



Consent Item 5

TO: East Bay Community Energy Board of Directors

FROM: Inder Khalsa, General Counsel

SUBJECT: Adoption of Imminent Risks Findings Pursuant to AB 361 and Authorization to Continue Meeting via Teleconferencing

DATE: September 21, 2022

Recommendation

Find that conducting in-person meetings of the Board would present imminent risks to attendees' health and authorize the Board to continue meeting via teleconferencing pursuant to Government Code Section 54953(e).

Background and Discussion

On March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency related to COVID-19, pursuant to Government Code Section 8625, which is still in effect. On March 10, 2020, the Alameda County Board of Supervisors ratified the County Health Officer's declaration of a local health emergency due to COVID-19.

The Brown Act allows legislative bodies to meet by "teleconference," but only if the agenda listed the remote location of each member, the agenda was posted at all remote locations, and the public could access any of the remote locations. Additionally, a quorum of the legislative body had to be within the legislative body's jurisdiction. See Government Code Section 54953(b)(3)

Due to the COVID-19 pandemic, the Governor issued Executive Order N-29-20, suspending certain sections of the Brown Act. Pursuant to the Executive Order, legislative bodies no longer needed to list the location of each remote attendee, post agendas at each remote location, or allow the public to access each location. Further, a quorum of the legislative body does not need to be within the legislative body's

jurisdiction. After several extensions, Executive Order N-29-20 expired on September 30, 2021.

On September 16, 2021 Governor Newsom signed AB 361, new legislation that amends the Brown Act to allow local agencies to meet remotely during Governor declared emergencies under certain conditions. AB 361 took effect immediately as an urgency measure, but the Governor subsequently suspended application of the legislation – with limited exceptions – until October 1, 2021. The provisions of AB 361 relevant to local agencies are codified at Government Code Section 54953(e).

AB 361 authorizes local agencies to continue meeting remotely without following the Brown Act’s standard teleconferencing provisions if the meeting is held during a state of emergency proclaimed by the Governor and either of the following applies: (1) state or local officials have imposed or recommended measures to promote social distancing; or (2) the agency has already determined or is determining whether, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

The legislative body must make the required findings every 30 days, until the end of the state of emergency or recommended or required social distancing.

AB 361 also requires legislative bodies to make remote public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body, and to make reasonable efforts to adhere as closely as reasonably possible to the provisions of the Brown Act. AB 361 adds new procedures and clarifies the requirements for conducting remote meetings. A legislative body that meets remotely must allow members of the public to access the meeting via a call-in option or an internet-based service option, and the agenda for the remote meeting must provide an opportunity for members of the public to directly address the body in real time.

Due to the rise in COVID-19 cases caused by the Delta Variant, Alameda County is still impacted by the effects of the COVID-19 emergency. The Centers for Disease Control (CDC) recommends physical distancing of at least six (6) feet whenever possible, avoiding crowds, and avoiding spaces that do not offer fresh air from the outdoors, particularly for people who are not fully vaccinated or who are at higher risk of getting very sick from COVID-19. The CDC also recommends that people who live with unvaccinated people avoid activities that make physical distancing hard.

EBCE's public-meetings are held at indoor facilities not designed to ensure circulation of fresh or outdoor air, particularly during periods of cold and/or rainy weather, and were not designed to ensure that attendees can remain six (6) feet apart. Additionally, holding in-person meetings may encourage community members to come to EBCE facilities to participate in EBCE meetings in-person, and some of them could be at high risk of getting very sick from COVID-19 and/or live with someone who is at high risk. At this point in time, there are few in-person locations available for the EBCE to meet in, since most of the agencies in Alameda County are still holding remote meetings.

In-person meetings could also tempt community members who are experiencing COVID-19 symptoms to leave their homes in order to come to EBCE Board meetings to participate. Attendees may need to use ride-share services and/or public transit to travel to in-person meetings, thereby putting them in close and prolonged contact with additional people outside of their households.

For these reasons, staff recommends that the Board adopt findings that, as a result of the state of emergency caused by COVID-19, meeting in person would present imminent risks to the health and safety of attendees.

