



CITY OF CUPERTINO

AGENDA

CITY COUNCIL

This will be a teleconference meeting without a physical location.

Tuesday, November 30, 2021

6:00 PM

Televised Special Meeting Open Session (6:00) and Non-Televised Closed Session (6:05)

TELECONFERENCE / PUBLIC PARTICIPATION INFORMATION TO HELP STOP THE SPREAD OF COVID-19

In accordance with Government Code 54953(e), this will be a teleconference meeting without a physical location to help stop the spread of COVID-19.

Members of the public wishing to observe the open session meeting may do so in one of the following ways:

- 1) Tune to Comcast Channel 26 and AT&T U-Verse Channel 99 on your TV.**
- 2) The meeting will also be streamed live on and online at www.Cupertino.org/youtube and www.Cupertino.org/webcast**

Members of the public wishing comment on an item on the agenda may do so in the following ways:

- 1) E-mail comments for the open or closed session by 4:30 p.m. on Tuesday, November 30 to the Council at citycouncil@cupertino.org. These e-mail comments will also be forwarded to Councilmembers by the City Clerk's office before the meeting and posted to the City's website after the meeting.**
- 2) E-mail comments for the open or closed session during the times for public comment during the meeting to the City Clerk at cityclerk@cupertino.org. The City Clerk will read the emails into the record, and display any attachments on the screen, for up to 3 minutes (subject to the Mayor's discretion to shorten time for public comments). Members of the public that wish to share a document must email cityclerk@cupertino.org prior to speaking.**

3) Teleconferencing Instructions

Members of the public may provide oral public comments pertaining to the agenda during the open session teleconference meeting or in open session prior to the closed session teleconference meeting as follows:

To address the City Council, click on the links below to access the open session and closed session meetings:

OPEN SESSION - 6:00 PM

Oral public comments will be accepted during the open session teleconference meeting. Comments may be made during the public comment period for each agenda item.

To address the City Council, click on the link below to register in advance and access the meeting:

Online Link for Open Session

https://cityofcupertino.zoom.us/webinar/register/WN_b7jqoBapT5OG6JHmKqye0w

Phone

Dial: 669-900-6833 and enter Webinar ID: 993 8008 6060 (Type *9 to raise hand to speak, *6 to unmute yourself). Unregistered participants will be called on by the last four digits of their phone number.

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

Meeting ID: 993 8008 6060

SIP: 99380086060@zoomcrc.com

After registering, you will receive a confirmation email containing information about joining the webinar.

CLOSED SESSION - 6:05 PM

Members of the public may provide oral public comments in open session prior to the closed session teleconference meeting as follows:

To address the City Council, click on the link below to register in advance and access the meeting:

Online Link for Closed Session

<https://cityofcupertino.zoom.us/j/95908503057>

Phone

Dial: 669-900-6833 and enter Meeting ID: 959 0850 3057 (Type *9 to raise hand to speak).

Please read the following instructions carefully:

1. You can directly download the teleconference software or connect to the meeting in your internet browser. If you are using your browser, make sure you are using a current and up-to-date browser: Chrome 30+, Firefox 27+, Microsoft Edge 12+, Safari 7+. Certain functionality may be disabled in older browsers, including Internet Explorer.
2. You will be asked to enter an email address and a name, followed by an email with instructions on how to connect to the meeting. Your email address will not be disclosed to the public. If you wish to make public comment pertaining to the agenda but do not wish to provide your name, you may say "Cupertino Resident" or similar designation.
3. When the Mayor calls for the item on which you wish to speak, click on "raise hand," or, if you are calling in, press *9. Speakers will be notified shortly before they are called to speak.
4. When called, please limit your remarks to the time allotted and the specific agenda topic.

In compliance with the Americans with Disabilities Act (ADA), anyone who is planning to attend this teleconference City Council meeting who is visually or hearing impaired or has any disability that needs special assistance should call the City Clerk's Office at 408-777-3223, at least 6 hours in advance of the Council meeting to arrange for assistance. In addition, upon request, in advance, by a person with a disability, City Council meeting agendas and writings distributed for the meeting that are public records will be made available in the appropriate alternative format.

NOTICE AND CALL FOR A SPECIAL MEETING OF THE CUPERTINO CITY COUNCIL

NOTICE IS HEREBY GIVEN that a special meeting of the Cupertino City Council is hereby called for Tuesday, November 30, 2021, commencing at 6:00 p.m. In accordance with Government Code 54953(e), this will be a teleconference meeting without a physical location to help stop the spread of COVID-19. Said special meeting shall be for the purpose of conducting business on the subject matters listed below under the heading, "Special Meeting."

