

**MEMORANDUM
LOCAL AGENCY FORMATION COMMISSION**

TO: Local Agency Formation Commission

FROM: Stephen Lucas, Executive Officer

SUBJECT: **Agenda Item 2.3 – Renewal of Resolution in Support of Assembly Bill 361**

DATE: October 28, 2021 for the meeting of November 4, 2021

SUMMARY

Pursuant to Assembly Bill 361 (AB361), the Commission adopted Resolution No. 4 2021/22 allowing it to continue to conduct its meetings remotely finding that a Gubernatorial State of Emergency exists and the Commission determined, by majority vote, that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees, Commissioners or staff. This resolution expires on November 5 and the Commission must renew the resolution every 30 days to allow remote meeting option.

Primary Differences

The primary differences between the Governor’s prior executive orders modifying Brown Act requirements and AB361 are:

- Local agency must allow the public to participate (listen/comment) in the meeting in real time. This means local agencies must clearly advertise the means by which members of the public can observe a public meeting or offer comment during a meeting remotely, via either a call-in or internet-based option. ***LAFCo meetings have consistently met this standard by allowing the public to view and comment on agenda items in real time via the Zoom meeting platform.***
- An individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body that requires registration to log in to a teleconference, may be required to register as required by the third-party internet website or online platform to participate. ***LAFCo meetings have consistently met this standard, although we have requested participants to voluntarily identify themselves for the record and ease of communication.***

At this time, the Governor’s Proclamation of a State of Emergency-COVID executed on March 4, 2020, remains in effect. Additionally, the Governor’s State of Emergency-Dixie Fire executed on July 23, 2021, remains in effect. Furthermore, the State Department of Public Health [website](#) *“recommends universal mask use for indoor public settings, regardless of vaccination status.”*

To provide the Commission with the greatest flexibility to conduct its business in a safe manner, Staff is recommending the Commission adopt a resolution finding that the COVID 19 pandemic state of emergency remains in effect allowing Commission meetings to be conducted remotely.

Background

The Governor's existing Executive Orders (N-25-20, N-29-20, N-35-20) allowing for modifications to the Brown Act to address COVID pandemic concerns terminated on September 30, 2021. These modifications allowed local agencies to conduct remote meetings with minimal restrictions. In response to the continued pandemic health and safety concerns, as well as other potential emergencies such as fires, earthquakes or floods, Assembly Bill 361 (AB361) was signed by the Governor effective October 1, 2021, and allows for local agencies, under specified circumstances, to continue utilizing remote meetings under Brown Act modifications as previously done, provided they adopt a resolution declaring such. The current process can be distilled as follows:

1. An emergency situation arises. The specific nature of the emergency produces an imminent risk to public health and safety (pandemic, fire, floods, earthquakes, etc.)
2. A state of emergency is declared by the Governor (pursuant to §8625) or state/local officials continue to impose or recommend measures to promote social distancing.
3. A local agency wishes to meet remotely via teleconferencing as a result of the emergency. A meeting notice/agenda are produced and posted, with an agenda item dedicated to consideration of a resolution to transition to teleconferenced meetings.
4. A resolution is passed by majority vote determining that meeting in person would present imminent risks to the health or safety of attendees. This resolution is valid for 30 days.
5. 30 days later, if the state of emergency remains active, a local agency may act to *renew* its resolution effecting the transition to teleconferenced meetings by passing another resolution which includes findings that legislative body has both: 1) reconsidered the circumstances of the state of emergency, and 2) the state of emergency continues to directly impact the ability of the members or the public to meet safely in person.

Background – the Governor's Executive Orders:

Starting in March 2020, amid rising concern surrounding the spread of COVID-19 throughout communities in the state, California Governor Gavin Newsom issued a series of Executive Orders aimed at containing the Novel Coronavirus. These Executive Orders (N-25-20, N-29-20, N-35-20) collectively modified certain requirements created by the Ralph M. Brown Act ("the Brown Act"), the state's local agency public meetings law. The orders waived several requirements, including requirements in the Brown Act expressly or impliedly requiring the physical presence of members of the legislative body, the clerk or other personnel of the body, or of the public as a condition of participation in or for the purpose of establishing a quorum for a public meeting. Furthermore, the orders:

- waived the requirement that local agencies provide notice of each teleconference location from which a member of the legislative body will be participating in a public meeting (RETAINED in AB361),
- waived the requirement that each teleconference location be accessible to the public (RETAINED in AB361),
- waived the requirement that members of the public be able to address the legislative body at each teleconference location (NOW REQUIRED by AB361),
- waived the requirement that local agencies post agendas at all teleconference locations, (RETAINED in AB361) and,
- waived the requirement that at least a quorum of the members of the local body participate from locations within the boundaries of the territory over which the local body exercises jurisdiction. (RETAINED in AB361).