Staff will continue to monitor the situation and will return to the Board every 30 days or as needed with additional recommendations related to the conduct of public meetings.

Attachments

- Proclamation of Governor Newsom of a State of Emergency due to COVID-19
- Resolution No. R-2020-91 of the Alameda County Board of Supervisors Ratifying the Declaration of a Local Health Emergency due to COVID-19

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

PROCLAMATION OF A STATE OF EMERGENCY

WHEREAS in December 2019, an outbreak of respiratory illness due to a novel coronavirus (a disease now known as COVID-19), was first identified in Wuhan City, Hubei Province, China, and has spread outside of China, impacting more than 75 countries, including the United States; and

WHEREAS the State of California has been working in close collaboration with the national Centers for Disease Control and Prevention (CDC), with the United States Health and Human Services Agency, and with local health departments since December 2019 to monitor and plan for the potential spread of COVID-19 to the United States; and

WHEREAS on January 23, 2020, the CDC activated its Emergency Response System to provide ongoing support for the response to COVID-19 across the country; and

WHEREAS on January 24, 2020, the California Department of Public Health activated its Medical and Health Coordination Center and on March 2, 2020, the Office of Emergency Services activated the State Operations Center to support and guide state and local actions to preserve public health; and

WHEREAS the California Department of Public Health has been in regular communication with hospitals, clinics and other health providers and has provided guidance to health facilities and providers regarding COVID-19; and

WHEREAS as of March 4, 2020, across the globe, there are more than 94,000 confirmed cases of COVID-19, tragically resulting in more than 3,000 deaths worldwide; and

WHEREAS as of March 4, 2020, there are 129 confirmed cases of COVID-19 in the United States, including 53 in California, and more than 9,400 Californians across 49 counties are in home monitoring based on possible travel-based exposure to the virus, and officials expect the number of cases in California, the United States, and worldwide to increase; and

WHEREAS for more than a decade California has had a robust pandemic influenza plan, supported local governments in the development of local plans, and required that state and local plans be regularly updated and exercised; and

WHEREAS California has a strong federal, state and local public health and health care delivery system that has effectively responded to prior events including the H1N1 influenza virus in 2009, and most recently Ebola; and

WHEREAS experts anticipate that while a high percentage of individuals affected by COVID-19 will experience mild flu-like symptoms, some will have more serious symptoms and require hospitalization, particularly individuals who are elderly or already have underlying chronic health conditions; and

WHEREAS it is imperative to prepare for and respond to suspected or confirmed COVID-19 cases in California, to implement measures to mitigate the spread of COVID-19, and to prepare to respond to an increasing number of individuals requiring medical care and hospitalization; and

WHEREAS if COVID-19 spreads in California at a rate comparable to the rate of spread in other countries, the number of persons requiring medical care may exceed locally available resources, and controlling outbreaks minimizes the risk to the public, maintains the health and safety of the people of California, and limits the spread of infection in our communities and within the healthcare delivery system; and

WHEREAS personal protective equipment (PPE) is not necessary for use by the general population but appropriate PPE is one of the most effective ways to preserve and protect California's healthcare workforce at this critical time and to prevent the spread of COVID-19 broadly; and

WHEREAS state and local health departments must use all available preventative measures to combat the spread of COVID-19, which will require access to services, personnel, equipment, facilities, and other resources, potentially including resources beyond those currently available, to prepare for and respond to any potential cases and the spread of the virus; and

WHEREAS I find that conditions of Government Code section 8558(b), relating to the declaration of a State of Emergency, have been met; and

WHEREAS I find that the conditions caused by COVID-19 are likely to require the combined forces of a mutual aid region or regions to appropriately respond; and

WHEREAS under the provisions of Government Code section 8625(c), I find that local authority is inadequate to cope with the threat posed by COVID-19; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Government Code section 8625, **HEREBY PROCLAIM A STATE OF EMERGENCY** to exist in California.