SPECIAL MEETING

OPEN SESSION - 6:00 PM

ROLL CALL

CONSENT CALENDAR

Unless there are separate discussions and/or actions requested by council, staff or a member of the

public, it is requested that items under the Consent Calendar be acted on simultaneously.

1. Subject: Consider adopting a resolution authorizing continued remote teleconference meetings of the legislative bodies of the City of Cupertino for the period November 30, 2021 through December 30, 2021 pursuant to the Brown Act, as amended by AB 361
Recommended Action: Adopt Resolution No. 21-111 authorizing continued remote teleconference meetings of the legislative bodies of the City of Cupertino for the period November 30, 2021 through December 30, 2021 pursuant to the Brown Act, as amended by AB 361
[Staff Report](#)
[A - Draft Resolution](#)
[B - Adopted Resolution No. 21-098](#)

RECESS

ROLL CALL - 6:05 PM

CLOSED SESSION

2. Subject: Conference with Legal Counsel - Existing Litigation (Gov. Code § 54956.9(a)): Participation in nationwide opioids settlements
3. Subject: Conference with Legal Counsel - Anticipated Litigation: Initiation of litigation pursuant to Gov. Code § 54956.9(c) (one case)
4. Subject: Conference with Legal Counsel - Anticipated Litigation: Significant exposure to litigation pursuant to Gov. Code § 54956.9(d) (one case)
5. Subject: Public Employee Performance Evaluation (Gov. Code § 54957(b)(1)); Title: Interim City Manager

OPEN SESSION

ROLL CALL

REPORT REGARDING CLOSED SESSION

ADJOURNMENT

The City of Cupertino has adopted the provisions of Code of Civil Procedure §1094.6; litigation challenging a final decision of the City Council must be brought within 90 days after a decision is announced unless a shorter time is required by State or Federal law.

Prior to seeking judicial review of any adjudicatory (quasi-judicial) decision, interested persons must file a petition for reconsideration within ten calendar days of the date the City Clerk mails notice of the

City's decision. Reconsideration petitions must comply with the requirements of Cupertino Municipal Code §2.08.096. Contact the City Clerk's office for more information or go to <http://www.cupertino.org/cityclerk> for a reconsideration petition form.

In compliance with the Americans with Disabilities Act (ADA), anyone who is planning to attend this teleconference meeting who is visually or hearing impaired or has any disability that needs special assistance should call the City Clerk's Office at 408-777-3223, at least 6 hours in advance of the meeting to arrange for assistance. In addition, upon request, in advance, by a person with a disability, meeting agendas and writings distributed for the meeting that are public records will be made available in the appropriate alternative format.

Any writings or documents provided to a majority of the Cupertino City Council after publication of the packet will be made available for public inspection in the City Clerk's Office located at City Hall, 10300 Torre Avenue, Cupertino, California 95014, during normal business hours; and in Council packet archives linked from the agenda/minutes page on the Cupertino web site.

IMPORTANT NOTICE: Please be advised that pursuant to Cupertino Municipal Code section 2.08.100 written communications sent to the Cupertino City Council, Commissioners or City staff concerning a matter on the agenda are included as supplemental material to the agenda item. These written communications are accessible to the public through the City's website and kept in packet archives. Do not include any personal or private information in written communications to the City that you do not wish to make public, as written communications are considered public records and will be made publicly available on the City website.



CITY OF CUPERTINO

Agenda Item

21-10117

Agenda Date:
11/30/2021 Agenda #: 1.

Subject: Consider adopting a resolution authorizing continued remote teleconference meetings of the legislative bodies of the City of Cupertino for the period November 30, 2021 through December 30, 2021 pursuant to the Brown Act, as amended by AB 361

Adopt Resolution No. 21-111 authorizing continued remote teleconference meetings of the legislative bodies of the City of Cupertino for the period November 30, 2021 through December 30, 2021 pursuant to the Brown Act, as amended by AB 361



CITY MANAGER'S OFFICE

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3223 • FAX: (408) 777-3366
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: November 30, 2021

Subject

Consider adopting a resolution authorizing continued remote teleconference meetings of the legislative bodies of the City of Cupertino for the period November 30, 2021 through December 30, 2021 pursuant to the Brown Act, as amended by AB 361

