and CBC meetings, including the need for additional staffing to verify vaccination status at the door.

Los Angeles County Public Health never issued a vaccine verification requirement for indoor public meetings that are not mega-events (over 5,000 people), so it has not indicated the target metrics for when such restrictions should be removed. The LA Times quoted Los Angeles County Public Health Director Barbara Ferrer on February 7, 2022 continuing to support the County's vaccination requirement for bars, wineries, breweries, nightclubs and lounges, as well as the City of Los Angeles' requirement for other types of indoor businesses, in consideration of the continued high number of cases. The types of activities, such as eating, drinking, and unmasking, that take place in these types of businesses are arguably different and more high-risk than a City Council meeting where participants can remain masked.

Contra Costa County, the third largest county in the Bay Area, is lifting its vaccination verification requirement for indoor restaurants, bars, and gyms, after 80% of residents are fully vaccinated and 40% have received a booster shot. However, cities, such as Oakland, Berkeley, San Francisco, and West Hollywood continue to keep in place their vaccination verification requirements for these types of facilities. Notably, the City of West Hollywood specifically exempted Brown Act noticed meetings from its vaccination verification requirement.

#### *Meetings of Other Commissions, Boards and Committees*

Staff recommends that at the time City Council resumes meeting in-person, other City Commissions, Boards and Committees, and also resume meeting in person. Given current staffing shortages, the City does not have the staffing capabilities to provide a hybrid (WebEx and in-person) format for meetings other than City Council meetings.

#### **AB 361**

Notwithstanding the above, City Council may still desire to hold teleconferenced (virtual) meetings, in light of the ongoing pandemic conditions. Although the COVID metrics are improving over the surge conditions in December and January, the case rates are still far above what they were earlier in the pandemic, in 2021. The State, County, and Local Emergencies are still actively in place. The City Manager's Supplements to Public Order are still in place.

In addition to the Public Orders issued by the City Manager, the City adopted policies during the pandemic to limit access to City facilities, to protect the public and to protect City employees. These public health and safety measures included reducing the number of City employees working in City facilities, with a large number of employees working remotely where feasible; requiring City employees to provide proof of vaccination, providing City services online, via telephone, or outdoors; and reducing crowding in City facilities by encouraging appointments rather than walk-ins. Additionally, other safety precautions have been taken, such as erecting plastic barriers at public counters.

In order to have teleconferenced public meetings, without providing access to City Council Members' locations, the City Council must make findings stating they have reconsidered the circumstances of the COVID-19 state of emergency and that one of the following circumstances exist:

1. The state of emergency as a result of COVID-19 continues to directly impact the ability of the members of City Council and the members of the City's subordinate Commissions, Boards and Committees to meet safely in person; OR
2. The State of California and the City of Culver continue to impose or recommend measures to promote social distancing.

The City is continuing to impose and recommend public health protocols, including social distancing. For instance:

- Requiring City employees to be vaccinated or have a medical or religious exemption approved;
- Requiring the public to show proof of vaccination to enter indoor portions of City facilities, or they must obtain City services virtually, via telephone, or outdoors;
- Requiring staff and the public to wear well-fitted masks inside City facilities;
- Posting COVID-19 safety measures on the City's social media pages and in City facilities; and
- Placing hand sanitizer stations in City Hall and placing plastic barriers at public counters to promote social distancing.

#### Additional Requirements under AB361

As a reminder, AB 361 also has several requirements to make sure that the public is able to watch and make public comments during the teleconferenced public meetings. These requirements have already been implemented by the City and include:

- Providing 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.
- Restricting the Legislative Body from taking 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.
- Prohibiting the legislative body from requiring public comments to be submitted in advance of the meeting and specifying the legislative body must provide an opportunity for the public to address the legislative body and offer comment in real time.
- Prohibiting 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.

#### FISCAL ANALYSIS

There is no cost associated with evaluating the Local Emergency and making findings to continue virtual meetings. However, virtual meetings and hybrid meetings both require two Information Technology (IT) staff members and overtime costs. IT staff can continue to use existing hardware to allow for members of the public to register to speak, so there will be no additional cost to the City for

that function. Additional staff costs may be incurred if there are additional staffing needs depending on the configuration of in-person meetings.

## ATTACHMENTS

1. 2022-02-14\_ATT2\_Proposed Resolution

## MOTION

That the City Council:

1. Adopt a Resolution to continue the ability to hold teleconference meetings for City Council and all City Commissions, Boards and Committees, as required by AB 361 every 30 days, during the COVID-19 proclaimed Local Emergency and California State of Emergency;

OR

2. Direct the City Manager as desired regarding a return to in-person City Council, Commission, Board and Committee Meetings, including whether to require COVID-19 vaccination verification for in-person attendance at City Council, Commission, Board and Committee meetings; and
3. Provide other direction to the City Manager if deemed appropriate.