

SAN MATEO



LOCAL AGENCY FORMATION COMMISSION

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November 10, 2021

To: LAFCo Commissioners

From: Martha Poyatos, Executive Officer
Rob Bartoli, Management Analyst

Subject: Resolution to make findings relating to remote meetings under the Brown Act

Summary

On June 11, 2021, Governor Newsom issued Executive Order N-08-21, which rescinded his prior Executive Order N-29-20 and which waived, through September 30, 2021, certain provisions of the Brown Act relating to teleconferences/remote meetings by local agency legislative bodies. The Executive Order waived, among other things, the provisions of the Brown Act that otherwise required the physical presence of members of local agency legislative bodies or other personnel in a particular location as a condition of participation or as a quorum for a public meeting. These waivers set forth in the Executive Order were to expire on October 1, 2021.

On September 16, 2021, the Governor signed Assembly Bill (AB) 361, a bill that codifies certain teleconference procedures that local agencies have adopted in response to the Governor's Brown Act-related Executive Orders. Specifically, AB 361 allows a local agency to continue to use teleconferencing under the same basic rules as provided in the Executive Orders under certain prescribed circumstances or when certain findings have been made and adopted by the local agency legislative body.

In order to continue to hold video and teleconference meetings, the Commission will need to review and make findings every 30 days or thereafter that the state of emergency continues to directly impact the ability of the members to meet safely in person and that state or local officials continue to impose or recommend measures to promote social distancing. If the Commission does continue to hold video and teleconference meetings, to meet the requirements of AB 361, the Commission will need to adopt a resolution at every meeting.

COMMISSIONERS: WARREN SLOCUM, CHAIR, COUNTY ▪ MIKE O'NEILL, VICE CHAIR, CITY ▪ HARVEY RARBACK, CITY ▪ DON HORSLEY, COUNTY
▪ JOSHUA COSGROVE, SPECIAL DISTRICT ▪ RIC LOHMAN, SPECIAL DISTRICT ▪ ANN DRAPER, PUBLIC

ALTERNATES: KATI MARTIN, SPECIAL DISTRICT ▪ DIANA REDDY, CITY ▪ JAMES O'NEILL, PUBLIC ▪ DAVE PINE, COUNTY

STAFF: MARTHA POYATOS, EXECUTIVE OFFICER ▪ TIM FOX, LEGAL COUNSEL ▪ ROB BARTOLI, MANAGEMENT ANALYST ▪ ANGELA MONTES, CLERK

The San Mateo County Board of Supervisors, along with other commissions, cities, and special districts in the County, has adopted a resolution to continue remote meetings and encouraged other legislative bodies to make similar findings. In the Board's findings, they noted that the Board chambers, which LAFCo also utilizes, is located in a County building that includes court rooms and County offices that are occupied by staff. If in person public meetings were to occur now, social distancing measures currently in place to maintain the safe occupancy of the building could be negatively impacted.

Recommended Commission Action by Resolution

Adopt a resolution finding that, as a result of the continuing COVID-19 pandemic state of emergency, meeting in person would present imminent risks to the health or safety of attendees.

Attachments

- A. Resolution finding that, as a result of the continuing COVID-19 pandemic state of emergency declared by Governor Newsom, meeting in person for meetings of the San Mateo Local Agency Formation Commission would present imminent risks to the health and safety of attendees.

RESOLUTION NO. _____

**RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION
OF THE COUNTY OF SAN MATEO
FINDING THAT, AS A RESULT OF THE CONTINUING COVID-19 PANDEMIC
STATE OF EMERGENCY DECLARED BY GOVERNOR NEWSOM,
MEETING IN PERSON FOR MEETINGS OF THE COMMISSION WOULD PRESENT IMMINENT RISKS TO THE
HEALTH OR SAFETY OF ATTENDEES**

RESOLVED, by the Local Agency Formation Commission of the County of San Mateo, State of California, that

WHEREAS, on March 4, 2020, the Governor proclaimed pursuant to his authority under the California Emergency Services Act, California Government Code section 8625, that a state of emergency exists with regard to a novel coronavirus (a disease now known as COVID-19); and

WHEREAS, on June 4, 2021, the Governor clarified that the “reopening” of California on June 15, 2021 did not include any change to the proclaimed state of emergency or the powers exercised thereunder, and as of the date of this Resolution, neither the Governor nor the Legislature have exercised their respective powers pursuant to California Government Code section 8629 to lift the state of emergency either by proclamation or by concurrent resolution in the state Legislature; and

WHEREAS, on March 17, 2020, Governor Newsom issued Executive Order N-29-20 that suspended the teleconferencing rules set forth in the California Open Meeting law, Government Code section 54950 et seq. (the “Brown Act”), provided certain requirements were met and followed; and

WHEREAS, on September 16, 2021, Governor Newsom signed AB 361 that provides that a legislative body subject to the Brown Act may continue to meet without fully complying with the teleconferencing rules in the Brown Act provided the legislative body determines that meeting in person would present imminent risks to the health or safety of attendees, and further requires that certain findings be made by the legislative body every thirty (30) days; and,

WHEREAS, California Department of Public Health (“CDPH”) and the federal Centers for Disease Control and Prevention (“CDC”) caution that the Delta variant of COVID-19, currently the dominant strain of COVID-19 in the country, is more transmissible than prior variants of the virus, may cause more severe illness, and that even fully vaccinated individuals can spread the virus to others resulting in rapid and alarming rates of COVID-19 cases and hospitalizations (<https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html>); and,

WHEREAS, the CDC has established a “Community Transmission” metric with 4 tiers designed to

reflect a community's COVID-19 case rate and percent positivity; and,

WHEREAS, the County of San Mateo currently has a Community Transmission metric of "substantial" which is the second most serious of the tiers; and,

WHEREAS, the Local Agency Formation Commission of the County of San Mateo has an important governmental interest in protecting the health, safety and welfare of those who participate in its meetings; and,

WHEREAS, in the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, the Commission deems it necessary to find that meeting in person would present imminent risks to the health or safety of attendees, and thus intends to invoke the provisions of AB 361 related to teleconferencing;

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that

1. The recitals set forth above are true and correct.
2. The Commission finds that meeting in person would present imminent risks to the health or safety of attendees.
3. Staff is directed to return at subsequent Commission meetings after the adoption of this resolution with an item for the Commission to consider making the findings required by AB 361 in order to continue meeting under its provisions.
4. Staff is directed to take such other necessary or appropriate actions to implement the intent and purposes of this resolution.

Regularly passed and adopted this ____ day of _____.

Ayes and in favor of said resolution:

Commissioners: _____

Noes and against said resolution:

Commissioners Absent and/or Abstentions:
 Commissioners: _____

 Chair
 Local Agency Formation Commission
 County of San Mateo
 State of California

ATTEST:

 Executive Officer
 Local Agency Formation Commission

Date: _____

I certify that this is a true and correct copy of the resolution above set forth.

Date: _____

 Clerk to the Commission
 Local Agency Formation Commission