



County of San Mateo

Inter-Departmental Correspondence

Department: COUNTY EXECUTIVE

File #: 22-236

Board Meeting Date: 4/5/2022

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors

From: Michael P. Callagy, County Executive

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

RECOMMENDATION:

Adopt a resolution finding that the COVID-19 pandemic state of emergency continues to present imminent risks to the health or safety of attendees and that it continues to directly impact the ability of members of the Board of Supervisors to meet safely in person.

BACKGROUND:

On June 11, 2021, Governor Newsom issued Executive Order N-08-21, 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 in a particular location as a condition of participation in, or to constitute a quorum for, a public meeting.

The waivers set forth in the Executive Order expired on October 1, 2021, and absent any further State action, local agency legislative bodies subject to the Brown Act would have been required to fully comply with the Brown Act's meeting requirements as they existed prior to March 2020, including the Brown Act's various restrictions and requirements related to teleconferences.

On September 16, 2021, the Governor signed into law Assembly Bill (AB) 361, a bill that came into effect immediately and that codifies certain of the 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 as long as there is a proclaimed state of emergency, in combination with either (1) local health official recommendations for social distancing or (2) findings adopted by majority vote of the local agency legislative body that meeting in person would present imminent risks to the health or safety of meeting attendees.

AB 361 also requires that, if the state of emergency lasts for more than 30 days, the local agency

legislative body must make findings every 30 days to continue using the bill's exemption to the otherwise-applicable Brown Act teleconferencing rules. Specifically, the legislative body must reconsider the circumstances of the state of emergency and find that the state of emergency continues to directly impact the ability of members of the local agency legislative body to meet safely in person.

As noted, local agency legislative bodies were required to return to in-person meetings on October 1, 2021, unless they chose to continue with fully teleconferenced meetings and made the findings prescribed by AB 361 related to the existing state of emergency. At its meeting of September 28, 2021, the Board of Supervisors unanimously adopted Resolution No. 078447, wherein the Board found, among other things, that as a result of the continuing COVID-19 state of emergency, meeting in person would present imminent risks to the health or safety of attendees.

Resolution No. 078447 also directed staff to bring an item to the Board within 30 days after adoption of that resolution to allow the Board to consider whether to make appropriate findings to continue meeting remotely pursuant to the provisions of AB 361.

At its meetings on October 19, 2021, November 16, 2021, December 14, 2021, January 11, 2022, February 8, 2022, and March 8, 2022 the Board unanimously adopted a resolution (Nos. 078482, 078550, 078609, 078653, 078701, and 078752 respectively) finding that the existing COVID-19 state of emergency continues to directly impact the ability of members of the Board to meet safely in person and that meeting in person would present imminent risks to the health or safety of meeting attendees.

DISCUSSION:

If the Board desires to continue meeting remotely pursuant to the provisions of AB 361, the Board must reconsider the circumstances of the state of emergency every thirty days. As described below, the circumstances, though improved, remain materially similar to those in existence on September 28, 2021 when the Board adopted Resolution No. 078447 first invoking the provisions of AB 361, as well as on October 19, 2021, November 16, 2021, December 14, 2021, January 11, 2022, February 8, 2022, and March 8, 2022 when the Board reconsidered the circumstances of the COVID-19 state of emergency.

As noted at those times, the County's high vaccination rate, successfully implemented local health measures, and best practices by the public have proven effective, *in combination*, at controlling the local spread of COVID-19.

The Centers for Disease Control and Prevention ("CDC") has advised that the Omicron variant, which was classified as a Variant of Concern in November 2021, spreads more easily than the original virus that causes COVID-19 and the Delta variant. The CDC expects that anyone with Omicron infection can spread the virus to others, even if they are vaccinated or do not have symptoms. The presence and severity of symptoms can be affected by COVID-19 vaccination status, the presence of other health conditions, age, and history of prior infection. While preliminary data suggest that Omicron may cause more mild disease than previous variants, some people may still have severe disease, need hospitalization, and could die from the infection. The CDC warns that, even if only a small percentage of people with Omicron infection need hospitalization, the large volume of cases could overwhelm local healthcare systems.

In addition, effective February 16, 2022, only unvaccinated persons are required to mask in most indoor settings. It is recommended, however, that fully vaccinated individuals continue to mask indoors when the risk of transmission may be high.

Thus, reducing the circumstances under which people come into close contact remains a vital component of the County's COVID-19 response strategy. While local agency public meetings are an essential government function, the last two years have proven that holding such meetings *in person* is often not essential.

The Board most recently found in Resolution No. 078752, and it remains the case, that public meetings pose high risks for COVID-19 spread for several reasons. These meetings may bring together people from throughout a geographic region, increasing the opportunity for COVID-19 transmission. Further, the open nature of public meetings makes it difficult to enforce compliance with vaccination, physical distancing, masking, cough and sneeze etiquette, or other safety measures, while some of the safety measures used by private businesses to control these risks may be less effective for public agencies.

Finally, as most recently found in Resolution No. 078752, the Board shares the Hall of Justice building with the Courts and other County offices and staff who perform essential government functions that cannot be conducted online. The social distancing measures currently in place to maintain the safe occupancy of the building could be undermined by periodically introducing many members of the public at the building's entrances and in its elevators, cafeteria and restrooms.

These factors combine to continue to directly impact the ability of members of the Board to meet safely in person and to make in-person public meetings imminently risky to health and safety.

Staff therefore recommends that the Board adopt findings to confirm that the Board has reconsidered the circumstances of the state of emergency caused by the spread of COVID-19; that the state of emergency caused by the spread of COVID-19 continues to directly impact the ability of members of the Board to meet safely in person; and that conducting in-person meetings at the present time would present an imminent risk to the health and safety of attendees.

A resolution to that effect and directing staff to return within 30 days to afford the Board the opportunity to reconsider such findings, is included herewith.

The proposed resolution also encourages other County legislative bodies to consider continuing to make similar findings and directs the County Manager to assist those legislative bodies in continuing to meet remotely.

The proposed resolution further directs staff to take measures to prepare for physical presence and in-chambers participation by members of the public as an available option for the April 19, 2022 meeting of the Board.

County Attorney has reviewed and approved the resolution as to form.

FISCAL IMPACT:

None.