IT IS HEREBY ORDERED THAT:

1. In preparing for and responding to COVID-19, all agencies of the state government use and employ state personnel, equipment, and facilities or perform any and all activities consistent with the direction of the Office of Emergency Services and the State Emergency Plan, as well as the California Department of Public Health and the Emergency Medical Services Authority. Also, all residents are to heed the advice of emergency officials with regard to this emergency in order to protect their safety.
2. As necessary to assist local governments and for the protection of public health, state agencies shall enter into contracts to arrange for the procurement of materials, goods, and services needed to assist in preparing for, containing, responding to, mitigating the effects of, and recovering from the spread of COVID-19. Applicable provisions of the Government Code and the Public Contract Code, including but not limited to travel, advertising, and competitive bidding requirements, are suspended to the extent necessary to address the effects of COVID-19.
3. Any out-of-state personnel, including, but not limited to, medical personnel, entering California to assist in preparing for, responding to, mitigating the effects of, and recovering from COVID-19 shall be permitted to provide services in the same manner as prescribed in Government Code section 179.5, with respect to licensing and certification. Permission for any such individual rendering service is subject to the approval of the Director of the Emergency Medical Services Authority for medical personnel and the Director of the Office of Emergency Services for non-medical personnel and shall be in effect for a period of time not to exceed the duration of this emergency.
4. The time limitation set forth in Penal Code section 396, subdivision (b), prohibiting price gouging in time of emergency is hereby waived as it relates to emergency supplies and medical supplies. These price gouging protections shall be in effect through September 4, 2020.
5. Any state-owned properties that the Office of Emergency Services determines are suitable for use to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services for this purpose, notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.
6. Any fairgrounds that the Office of Emergency Services determines are suitable to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services pursuant to the Emergency Services Act, Government Code section 8589. The Office of Emergency Services shall notify the fairgrounds of the intended use and can immediately use the fairgrounds without the fairground board of directors' approval, and

notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.


7. The 30-day time period in Health and Safety Code section 101080, within which a local governing authority must renew a local health emergency, is hereby waived for the duration of this statewide emergency. Any such local health emergency will remain in effect until each local governing authority terminates its respective local health emergency.
8. The 60-day time period in Government Code section 8630, within which local government authorities must renew a local emergency, is hereby waived for the duration of this statewide emergency. Any local emergency proclaimed will remain in effect until each local governing authority terminates its respective local emergency.
9. The Office of Emergency Services shall provide assistance to local governments that have demonstrated extraordinary or disproportionate impacts from COVID-19, if appropriate and necessary, under the authority of the California Disaster Assistance Act, Government Code section 8680 et seq., and California Code of Regulations, Title 19, section 2900 et seq.
10. To ensure hospitals and other health facilities are able to adequately treat patients legally isolated as a result of COVID-19, the Director of the California Department of Public Health may waive any of the licensing requirements of Chapter 2 of Division 2 of the Health and Safety Code and accompanying regulations with respect to any hospital or health facility identified in Health and Safety Code section 1250. Any waiver shall include alternative measures that, under the circumstances, will allow the facilities to treat legally isolated patients while protecting public health and safety. Any facilities being granted a waiver shall be established and operated in accordance with the facility's required disaster and mass casualty plan. Any waivers granted pursuant to this paragraph shall be posted on the Department's website.
11. To support consistent practices across California, state departments, in coordination with the Office of Emergency Services, shall provide updated and specific guidance relating to preventing and mitigating COVID-19 to schools, employers, employees, first responders and community care facilities by no later than March 10, 2020.
12. To promptly respond for the protection of public health, state entities are, notwithstanding any other state or local law, authorized to share relevant medical information, limited to the patient's underlying health conditions, age, current condition, date of exposure, and possible contact tracing, as necessary to address the effect of the COVID-19 outbreak with state, local, federal, and nongovernmental partners, with such information to be used for the limited purposes of monitoring, investigation and control, and treatment and coordination of care. The

notification requirement of Civil Code section 1798.24, subdivision (i), is suspended.