The Brown Act Executive Orders Sunset – September 30, 2021

On June 11, 2021, the Governor issued Executive Order N-08-21 which rescinds the aforementioned modifications made to the Brown Act, effective September 30, 2021. After that date, local agencies must adopt a resolution pursuant to AB361 to continue to conduct remote meetings with modified Brown Act requirements or they are required to observe all the usual Brown Act requirements as they existed prior to the issuance of the orders.

NEW AB 361 – Flexibility for Remote Open Meetings During a Proclaimed State Emergency

Assembly Bill 361 provides local agencies with the ability to continue to meet remotely under modified Brown Act requirements during proclaimed state emergencies with the adoption of resolution finding that either:

- 1) Open physical meetings present imminent risks to the health or safety of attendees; or
- 2) State/local officials recommend/require measures to promote social distancing.

These criteria permit a local agency to schedule a remote meeting to determine whether meeting in-person during the state of emergency would pose imminent risk to the health or safety of attendees. At that remote meeting, a local agency may determine by majority vote that sufficient risks exist to the health or safety of attendees as a result of the emergency and pass a resolution to that effect. These criteria also permit a local agency to meet remotely in the event that there is a state of emergency declaration while state or local officials have recommended or required measures to promote social distancing.

Renewal

AB 361 requires that the renewal of the resolution effecting the transition to the modified Brown Act requirements must be based on findings that the state of emergency declaration remains active, the local agency has thoughtfully reconsidered the circumstances of the state of emergency, and the local agency has either identified A) ongoing, direct impacts to the ability to meet safely in-person or B) active social distancing measures as directed by relevant state or local officials.

Action Requested: Consider Staff Memorandum and Approve Resolution No. 5 2021/22

Attachment: 1. Governor's Order N-15-21
2. Draft Resolution No. 5 2021/22

Sincerely,

Steve Lucas

Stephen Lucas
Executive Officer

cc: LAFCO

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

EXECUTIVE ORDER N-15-21

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS on June 11, 2021, I issued Executive Order N-08-21 to roll back certain provisions of my COVID-19-related Executive Orders and to clarify that other provisions remained necessary to help California respond to, recover from, and mitigate the impacts of the COVID-19 pandemic; and

WHEREAS Paragraph 42 of Executive Order N-08-21 waived and set forth certain requirements related to public meetings of local legislative and state bodies, and specified that it would be valid through September 30; and

WHEREAS on September 16, 2021, I signed into law Assembly Bill 361 (AB 361), which pertains to the same subject matter as Paragraph 42 of Executive Order N-08-21, which took effect immediately pursuant to an urgency clause, and which may, in some instances, have different substantive provisions than the provisions contained in Paragraph 42 of Executive Order N-08-21; and

WHEREAS it is necessary to provide clarity around the applicable procedures governing meetings of local legislative and state bodies until Paragraph 42 of Executive Order N-08-21 expires to further mitigate the impacts of the COVID-19 pandemic as the state continues to reopen and to ensure that critical governmental functions are not interrupted.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, do hereby issue the following Order to become effective immediately:


IT IS HEREBY ORDERED THAT:

1. The provisions governing teleconference meetings in Education Code section 89305.6, Government Code section 11133, and subdivision (e) of Government Code section 54953 are suspended through September 30, 2021, except that any local legislative body that meets to take a majority vote pursuant to subparagraph (B) of paragraph (1) of subdivision (e) of Government Code section 54953 shall conduct the meeting at which such vote is taken as required by paragraph (2) of subdivision (e) of Government Code section 54953. Except as otherwise specified in this paragraph, the requirements related to public meetings of local legislative and state bodies specified in Paragraph 42 of Executive Order N-08-21 shall continue to govern such meetings through September 30, 2021.
2. This Order shall expire at 11:59 p.m. on October 1, 2021.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 20th day of September 2021.