Recommended Action

Adopt the Draft Resolution authorizing continued remote teleconference meetings of the legislative bodies of the City of Cupertino for the period November 30, 2021 through December 30, 2021 pursuant to the Brown Act, as amended by AB 361

Background

On March 2, 2020, Governor Newsom declared a state of emergency due to the public health threat posed by COVID-19. On March 4, 2020, Governor Newsom issued Executive Order No-29-20, which suspended certain elements of the Brown Act and specifically allowed legislative bodies to hold meetings entirely electronically with no physical meeting. In accordance with the Executive Order, the City held its first teleconference meeting on March 24, 2020, to help stop the spread of COVID-19. On June 11, 2021, Governor Newsom issued Executive Order No-08-21, which stated that the provisions in Executive Order No-29-20, suspending certain elements of the Brown Act, would continue to apply through September 30, 2021.

On September 15, 2021, Governor Newsom signed AB 361 into law, which allows state and local agencies to continue using teleconferencing during certain state-declared emergencies under modified Brown Act requirements. AB 361 became effective immediately after signing due to its emergency clause and is set to sunset on January 1, 2024. Under AB 361, teleconference meetings may be held during a state of emergency if (1) state or local officials have imposed or recommended measures to promote social distancing, or (2) a legislative body determines by a majority vote that meeting in person would present imminent risks to the health or safety of attendees. (Gov. Code, § 54953(e)(1).)

To continue teleconference meetings beyond a 30-day period, AB 361 requires the Council to make a determination that either (i) "[t]he state of emergency continues to directly impact the ability of the members to meet safely in person, or (ii) "State or local officials continue to impose or recommend measures to promote social distancing." (Gov. Code, § 54953(e)(3)(B).) That determination must be reviewed each 30 days thereafter to continue teleconference meetings. (*Ibid.*)

Discussion

AB 361 allows the City Council and other City legislative bodies to continue meeting exclusively via teleconference so long as a state emergency declaration remains in place and the statute's conditions for permitting remote meetings are met. To continue meeting remotely, the City Council must find that state or local officials have imposed or recommend measures to support social distancing, or that the state of emergency continues to directly impact the ability of the members to meet safely in person.

On October 5, 2021 Council adopted Resolution No. 21-098 affirming findings related to AB 361 and authorizing the City Manager and legislative bodies of the City of Cupertino to meet exclusively by teleconference in accordance with Government Code section 54953(e)(3) and other applicable provisions of the Brown Act through December 2, 2021 (Attachment B). Council made additional findings necessary to extend the authorization for 30 days on November 2, 2021.

Council may make either or both of the permitted findings to further extend the time to allow teleconference meetings to continue. The Santa Clara County Health Officer continues to recommend that governmental entities limit indoor activities to protect participants who are not fully vaccinated. ([Health Officer Order, June 21, 2021](#).) In addition, state Department of Industrial Relations [Emergency Temporary Standards](#) continue to require or recommend social distancing in certain circumstances. These measures are required or recommended based on evidence that indoor activities continue to present imminent health and safety risks, particularly for unvaccinated individuals. It is therefore recommended that Council adopt the Draft Resolution authorizing continued teleconference meetings for the City of Cupertino's legislative bodies in order to protect the health and safety of all attendees and participants, particularly those who are unvaccinated (Attachment A).

Sustainability Impact

Conducting meetings remotely has reduced paper consumption.

Fiscal Impact

No fiscal impact.

Prepared by: Kirsten Squarcia, City Clerk

Approved for Submission by: Greg Larson, Interim City Manager

Attachments:

A – Draft Resolution

B – Adopted Resolution No. 21-098

RESOLUTION NO. 21-__

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL
AUTHORIZING CONTINUED REMOTE TELECONFERENCE MEETINGS OF THE
LEGISLATIVE BODIES OF THE CITY OF CUPERTINO FOR THE PERIOD
NOVEMBER 30, 2021 THROUGH DECEMBER 30, 2021 PURSUANT TO BROWN
ACT PROVISIONS**

WHEREAS, the City of Cupertino is committed to preserving and nurturing public access and participation in meetings of the City Council, commissions, and committees; and

WHEREAS, all meetings of the City of Cupertino's legislative bodies are open and public, as required by the Ralph M. Brown Act (Government Code sections 54950–54963), so that any member of the public may attend, participate, and watch the City's legislative bodies conduct their business; and

WHEREAS, the Brown Act, Government Code section 54953(e), makes provisions for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

