

Orange Countywide Oversight Board

Date: 2/23/2022

Agenda Item No. 3

From: Staff to the Orange Countywide Oversight Board

Subject: Resolution of the Countywide Oversight Board Approving Teleconference Meetings During a Proclaimed State of Emergency

Recommended Action:

Approve resolution for continuing teleconference meetings during a proclaimed state of emergency.

On September 16, 2021, Governor Gavin Newsom signed Assembly Bill 361 (“AB 361”) into law, amending the Ralph M. Brown Act (Gov. Code, § 54950 et seq.) (the “Brown Act”). AB 361 codified certain modified requirements for teleconference meetings held by public agencies, similar to those previously authorized and extended by executive order during the COVID-19 State of Emergency.

AB 361 was introduced to provide a longer-term solution for teleconference meetings during states of emergency, effective until January 1, 2024. AB 361 amends Section 54953 of the Government Code to allow the legislative body of a local agency to meet remotely without complying with the normal teleconference rules for agenda posting, physical location access, or quorum rules. To do so, one of three scenarios must exist, all of which require that the Governor has proclaimed a State of Emergency pursuant to Government Code section 8625:

- A. State or local officials have imposed or recommended measures to promote social distancing;
- B. The agency is holding a meeting for the purpose of determining whether meeting in person would present imminent risks to the health or safety of attendees; or
- C. The agency is holding a meeting and has determined that meeting in person would present imminent risks to the health or safety of attendees.

(Gov. Code, § 54953(e)(1).)

An agency and any committee that is required to comply with the Brown Act, that holds a meeting under either of the three scenarios must continue to post its agenda in the time required by the Brown Act and ensure that the public is able to address the board directly through teleconference means. (Gov. Code, § 54953(e)(2)). If a disruption prevents the agency or committee from broadcasting the meeting or receiving public comments in real time, the agency or committee cannot take further action until those functions are restored; any actions taken during such a disruption are subject to legal challenge. (Gov. Code, § 54953(e)(2)).

Assuming the State of Emergency remains in effect, if the Countywide Oversight Board for the County of Orange (the “Oversight Board”) wishes to continue meeting under the modified rules, then the Oversight Board must adopt an initial resolution within 30 days of the first teleconference meeting, and then must adopt an extension resolution at least every 30 days thereafter. (Gov. Code, § 54953(e)(3)). The resolution must contain findings stating the Oversight Board reconsidered the circumstances of the State of Emergency and either: (1) the State of Emergency continues to directly impact the ability of the Oversight Board’s members to meet safely in person; or (2) State or local officials continue to impose or recommend measures to promote social distancing. (Gov. Code, § 54953(e)(3)).

Where consecutive regular meetings fall outside the 30-day time frame, the Oversight Board should hold a special “AB 361” remote meeting within the 30-day window simply to re-authorize the AB 361 exceptions.

Without the AB 361 exceptions, the Oversight Board will be required to return to normal in-person meetings or provide public access at each remote location under the traditional teleconference rules, as of October 1,

2021. Therefore, if the AB 361 authorization lapses and the Oversight Board wishes to hold a teleconference meeting, it will be required to post agendas and provide public access at each remote location, identify those locations in the agenda, and maintain a quorum of the board within agency boundaries. If a meeting is not held in conformity with AB 361, board members may not teleconference from their residences or other locations which are not open and accessible to the public.

The Board approved a resolution at its January 25, 2022, meeting to authorize teleconference meetings pursuant to AB 361, and that resolution will expire on February 24, 2022. By approving this resolution today, the Board will be renewing teleconference meeting authorization through March 25, 2022.

Impact on Taxing Entities

None.

Attachment

Resolution

RESOLUTION OF THE ORANGE COUNTYWIDE OVERSIGHT BOARD
RESOLUTION NO. _____

RECOGNIZING A STATE OF EMERGENCY AND
AUTHORIZING TELECONFERENCED MEETINGS PURSUANT TO AB 361

WHEREAS, in response to the novel coronavirus (“COVID-19”) pandemic, Governor Newsom adopted a series of Executive Orders allowing the legislative bodies of local governments to meet remotely via teleconference, so long as other provisions of the Ralph M. Brown Act (“Brown Act”) were followed; and

WHEREAS, on September 16, 2021, Governor Newsom signed AB 361, which immediately amended the Brown Act allowing governing boards to continue holding virtual meetings outside the teleconferencing requirements of Government Code section 54953(b), if the board makes a finding that there is a proclaimed State of Emergency, and either (1) state or local officials have imposed or recommended social distancing measures, or (2) meeting in person would present imminent risks to the health or safety of attendees due to the emergency; and

WHEREAS, on March 4, 2020, Governor Newsom declared a statewide emergency arising from COVID-19 pursuant to Government Code section 8625; and

WHEREAS, the Countywide Oversight Board within the County of Orange (“Oversight Board”) believes the spread of COVID-19 poses an imminent risk to the health and safety of in person meeting attendees; and

WHEREAS, the Oversight Board is committed to open and transparent governance in compliance with the Brown Act; and

WHEREAS, the Oversight Board is conducting virtual meetings by way of telephonic and/or internet-based services as to allow members of the public to fully participate in meetings and offer public comment; and

WHEREAS, the Oversight Board adopted Resolution No. 22-008, authorizing teleconferenced meetings pursuant to AB 361; and

WHEREAS, the authorization for teleconference meetings in Resolution No. 22-008 expires on February 24, 2022, pursuant to AB 361;

NOW, THEREFORE, BE IT RESOLVED BY THE ORANGE COUNTYWIDE OVERSIGHT BOARD that the recitals set forth above are true and correct and fully incorporated into this Resolution by this reference; and

BE IT FURTHER RESOLVED that the Oversight Board recognizes that a State of Emergency in the State of California continues to exist due to the COVID-19 pandemic; and

BE IT FURTHER RESOLVED that the governing board recognizes that social distancing measures remain recommended by state and local officials; and

BE IT FURTHER RESOLVED that the governing board finds that holding in-person meetings would present imminent risks to the health or safety of attendees due to the cause of the State of Emergency and that the cause of the State of Emergency directly impacts the ability of the Oversight Board to meet safely in person; and

BE IT FURTHER RESOLVED, the Oversight Board continues to authorize the use of teleconferencing for all meetings in accordance with Government Code section 54953(e) and all other applicable provisions of the Brown Act, for a period of 30 days from the date of the adoption of this resolution, or such time that the Oversight Board adopts a subsequent resolution in accordance with Government Code section 54953(e)(3).