



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

File #: 21-820, **Version:** 1

Consider adoption of a resolution pursuant to AB 361 to find that as a result of the continuing COVID-19 pandemic state of emergency declared by Governor Newsom, holding Board of Supervisors meetings in person would present imminent risks to the health or safety of attendees.

RECOMMENDATION:

It is recommended that the Board of Supervisors adopt a resolution pursuant to AB 361 to find that as a result of the continuing COVID-19 pandemic state of emergency declared by Governor Newsom, holding Board of Supervisors' meetings in person would present imminent risks to the health or safety of attendees.

SUMMARY:

On September 16, 2021, Governor Newsom signed AB 361. This legislation amends the Brown Act to allow meeting bodies subject to the Brown Act to meet via teleconference during a proclaimed state of emergency in accordance with teleconference procedures established by AB 361 rather than under the Brown Act's more narrow standard rules for participation in a meeting by teleconference. If the Board of Supervisors desires to continue to meet remotely via teleconference after September 30, 2021, the Board is required to adopt a resolution making the requisite findings under AB 361. The new law also requires the Board to reconsider that determination no later than 30 days after the first teleconference meeting held pursuant to AB 361 and every 30 days thereafter. Adoption of the proposed resolution, attached as Attachment A, will enable the Board to meet via teleconference in October and to reconsider the determination for subsequent meetings.

DISCUSSION:

On March 4, 2020, Governor Newsom issued a Proclamation of State of Emergency in response to the COVID-19 pandemic. That proclamation remains in effect. As a result of the state of emergency, the Governor issued executive orders that waived the normally strict provisions of the Brown Act relating to holding and participating in meetings via teleconferencing. Executive Order N-29-20 allowed bodies subject to the Brown Act to meet without a physical meeting location, so long as various requirements were met, including providing the public the opportunity to observe and participate in the meeting telephonically or electronically. Executive Order No. N-08-21 extended the suspension of the Brown Act's normal teleconferencing rules through September 30, 2021.

On September 16, the Governor signed AB 361, urgency legislation which took effect immediately. (Attachment B.) AB 361 amended Government Code section 54953 to address holding meetings subject to the Brown Act via teleconference during a declared state of emergency. The amended section 54953 takes the place of the provisions of the prior executive orders related to teleconferencing, except that Governor Newsom has subsequently clarified that requirements related to public meetings of local legislative bodies set forth in Executive Order N-08-21 would continue to govern through September 30, 2021, so long as notice of the public meeting is provided, and the public has the opportunity to observe and participate in the meeting as required by AB 361. AB 361 allows a board, commission or committee subject to the Brown Act, called "legislative bodies" under the Brown Act, to meet via teleconference without following the normal Brown Act teleconference rules if any of the following circumstances exist:

“ A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.
(B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees. [or]
(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.”
(Gov’t Code §54953(e)(1) [AB 361, p. 9].)

If the meeting is held via teleconference under these provisions, the meeting body must meet certain requirements under AB 361, including providing public access to the meeting and opportunity for the public to address the members of the legislative body.

AB 361 also requires periodic review of the determination to continue to meet via teleconference. If the state of emergency is still active, or if “state or local officials have imposed or recommended measures to promote social distancing,” then no later than 30 days after meeting via teleconference for the first time pursuant to AB 361, the body must make a finding that the body “has reconsidered the circumstances of the state of emergency” and further find that “[a]ny of the following circumstances exist: (i) The state of emergency continues to directly impact the ability of the members to meet safely in person. (ii) State or local officials continue to impose or recommend measures to promote social distancing.” (Gov’t Code §54953(e)(3) [AB 361, p. 11].)

Neither the State nor County Health Officers have currently required or recommended social distancing, therefore, based on these provisions of AB 361, County Counsel has prepared the attached resolution for the Board’s consideration. Adoption of the resolution will enable the Board to continue to meet remotely via teleconference at its meetings in October. Supervisors will continue to have the option of attending the Board meetings in person even though some may participate remotely. If the resolution is adopted, no later than 30 days after the Board first meets via teleconference pursuant to AB 361, the Board will be required to adopt the requisite findings to continue to meet remotely if the Board desired to so and conditions warranted making the required findings. Accordingly, staff would propose to return during October with a resolution for the Board to consider at that time.

This action would only apply to the Board of Supervisors’ meetings; all subsidiary committees and commissions subject to the Brown Act will be required to adopt similar findings.

OTHER AGENCY INVOLVEMENT:

The CAO concurs in the recommendation.

FINANCING:

The only financial impact is the continuing cost of teleconferencing.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

- Economic Development
- Administration
- Health & Human Services
- Infrastructure

X Public Safety

Prepared and Approved by:

Leslie J. Girard, County Counsel

Attachments: Draft Resolution
AB 361