13. Notwithstanding Health and Safety Code sections 1797.52 and 1797.218, during the course of this emergency, any EMT-P licensees shall have the authority to transport patients to medical facilities other than acute care hospitals when approved by the California EMS Authority. In order to carry out this order, to the extent that the provisions of Health and Safety Code sections 1797.52 and 1797.218 may prohibit EMT-P licensees from transporting patients to facilities other than acute care hospitals, those statutes are hereby suspended until the termination of this State of Emergency.
14. The Department of Social Services may, to the extent the Department deems necessary to respond to the threat of COVID-19, waive any provisions of the Health and Safety Code or Welfare and Institutions Code, and accompanying regulations, interim licensing standards, or other written policies or procedures with respect to the use, licensing, or approval of facilities or homes within the Department's jurisdiction set forth in the California Community Care Facilities Act (Health and Safety Code section 1500 et seq.), the California Child Day Care Facilities Act (Health and Safety Code section 1596.70 et seq.), and the California Residential Care Facilities for the Elderly Act (Health and Safety Code section 1569 et seq.). Any waivers granted pursuant to this paragraph shall be posted on the Department's website.

I FURTHER DIRECT that as soon as hereafter possible, this proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this proclamation.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 4th day of March 2020



GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State



OFFICE OF THE AGENCY DIRECTOR

1000 San Leandro Boulevard, Suite 300
San Leandro, CA 94577
TEL (510) 618-3452
FAX (510) 351-1367

March 6, 2020

The Honorable Board of Supervisors
County Administration Building
1221 Oak Street
Oakland, CA 94612

SUBJECT: ADOPT A RESOLUTION RATIFYING THE DECLARATION OF A LOCAL HEALTH EMERGENCY BY THE COUNTY HEALTH OFFICER RELATED TO THE 2019 NOVEL CORONAVIRUS

Dear Board Members:

RECOMMENDATION

Adopt a Resolution ratifying the Declaration of a Local Health Emergency by the County Health Officer related to the 2019 Novel Coronavirus

DISCUSSION/SUMMARY

In December 2019, an outbreak of a respiratory illness due to a novel coronavirus (a disease known as 2019 Novel Coronavirus or COVID-19) was first identified in Wuhan City, Hubei Province, China. Since then, the outbreak has spread to more than 75 countries, including the United States. As of March 5, 14 California counties have had at least one citizen infected with the virus. The County of Alameda is among those counties, as are several Bay Area counties including Contra Costa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma.

The United States Centers for Disease Control and Prevention (CDC) considers COVID-19 to present a very serious threat to public health. On January 23, 2020, the CDC activated its Emergency Response System to provide ongoing support for the response to COVID-19 across the United States. On January 31, 2020, the Secretary of the US Department of Health and Human Services declared a public health emergency in the United States.

As of March 6, 2020, the CDC has identified 164 confirmed cases of COVID-19 infection, across 19 states, including 45 in California. The number of reported cases has escalated dramatically, with more than 94,000 confirmed cases and more than 3,300 deaths worldwide.

On March 1, 2020, the California Department of Public Health confirmed that an Oakland resident had become infected with COVID-19 after providing healthcare to the Solano County COVID-19 patient. Two days later, an individual in Berkeley also tested positive for COVID-19 Infection.

The Honorable Board of Supervisors

March 6, 2020

Page 2 of 2

California Health and Safety Code section 101080 allows a local health officer to declare a local health emergency in the health officer's jurisdiction, or any part thereof, "whenever the health officer reasonably determines that there is an imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, noncommunicable biologic agent, toxin, or radioactive agent." On March 1, 2020, Alameda County Interim Health Officer Erica Pan, MD, MPH, FAAP declared a local health emergency. Dr. Pan found that with "multiple cases of COVID-19 and evidence of community transmission in the region, there is an ongoing risk and likelihood of additional COVID-19 positive patients and community spread in the County of Alameda." Dr. Pan renewed this declaration of emergency on March 5, 2020.

