



County of San Mateo

Inter-Departmental Correspondence

Date: January 31, 2022
To: San Mateo County Treasury Oversight Committee
From: Sandie Arnott, Treasurer-Tax Collector
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On June 11, 2021, Governor Newsom issued Executive Order N-08-21, which rescinded his prior Executive Order N-29-20 and which waived, through September 30, 2021, certain provisions of the Brown Act relating to teleconferences/remote meetings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.

These factors combine to make in-person public meetings imminently risky to health and safety. We therefore recommend that the Treasury Oversight Committee adopt findings that conducting in-person meetings at the present time would present an imminent risk to the health and safety of attendees.

RESOLUTION NO. _____

TREASURY OVERSIGHT COMMITTEE, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

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RESOLUTION FINDING THAT, AS A RESULT OF THE CONTINUING COVID-19 PANDEMIC STATE OF EMERGENCY, MEETING IN PERSON WOULD PRESENT IMMEDIATE RISKS TO THE HEALTH OR SAFETY OF ATTENDEES

RESOLVED, by the Treasury Oversight Committee of the County of San Mateo, State of California, that

WHEREAS, on March 4, 2020, pursuant to section 8550, *et seq.*, of the California Government Code, Governor Newsom proclaimed a state of emergency related to the COVID-19 novel coronavirus and, subsequently, the San Mateo County Board of Supervisors declared a local emergency related to COVID-19, and the proclamation by the Governor and declaration by the Board remain in effect; and

WHEREAS, on March 17, 2020, Governor Newsom issued Executive Order N-29-20, which suspended certain provisions in the California Open Meeting Law, codified at Government Code section 54950, *et seq.* (the "Brown Act"), related to teleconferencing by local agency legislative bodies, provided that certain requirements were met and followed; and

WHEREAS, on June 11, 2021, the Governor issued Executive Order N-08-21, which extended certain provisions of Executive Order N-29-20 that waive otherwise-applicable Brown Act requirements related to remote/teleconference meetings by local agency legislative bodies through September 30, 2021; and

WHEREAS, on September 16, 2021, Governor Newsom signed AB 361, which provides that a local agency legislative body may continue to meet remotely without complying with otherwise-applicable requirements in the Brown Act related to remote/teleconference meetings by local agency legislative bodies, provided that a state of emergency has been declared and the legislative body determines that meeting in person would present imminent risks to the health or safety of attendees, and provided that the legislative body makes such finding at least every thirty days during the term of the declared state of emergency; and

WHEREAS, this Committee concludes that there is a continuing threat of COVID-19 to the community, and that Committee meetings have characteristics that give rise to risks to health and safety of meeting participants; and

WHEREAS, California Department of Public Health and the federal Centers for Disease Control and Prevention caution that the Delta variant of COVID-19, currently the dominant strain of COVID-19 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>); and

WHEREAS, the County has an important interest in protecting the health and safety of those who participate in meetings of this Committee and of the County's various other legislative bodies; and

WHEREAS, this Committee and several other County legislative bodies typically meet in-person in public building where other essential governmental functions take place, such that increasing the number of people present in those buildings may impair the safety of the occupants; and

WHEREAS, the COVID-19 pandemic has informed County agencies about the unique advantages of online public meetings, which are substantial, as well as the unique challenges, which are frequently surmountable; and

WHEREAS, in the interest of public health and safety, as affected by the state of emergency caused by the spread of COVID-19, the San Mateo County Treasury Oversight Committee finds that meeting in person would present imminent risks to the health or safety of attendees, and the Committee will therefore invoke the provisions of AB 361 related to teleconferencing for meetings of the Treasury Oversight Committee.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that

1. The recitals set forth above are true and correct.
2. The Treasury Oversight Committee finds that meeting in person would present imminent risks to the health or safety of meeting attendees. Our meetings will continue to occur exclusively by teleconferencing technology, and we will provide an opportunity for members of the public to address this Committee by publishing the agenda so that it is accessible by the public.
3. The Treasury Oversight Committee will place a resolution similar to this resolution on the agenda of a future meeting of the Treasury Oversight Committee.

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Regularly passed and adopted on this 31st day of January, 2022

AYES and in favor of said resolution

Treasury Oversight Committee Members: Daneca Halvorson

Sandie Arnott

Kevin Bultema

Helen Fisicaro

Connie Mobley-Ritter

Virginia Chang-Kiraly

NOES and against said resolution

Treasury Oversight Committee Members: None



Chair, San Mateo County Treasury Oversight Committee