



**Department:** Administration  
**Cost Center:** 1021  
**For Agenda of:** 10/5/2021  
**Placement:** Consent  
**Estimated Time:** N/A

**FROM:** Greg Hermann, Deputy City Manager  
**Prepared By:** Teresa Purrington, City Clerk and Megan Wilbanks, Deputy City Clerk

**SUBJECT:** AUTHORIZATION TO CONTINUE MEETING VIRTUALLY PURSUANT TO ASSEMBLY BILL 361

## RECOMMENDATION

Adopt a Resolution entitled, "A Resolution of the City Council of the City of San Luis Obispo, California, proclaiming the continued need to meet by teleconference pursuant to Government Code Section 54953(e)."

## DISCUSSION

On March 4, 2020, Governor Newsom declared a state of emergency due to the novel coronavirus COVID-19. That declaration is still in effect. Since March 12, 2020, Executive Orders from the Governor have relaxed various Brown Act meeting requirements relating to teleconferencing rules, temporarily suspending the Brown Act provisions requiring the physical presence of council, board and commission members at public meetings. The Governor's orders allow for virtual meetings while social distancing orders are in place so that state and local agencies can continue to provide services with a remote workforce and elected officials. The most recent extension of that authorization will expire September 30, 2021.

On Friday, September 17, 2021, the Governor signed AB 361 (Attachment A), which contained urgency findings, making the law effective immediately. AB 361 amends Government Code section 54953 to provide more clarity on the Brown Act's rules and restrictions surrounding the use of teleconferencing to conduct meetings. The newly enacted Government Code section 54953(e) creates alternate measures to protect the ability of the public to appear before local legislative bodies.

Prior to the Governor's emergency order, the Brown Act provided that if a legislative body elects to use teleconferencing, then it must identify each teleconference location in the public notice and agenda, and post agendas at all teleconference locations (Gov. Code § 54953(b)(3)). All teleconference locations must be publicly accessible and there must be an opportunity for public comment at each teleconference location. Additionally, a quorum of the members of the legislative body must participate from locations physically within the jurisdictional boundaries of the agency (Gov. Code § 54953(b)(3)). These requirements were suspended during the COVID-19 pandemic to facilitate physical

## Item 5c

distancing recommendations and orders, and the remote work environment that all employers faced (Exec. Order N-29-20 § 3; Exec. Order N-08-21 §42).

With the passage of AB 361, local agencies are allowed to continue to conduct virtual meetings during a declared state of emergency, provided local agencies comply with specified requirements. Absent this legislation, local agencies would return to Brown Act meeting requirements on October 1, 2021. For the first virtual public meeting of a legislative body on or after October 1, such a meeting is only allowed if it is during a state of emergency proclaimed by the Governor, and at least one of the following circumstances apply:

- State or local officials have imposed or recommended measures to promote social distancing.
- The legislative body is meeting to determine whether, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
- The legislative body has determined that, as a result of the emergency, meeting in person presents imminent risks to the health or safety of attendees (Gov. Code § 54953(e)(1)).

If any of the circumstances above apply, and an agency elects to hold virtual meetings, the agency must provide adequate notice of the meeting and post an agenda as otherwise required by the Brown Act; however, the agenda does not need to list each teleconference location or be physically posted at each teleconference location.

On August 31, 2021, the San Luis Obispo County Health Officer issued Order No. 6 (Attachment B) requiring face coverings in all public indoor settings. The Order noted, "... San Luis Obispo County is experiencing high levels of community transmission due to the Delta variant. While most COVID-19 cases are among unvaccinated residents, the proportion of breakthrough cases is increasing." The Order also references the State Occupational Safety and Health Administration (CalOSHA) regulations which, among other requirements, obligate an employer to provide training to employees on COVID-19 transmission and risk reduction, including "the fact that particles containing the virus can travel more than six feet, especially indoors, so social distancing, face coverings, increased ventilation indoors, and respiratory protection decrease the spread of COVID-19, but are most effective when used in combination." (CCR Section 3205(c)5(D).)

