



DATE: September 28, 2021

CATEGORY: Consent

DEPT.: City Attorney's Office,
City Manager's Office

TITLE: **AB 361 Resolution Adopting Findings to Continue Virtual Public Meetings During State of Emergency**

RECOMMENDATION

Adopt a Resolution of the City Council of the City of Mountain View Making Findings Pursuant to AB 361 to Continue Virtual Public Meetings for the City Council and City Boards, Commissions, and Committees During the COVID-19 State of Emergency, to be read in title only, further reading waived (Attachment 1 to the Council report).

BACKGROUND

In March 2020, a week after declaring a State of Emergency related to the COVID-19 pandemic, Governor Gavin Newsom issued Executive Order N-29-20, which authorized exemptions to teleconferencing rules in the Brown Act to facilitate virtual meetings while public health orders were in place. The City Council and the City's boards, commissions, and committees have conducted their meetings virtually, as authorized by the Executive Order, since March 17, 2020.

Executive Order N-08-21 extended the previous order until September 30, 2021. With the expiration of the Executive Order approaching, the Legislature formally amended the open meeting laws, including the Brown Act, to allow public meetings to continue to be held remotely during a declared state of emergency when certain conditions are met. On September 10, 2021, both houses of the Legislature voted to approve Assembly Bill (AB) 361 (Rivas), "Open Meetings: State and Local Agencies: Teleconferences." On September 16, 2021, the Governor signed AB 361, which took effect immediately as an urgency statute.

ANALYSIS

AB 361 Modifications to Brown Act Teleconferencing Rules During State of Emergency

The Brown Act provides that if a legislative body elects to use teleconferencing, then it must identify each teleconference location in the public notice and agenda and post agendas at all teleconference locations. All teleconference locations must be publicly accessible, and there must be an opportunity for public comment at each teleconference location. Additionally, a quorum of the members of the legislative body must participate from locations physically within the jurisdictional boundaries of the agency. These requirements were suspended by the Executive Order enacted during the COVID-19 pandemic to facilitate social distancing recommendations and orders and the remote work environment.

AB 361 allows for the teleconferencing exemptions to continue during a declared state of emergency as defined under the California Emergency Services Act if one of the following circumstances applies:

1. State or local officials have imposed or recommended measures to promote social distancing.
2. The legislative body is meeting to determine whether, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
3. The legislative body has determined that, as a result of the emergency, meeting in person presents imminent risks to the health or safety of attendees.

If at least one of those circumstances applies, then AB 361 provides an exemption from the Brown Act's existing requirements and establishes alternate measures to protect the public's rights to appear before local legislative bodies. Specifically, AB 361 exempts the agency from complying with the following requirements: ensuring that each teleconference location is physically accessible to the public; maintaining quorum with members physically within the jurisdiction; and providing an opportunity for public comment at each teleconference location.

When an agency holds a virtual or remote meeting because the emergency and public health and safety criteria are met, the agency must provide adequate notice of the meeting and post an agenda as otherwise required by the Brown Act; however, the agenda does not need to list each teleconference location or be physically posted at each teleconference

location. Also, where there is a disruption in the public broadcast of the call-in or internet-based meeting service, the legislative body must take no further action on agenda items until public access is restored.

Proposed Resolution

With the emergence of the Delta variant as the dominant COVID-19 variant, the Santa Clara County Public Health Officer reinstated an indoor masking requirement, and many workplaces that had contemplated a return to in-person operations have announced a further delay. The Delta variant is believed by medical experts to be twice as contagious as previous variants, and data has shown the variant has increased transmissibility even among some vaccinated people. Under these circumstances, while the declared State of Emergency remains in effect, Council may determine that meeting in person presents imminent risks to the health or safety of attendees and continue to meet remotely or virtually under the AB 361 teleconferencing exemption.

If Council adopts the proposed resolution, Council meetings and City board, commission, and committee meetings would continue to meet virtually without adhering to the regular teleconference rules for 30 days following the Council action. Every 30 days during the State of Emergency, to keep meeting under the teleconference exemptions, Council must make findings about the continued applicability of the required health and safety circumstances; specifically, Council would need to find that in reconsidering the circumstances of the State of Emergency that the emergency continues to directly impact the ability of members to safely meet in person or State or local officials continue to impose or recommend measures to propose social distancing. If Council cannot make these findings by a majority vote, then it will no longer be exempt from the physical public access, quorum, and public comment opportunity rules applied to teleconference meetings.

FISCAL IMPACT

There is no new fiscal impact involved with extending virtual public meetings for the 30 days following the Council action.

ALTERNATIVES

1. Decline to adopt the resolution and resume in-person meetings in compliance with all Brown Act teleconference requirements.
2. Provide other direction.

PUBLIC NOTICING

The Council's agenda is advertised on Channel 26, and the agenda and this report appear on the City's website.

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Attachment: 1. Resolution