The declaration of a local health emergency provides the following benefits: it allows other jurisdictions and state agencies to provide mutual aid; it allows the extraordinary costs of providing mutual aid to be a legal charge against the state; and it provides immunity to healthcare providers who render aid during the emergency. The declaration also provides the local Health Officer with the authority to exercise the full range of her power to protect the community's public health, which includes issuance and enforcement of orders for quarantine and isolation.

Under section 101080, your Board is required to ratify the Health Officer's declaration of emergency. Ordinarily, your Board would need to renew this ratification every thirty (30) days; however, on March 4, 2020, California Governor Gavin Newsom issued a Proclamation of a State of Emergency relating to the COVID-19 outbreak that included a waiver of the renewal requirement: "The 30-day time period in Health & Safety Code section 101080, within which a local governing authority must renew a local health emergency, is hereby waived for the duration of this statewide emergency. Any such local health emergency will remain in effect until each local governing authority terminates its respective local emergency." The Governor similarly waived the renewal requirement for a declaration of local emergency.

VISION 2026 GOAL

This Resolution meets the 10X goal pathway of **Healthcare for All** in support of our shared visions of **Safe and Livable Communities**, **Thriving and Resilient Population**, and **Healthy Environment**.

Sincerely,

DocuSigned by:

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Colleen Chawla, Director
Health Care Services Agency

RESOLUTION NUMBER R-2020- 91

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA RATIFYING THE DECLARATION OF LOCAL HEALTH EMERGENCY BY THE COUNTY HEALTH OFFICER RELATED TO THE 2019 NOVEL CORONAVIRUS

WHEREAS, California Health and Safety Code section 101080 authorizes a local health officer to declare a local health emergency in the health officer's jurisdiction, or any part thereof, whenever the health officer reasonably determines that there is an imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, non-communicable biological agent, toxin, or radioactive agent; and

WHEREAS, on March 1, 2020 and again on March 5, 2020, the County's Health Officer declared a local health emergency based on an imminent and proximate threat to public health from the introduction of a novel coronavirus (named COVID-19) in the County of Alameda; and

WHEREAS, under Health and Safety Code section 101080, the local health emergency shall not remain in effect for more than seven (7) days unless ratified by the Board of Supervisors; and

WHEREAS, the Board of Supervisors hereby finds that there continues to exist an imminent and proximate threat to public health from the introduction of COVID-19 in the County for reasons set forth in the declaration of local health emergency by the County's Health Officer, dated March 5, 2020;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Supervisors of the County of Alameda as follows:

Section 1 – The local health emergency declared by the County's Health Officer on March 5, 2020 is hereby ratified. Under authority granted by California Governor Gavin Newsom in a Proclamation of a State of Emergency issued on March 4, 2020, this declaration of local emergency shall remain in effect until the Board of Supervisors determines that the emergency condition no longer exists.

Section 2 – The Board of Supervisors hereby delegates to the County's Health Officer authority to terminate the local health emergency, pursuant to Health & Safety Code section 101080 "at the earliest possible date that conditions warrant the termination."


Section 3 – All County departments and agencies take those actions, measures, and steps deemed necessary to assure the health, safety, and welfare of County citizens and property, including requesting mutual aid to the extent such aid is necessary.

The foregoing Resolution was passed and adopted by the Board of Supervisors of the County of Alameda, State of California, at a regular meeting of the Board on the 10 day of March, 2020 by the following vote:

AYES: Supervisors Carson, Haggerty and President Valle - 3

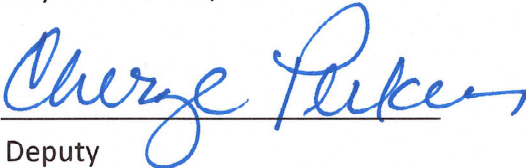
NOES: None

EXCUSED: Supervisors Chan and Miley - 2

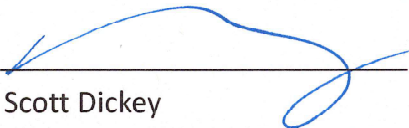


Richard Valle, President of the Board of Supervisors

ATTEST:
Clerk of the Board of Supervisors,
County of Alameda, State of California