Adoption of the Draft Resolution (Attachment C) reaffirms the Public Health Officer Order and CalOSHA requirements as the basis for continuing to meet virtually. It should be noted that adoption of the Resolution does not prohibit the conduct of a traditional or hybrid meeting if the circumstances of the declared health emergency change. Additionally, as required by Gov. Code § 54953(e)(G)(3), the City Council must make these findings every 30 days for as long as the City is conducting virtual meetings. To meet this requirement, staff recommends placing a standing Consent Item on the first

Council Meeting of each month to reaffirm the need to continue meeting virtually as necessary.

In addition, AB 361 adds new procedures and clarifies the requirements for conducting remote meetings, including the following:

- **Public Comment Opportunities in Real Time:** A legislative body that meets remotely pursuant to AB 361 must allow members of the public to access the meeting via a call-in option or an internet-based service option, and the agenda for the remote meeting must provide an opportunity for members of the public to directly address the body in real time. A legislative body cannot require public comments to be submitted in advance of the meeting.
- **No Action During Disruptions:** In the event of a disruption that prevents the local agency from broadcasting the remote meeting, or in the event of a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, AB 361 prohibits the legislative body from taking any further action on items appearing on the meeting agenda until public access to the meeting via call-in or internet-based options is restored.
- **Periodic Findings:** As mentioned above, to continue meeting remotely pursuant to AB 361, a legislative body must make periodic findings concerning the declared emergency and its effects. AB 361 will sunset on January 1, 2024.

Though adopted in the context of the pandemic, AB 361 will allow for virtual meetings during other state or local proclaimed emergencies, such as earthquakes or wildfires, where physical attendance may present a risk.

### **Previous Council Action**

On July 6, 2021, Council approved a Resolution consolidating and aligning prior Council emergency actions with revised State Orders and continuing certain prior actions to support continued protections for public health, safety and welfare, as well as economic recovery.

### **Public Engagement**

This is an administrative item, so no outside public engagement was completed. Public comment can be provided to the City Council through written correspondence prior to the meeting and through public testimony at the meeting.

### **CONCURRENCE**

The City Manager and City Attorney both concur with staff's recommendation.

**ENVIRONMENTAL REVIEW**

The California Environmental Quality Act does not apply to the recommended action in this report, because the action does not constitute a “Project” under CEQA Guidelines sec. 15378.

**FISCAL IMPACT**

Budgeted: No  
 Funding Identified: No

Budget Year: 2021-22

**Fiscal Analysis:**

| Funding Sources | Total Budget Available | Current Funding Request | Remaining Balance | Annual Ongoing Cost |
|-----------------|------------------------|-------------------------|-------------------|---------------------|
| General Fund    | N/A                    | \$                      | \$                | \$                  |
| State           |                        |                         |                   |                     |
| Federal         |                        |                         |                   |                     |
| Fees            |                        |                         |                   |                     |
| Other:          |                        |                         |                   |                     |
| <b>Total</b>    | <b>N/A</b>             | <b>\$</b>               | <b>\$</b>         | <b>\$</b>           |

There is no immediate fiscal impact.

There has been some previous discussion regarding conducting "hybrid" meetings. It should be noted that it is anticipated there would be a significant fiscal impact associated with conducting "hybrid" public meetings, as such an approach would require additional IT technology resources and additional staffing at meetings.

**ALTERNATIVES**

***Council could choose not to adopt the Resolution.*** Staff does not recommend this action because doing so would put the city out of alignment with County Public Health Order No. 6 and would require that meetings be conducted according to the unamended requirements of the Brown Act.

**ATTACHMENTS**

- A – Assembly Bill No. 361
- B – SLO County Public Health Order No. 6
- C – Draft Resolution proclaiming the continued need to meet by teleconference