GAVIN NEWSOM
Governor of California

ATTEST:

SHIRLEY N. WEBER, Ph.D.
Secretary of State

DRAFT

**A RESOLUTION OF THE BUTTE LOCAL AGENCY FORMATION COMMISSION
RE-RATIFYING THE PROCLAMATION OF A STATE OF EMERGENCY BY GOVERNOR NEWSOM
ON MARCH 4, 2020 TO ADDRESS THE COVID 19 PANDEMIC, AND RENEWING THE
AUTHORIZATION, PURSUANT TO AB361, TO CONDUCT REMOTE TELECONFERENCE MEETINGS
OF THE BUTTE LOCAL AGENCY FORMATION COMMISSION FOR THE PERIOD FROM NOVEMBER
6, 2021 TO DECEMBER 5, 2021 PURSUANT TO BROWN ACT PROVISIONS.**

WHEREAS, the Butte Local Agency Formation Commission is committed to preserving and nurturing public access and participation in meetings of the Commission; and

WHEREAS, all meetings of the Butte Local Agency Formation Commission are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963), so that any member of the public may attend, participate, and watch the District’s legislative bodies conduct their business; and

WHEREAS, the Brown Act, Government Code section 54953(e), makes provisions for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

WHEREAS, a required condition is that a state of emergency is declared by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558; and

WHEREAS, a proclamation is made when there is an actual incident, threat of disaster, or extreme peril to the safety of persons and property within the jurisdictions that are within the District’s boundaries, caused by natural, technological, or human-caused disasters; and

WHEREAS, it is further required that state or local officials have imposed or recommended measures to promote social distancing, or, the legislative body meeting in person would present imminent risks to the health and safety of attendees, Commissioners and staff; and

WHEREAS, the Commission previously adopted a Resolution No. 4 2021/22 on September 30, 2021, finding that the requisite conditions existed for the Commission to conduct remote teleconference meetings without compliance with paragraph (3) of subdivision (b) of section 54953; and

WHEREAS, as a condition of extending the use of the provisions found in section 54953(e), the Commission must reconsider the circumstances of the state of emergency that exists with the jurisdiction of the Commission and has done so; and

WHEREAS, such conditions continue to exist in the County of Butte, specifically, the State of Emergency proclaimed by Governor Newsom on March 4, 2020, due to the COVID 19 Pandemic; and

WHEREAS, the California Department of Public Health and the Butte County Public Health Department continues to recommend requiring face coverings in all public indoor settings attributable to the rise in SARS-CoV-2 Delta Variant and the Commission cannot be certain that all persons in attendance at meetings will follow the guidelines or be fully vaccinated; and

WHEREAS, the California Division of Occupational Safety and Health (“Cal/OSHA”) regulations at Title 8 Section 3205 recommends physical distancing in the workplace as precautions against the spread of COVID-19 and imposes certain restrictions and requirements due to a “close contact” which occurs when individuals are within six feet of another in certain circumstances; and

WHEREAS, the Commission does hereby find that the rise in SARS-CoV-2 Delta Variant has caused, and will continue to cause, conditions of peril to the safety of persons within the District that are likely to be beyond the control of the Commission or its staff, and desires to proclaim a local emergency exists and ratify the proclamation of state of emergency by the Governor of the State of California and the regulations of Cal/OSHA recommending physical distancing; and

WHEREAS, as a consequence of the local emergency, the Commission does hereby find that the legislative body of the Butte Local Agency Formation Commission shall continue to conduct their meetings without compliance with paragraph (3) of subdivision (b) of Government Code section 54953, as authorized by subdivision (e) of section 54953, and that such legislative bodies shall comply with the requirements to provide the public with access to meetings as prescribed in paragraph (2) of subdivision (e) of section 54953; and

WHEREAS, the Commission provides a written agenda that fully describes the process for the public to fully participate in the Commission's virtual meetings to include viewing, listening and commenting in real time in all agenda items.

NOW, THEREFORE, THE BUTTE LOCAL AGENCY FORMATION COMMISSION DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. Proclamation of Local Emergency. The Board hereby proclaims that a local emergency now exists throughout the Commission's jurisdictional boundaries, and the rise in SARS-CoV-2 Delta Variant has caused, and will continue to cause, conditions of peril to the safety of all persons participating in the Commission's meetings that are likely to be beyond the control of the Commission or its staff, equipment, and facilities of the Commission.

Section 3. Ratification of Governor's Proclamation of a State of Emergency. The Commission hereby ratifies the Governor of the State of California's Proclamation of State of Emergency for COVID 19, effective as of its issuance date of March 4, 2020.

Section 4. Remote Teleconference Meetings. The Executive Officer and the Butte Local Agency Formation Commission are hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution including, conducting open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.

Section 5. Effective Date of Resolution. This Resolution shall take effect on November 6, 2021 and shall be effective until the earlier of December 5, 2021, or such time the Commission adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the legislative body of the Butte Local Agency Formation Commission may continue to teleconference without compliance with paragraph (3) of subdivision (b) of section 54953.

PASSED AND ADOPTED by the Butte Local Agency Formation Commission this 4th day of November, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINS:

Clerk of the Commission

CARL LEVERENZ, Chair
Butte Local Agency Formation Commission