



County of San Mateo

Inter-Departmental Correspondence

Department: COUNTY EXECUTIVE

File #: 22-325

Board Meeting Date: 5/3/2022

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 of October 19, 2021, November 16, 2021, December 14, 2021, January 11, 2022, February 8, 2022, March 8, 2022, and April 5, 2022, the Board unanimously adopted resolutions (Nos. 078482, 078550, 078609, 078653, 078701, 078752, and 078803 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, March 8, 2022, and April 5, 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.

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. 078803, 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. 078803, 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 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.

Persons experiencing any potential symptoms of COVID-19, or who test positive but are asymptomatic, or who are exposed to someone with COVID-19, should follow medical advice regarding self-isolation or self-quarantine and avoiding public gatherings such as in-person meetings of the Board. Such persons should be able to do so without sacrificing their right to participate in public business during periods of self-isolation or self-quarantine. Accordingly, an option to attend the meeting remotely should continue to be provided, even if the majority of meeting participants can attend safely in the Board Chambers.

Moreover, because the onset of symptoms of COVID-19 or a positive test may occur too close to the start of a meeting for alternative arrangements for attendance to be made consistently with the Brown Act, providing a remote attendance option for Board meetings should be maintained for as long as COVID transmission remains a potential risk of in-person meetings. It is unwise to require a person experiencing potential COVID symptoms to feel that they must attend a Board meeting in-person in order to be heard on matters of public concern. **Providing an option of remote participation requires the adoption of AB 361 findings even if most of the attendees are capable of attending the meeting in-person, and do so.** The AB 361 resolution is drafted in such a way as to give attendees the *option* of participating remotely whenever it is advisable for them *as individuals* not to attend in-person due to their personal risk factors, symptom status, or test results, whenever these may arise - even if they arise hours or minutes before the meeting commences. In the absence of an AB 361 resolution, a meeting attendee who discovered too late that it was medically inadvisable for them to attend in-person would have to miss the meeting entirely, as simply calling into a meeting is impossible without an AB 361 resolution in place.

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, such that all attendees (Board members, staff, and the public) can make decisions about in-person attendance or remote attendance based on their personal circumstances and risk assessments.

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 Executive to assist those legislative bodies in providing remote meeting options whenever possible.

FISCAL IMPACT:

None.