



County of San Mateo

Inter-Departmental Correspondence

Department: COUNTY MANAGER

File #: 21-746

Board Meeting Date: 9/28/2021

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors
From: Michael P. Callagy, County Manager
Subject: Resolution to make findings relating to remote meetings under the Brown Act

RECOMMENDATION:

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.

BACKGROUND:

On June 11, 2021, Governor Newsom issued Executive Order N-08-21, which rescinded his prior Executive Order N-29-20 and which waived, through September 30, 2021, certain provisions of the Brown Act relating to teleconferences/remote meetings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.

If these waivers set forth in the Executive Order were to fully sunset on October 1, 2021, and absent any further State action, local agency legislative bodies subject to the Brown Act would be required to fully comply with the Brown Act's meeting requirements as they existed prior to March 2020, including the requirement that the public be afforded physical access to all teleconference locations from which board members were participating.

On September 16, 2021, the Governor signed Assembly Bill (AB) 361, a bill 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 under certain prescribed circumstances or when certain findings have been made and adopted by the local agency legislative body.

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 Brown Act teleconferencing rules. Specifically, the legislative body must find that there is a continuing need

for teleconferencing due to dangers posed by the ongoing state of emergency. This means that local agencies will have to put an item on the public meeting agenda at least every thirty days to make findings regarding the circumstances of the emergency and to vote to continue relying upon the law's teleconference provisions.

Under AB 361, local agency legislative bodies must return to in-person meetings on October 1, 2021, unless they choose to continue with fully teleconferenced meetings and make the prescribed findings related to the existing state of emergency. Specifically, AB 361 allows local agency legislative bodies to continue to conduct virtual meetings as long as there is a proclaimed state of emergency, in combination with (1) local health official recommendations for social distancing or (2) findings adopted by the local agency legislative body that meeting in person would present risks to health. AB 361 is effective immediately as urgency legislation and will sunset on January 1, 2024.

DISCUSSION:

The County's high vaccination rate, successfully implemented local health measures (such as indoor masking), and best practices by the public (such as voluntary social distancing) have proven effective, *in combination*, at controlling the local spread of COVID-19.

However, the California Department of Public Health and the federal Centers for Disease Control and Prevention have cautioned that the Delta variant of COVID-19, currently the dominant strain in the country, is more transmissible than prior variants of the virus, that it 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>).

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 18 months have proven that holding such meetings *in person* is often not essential.

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. Moreover, some of the safety measures used by private businesses to control these risks may be less effective for public agencies.

Finally, the Board of Supervisors 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 make in-person public meetings imminently risky to health and safety.

We therefore recommend that the Board adopt findings 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 each 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 making similar findings and directs the County Manager to assist those legislative bodies in continuing to meet remotely.

FISCAL IMPACT:

None