By: 
Deputy

APPROVED AS TO FORM:
Donna R. Ziegler, County Counsel

By: 
K. Scott Dickey
Assistant County Counsel

DECLARATION OF A LOCAL HEALTH EMERGENCY

WHEREAS, Health and Safety Code section 101080 authorizes a local health officer to declare a local health emergency in the health officer's jurisdiction, or any part thereof, whenever the health officer reasonably determines that there is an imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, noncommunicable biologic agent, toxin, or radioactive agent;

WHEREAS, COVID-19 is a contagious, infectious, or communicable disease;

WHEREAS, the Secretary of the United States Department of Health and Human Services declared a public health emergency on January 31, 2020, for the United States;

WHEREAS, the Centers for Disease Control and Prevention announced on February 25, 2020, that community spread of COVID-19 is likely to occur in the United States;

WHEREAS, the first confirmed case of COVID-19 has now been identified in the County of Alameda;

WHEREAS, the Governor Gavin Newsom issued a Proclamation of a State of Emergency on March 4, 2020 for California;

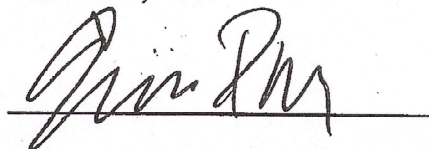
WHEREAS, based on the United States Department of Health and Human Services declaration and the Centers for Disease Control and Prevention statements, and multiple cases of COVID-19 and evidence of community transmission in the region, there is an ongoing risk and likelihood of additional COVID-19 positive patients and community spread in the County of Alameda;

WHEREAS, based on the foregoing, the Health Officer of Alameda County does hereby find that there is an imminent and proximate threat of the introduction and spread of COVID-19 in the County of Alameda and a threat to the public health of the residents of the County of Alameda;

THEREFORE, the County Health Officer hereby declares a renewal of a local health emergency originally declared on March 1st, 2020 throughout the County of Alameda;

IT IS SO DECLARED, on this date: March 5th, 2020.

BY:



Name: Dr. Erica Pan

Title: Interim Health Officer

Public Health Department, County of Alameda

DECLARATION OF A LOCAL HEALTH EMERGENCY

WHEREAS, Health and Safety Code section 101080 authorizes a local health officer to declare a local health emergency in the health officer's jurisdiction, or any part thereof, whenever the health officer reasonably determines that there is an imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, noncommunicable biologic agent, toxin, or radioactive agent;

WHEREAS, COVID-19 is a contagious, infectious, or communicable disease;

WHEREAS, the Secretary of the United States Department of Health and Human Services declared a public health emergency on January 31, 2020, for the United States;

WHEREAS, the Centers for Disease Control and Prevention announced on February 25, 2020, that community spread of COVID-19 is likely to occur in the United States;

WHEREAS, the first confirmed case of COVID-19 has now been identified in the County of Alameda;

WHEREAS, the Governor Gavin Newsom issued a Proclamation of a State of Emergency on March 4, 2020 for California;

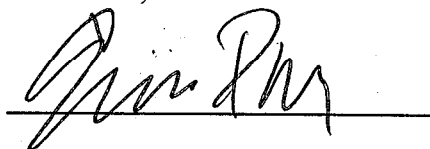
WHEREAS, based on the United States Department of Health and Human Services declaration and the Centers for Disease Control and Prevention statements, and multiple cases of COVID-19 and evidence of community transmission in the region, there is an ongoing risk and likelihood of additional COVID-19 positive patients and community spread in the County of Alameda;

WHEREAS, based on the foregoing, the Health Officer of Alameda County does hereby find that there is an imminent and proximate threat of the introduction and spread of COVID-19 in the County of Alameda and a threat to the public health of the residents of the County of Alameda;

THEREFORE, the County Health Officer hereby declares a renewal of a local health emergency originally declared on March 1st, 2020 throughout the County of Alameda;

IT IS SO DECLARED, on this date: March 5th, 2020.

BY:



Name: Dr. Erica Pan

Title: Interim Health Officer

Public Health Department, County of Alameda