WHEREAS, a required condition for holding meetings exclusively by teleconference is that a state of emergency is declared by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558; and

WHEREAS, Government Code section 54953(e) further requires that in order to authorize meetings exclusively by teleconference, a legislative body must determine that state or local officials have imposed or recommended measures to promote social distancing, or that meeting in person would present imminent risks to the health and safety of attendees; and

WHEREAS, on October 5, 2021 and November 2, 2021, the Cupertino City Council made the findings required under Government Code section 54953(e) and resolved that the legislative bodies of the City of Cupertino shall conduct their meetings without compliance with Government Code section 54953(b)(3), as authorized by Government Code section 54953(e), and that such legislative bodies should comply with the

requirements to provide the public with access to the meetings as prescribed in section 54953(e)(2); and

WHEREAS, Government Code section 54953(e)(3) provides that to continue to holding meetings of legislative bodies exclusively by teleconference, the legislative body must reconsidered the circumstances of the state of emergency every 30 days, and find that either (i) the state of emergency continues to directly impact the ability of the members to meet safely in person, or (ii) State or local officials continue to impose or recommend measures to promote social distancing; and

WHEREAS, the City Council has reconsidered the circumstances of the state of emergency that now exists, specifically defined in the County of Santa Clara proclamation of a local emergency beginning February 3, 2020, the City of Cupertino proclamation of a local emergency on March 11, 2020, the Governor of the State of California proclamation of a state of emergency beginning on March 4, 2020, and the national emergency declaration in Proclamation 9994 of March 13, 2020, beginning March 1, 2020, concerning the COVID-19 pandemic; and

WHEREAS, the County of Santa Clara Health Officer order dated June 21, 2021 and the California Department of Industrial Relations Revised Emergency Temporary Standards, effective June 17, 2021, continue to require or recommend social distancing in the workplace in certain circumstances; and

WHEREAS, the Health Officer Order, the Revised Emergency Temporary Standards, and evidence documenting the transmission of COVID-19 in indoor spaces establishes that the state of emergency continues to directly impact the ability of the members to meet safely in person; and

WHEREAS, based on the above findings, the Cupertino City Council hereby determines that the legislative bodies of the City of Cupertino shall continue to conduct their meetings without compliance with Government Code section 54953(b)(3), as authorized by Government Code section 54953(e), and that such legislative bodies shall comply with the requirements to provide the public with access to the meetings as prescribed in section 54953(e)(2); and WHEREAS, the City has and will continue to provide access for the public to legislative meetings and procedures through video teleconference technologies; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Cupertino does hereby:

Section 1. Remote Teleconference Meetings. The City Manager and legislative bodies of the City of Cupertino are hereby authorized and directed to meet exclusively by teleconference and to take all actions necessary to carry out the intent and purpose of this Resolution, including conducting open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.

Section 2. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption and shall be effective through December 30, 2021, or such time as the City Council adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the City Council of the City of Cupertino may continue to teleconference without compliance with Government Code section 54953(b)(3).

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 30th day of November 2021, by the following vote:

Vote Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

<p>SIGNED:</p> <p>_____</p> <p>Darcy Paul, Mayor City of Cupertino</p>	<p>_____</p> <p>Date</p>
<p>ATTEST:</p> <p>_____</p> <p>Kirsten Squarcia, City Clerk</p>	<p>_____</p> <p>Date</p>

RESOLUTION NO. 21-098

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL
AUTHORIZING CONTINUED REMOTE TELECONFERENCE MEETINGS OF THE
LEGISLATIVE BODIES OF THE CITY OF CUPERTINO FOR THE PERIOD
NOVEMBER 2, 2021 THROUGH DECEMBER 2, 2021 PURSUANT TO BROWN ACT
PROVISIONS**

WHEREAS, the City of Cupertino is committed to preserving and nurturing public access and participation in meetings of the City Council, commissions, and committees; and

WHEREAS, all meetings of the City of Cupertino's legislative bodies are open and public, as required by the Ralph M. Brown Act (Government Code sections 54950–54963), so that any member of the public may attend, participate, and watch the City's legislative bodies conduct their business; and

WHEREAS, the Brown Act, Government Code section 54953(e), makes provisions for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

WHEREAS, a required condition for holding meetings exclusively by teleconference is that a state of emergency is declared by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558; and

WHEREAS, Government Code section 54953(e) further requires that in order to authorize meetings exclusively by teleconference, a legislative body must determine that state or local officials have imposed or recommended measures to promote social distancing, or that meeting in person would present imminent risks to the health and safety of attendees; and

WHEREAS, on October 5, 2021, the Cupertino City Council made the findings required under Government Code section 54953(e) and resolved that the legislative bodies of the City of Cupertino shall conduct their meetings without compliance with Government Code section 54953 (b)(3), as authorized by Government Code section 54953(e), and that such legislative bodies should comply with the requirements to provide the public with access to the meetings as prescribed in section 54953(e)(2); and

WHEREAS, Government Code section 54593(e)(3) provides that to continue to holding meetings of legislative bodies exclusively by teleconference, the legislative body must reconsidered the circumstances of the state of emergency every 30 days, and find that either (i) the state of emergency continues to directly impact the ability of the members to meet safely in person, or (ii) State or local officials continue to impose or recommend measures to promote social distancing; and

WHEREAS, the City Council has reconsidered the circumstances of the state of emergency that now exists, specifically defined in the County of Santa Clara proclamation of a local emergency beginning February 3, 2020, the City of Cupertino proclamation of a local emergency on March 11, 2020, the Governor of the State of California proclamation of a state of emergency beginning on March 4, 2020, and the national emergency declaration in Proclamation 9994 of March 13, 2020, beginning March 1, 2020, concerning the COVID-19 pandemic; and

WHEREAS, the County of Santa Clara Health Officer order dated June 21, 2021 and the California Department of Industrial Relations Revised Emergency Temporary Standards, effective June 17, 2021, continue to require or recommend social distancing in the workplace in certain circumstances; and

WHEREAS, the Health Officer Order, the Revised Emergency Temporary Standards, and evidence documenting the transmission of COVID-19 in indoor spaces establishes that the state of emergency continues to directly impact the ability of the members to meet safely in person; and

WHEREAS, based on the above findings, the Cupertino City Council hereby determines that the legislative bodies of the City of Cupertino shall continue to conduct their meetings without compliance with Government Code section 54953 (b)(3), as authorized by Government Code section 54953(e), and that such legislative bodies shall comply with the requirements to provide the public with access to the meetings as prescribed in section 54953(e)(2); and WHEREAS, the City has and will continue to provide access for the public to legislative meetings and procedures through video teleconference technologies; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Cupertino does hereby:

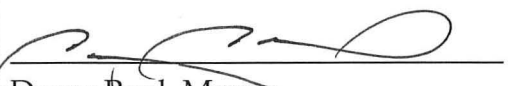

Section 1. Remote Teleconference Meetings. The City Manager and legislative bodies of the City of Cupertino are hereby authorized and directed to meet exclusively by teleconference and to take all actions necessary to carry out the intent and purpose of this Resolution, including conducting open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.

Section 2. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption and shall be effective through December 2, 2021, or such time as the City Council adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the City Council of the City of Cupertino may continue to teleconference without compliance with Government Code section 54953(b)(3).

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 2nd day of November 2021, by the following vote:

Vote Members of the City Council

AYES: Paul, Chao, Moore, Wei, Willey
NOES: None
ABSENT: None
ABSTAIN: None

<p>SIGNED:</p>  <p>Darcy Paul, Mayor City of Cupertino</p>	<p><u>11/17/2021</u></p> <p>Date</p>
<p>ATTEST:</p>  <p>Kirsten Squarcia, City Clerk</p>	<p><u>11/17/21</u></p> <p>Date</p>



CITY OF CUPERTINO

Agenda Item

21-10161

Agenda Date:
11/30/2021 Agenda #: 2.

Subject: Conference with Legal Counsel - Existing Litigation (Gov. Code § 54956.9(a)): Participation in nationwide opioids settlements



CITY OF CUPERTINO

Agenda Item

21-10192

Agenda Date:
11/30/2021 Agenda #: 3.

Subject: Conference with Legal Counsel - Anticipated Litigation: Initiation of litigation pursuant to Gov. Code § 54956.9(c) (one case)



CITY OF CUPERTINO

Agenda Item

21-10193

Agenda Date:
11/30/2021 Agenda #: 4.

Subject: Conference with Legal Counsel - Anticipated Litigation: Significant exposure to litigation pursuant to Gov. Code § 54956.9(d) (one case)



CITY OF CUPERTINO

Agenda Item

21-10194

Agenda Date:
11/30/2021 Agenda #: 5.

Subject: Public Employee Performance Evaluation (Gov. Code § 54957(b)(1)); Title: Interim City Manager