



Legislation Text

File #: 2023-0048, Version: 1

Report to Mayor and City Council

Tuesday, February 07, 2023

Consent

SUBJECT:

CONSIDER ADOPTING A RESOLUTION RE-AUTHORIZING THE MEETINGS OF THE LEGISLATIVE BODIES OF THE CITY TO BE CONDUCTED VIA REMOTE TELECONFERENCING IN ACCORDANCE WITH GOVERNMENT CODE SECTION 54953(E) FOR A CONTINUED 30-DAY PERIOD (CITY COUNCIL, SUCCESSOR AGENCY, HOUSING AUTHORITY)

I. SUMMARY

A number of laws have changed since the beginning of the COVID-19 pandemic related to the Brown Act and teleconferenced public meetings, first from Governor Newsom's Executive Orders and more recently from the enactment of AB 361, which took effect October 1, 2021, upon expiration of the Executive Orders.

AB 361 allows local government agencies to continue to hold remote teleconferenced meetings following expiration of the Executive Orders by complying with the alternative noticing and public participation requirements laid out in AB 361 (and codified in Gov't Code Section 54953(e)) instead of the onerous traditional Brown Act requirements on teleconferencing under Gov't Code Section 54953(b)(3), provided certain conditions are met related to the state of emergency.

As of October 1, 2021, local government agencies were obligated to either: (i) invoke AB 361 and adhere to its alternative requirements for teleconferenced meetings; or (ii) revert to traditional Brown Act compliance.

On October 5, 2021, the City Council, Successor Agency Board and Housing Authority Board invoked AB 361 by adopting joint Resolution No. 21-132, making an initial determination that the requisite conditions existed for these legislative bodies and their commissions, boards and committees that are subject to the Brown Act to conduct remote teleconference meetings under AB 361 rules. They have since conducted their meetings accordingly.

However, AB 361 provides that in order for a legislative body to continue to hold remote meetings in this manner, either the Governor's proclaimed state of emergency must remain

in effect OR state or local officials must have imposed or recommended measures to promote social distancing, and the legislative body must, every 30 days, make the following findings by majority vote:

- A. the legislative body has reconsidered the circumstances of the state of emergency; and
- B. any of the following circumstances exist:
 - i. the state of emergency continues to directly impact the ability of the members to meet safely in person; or
 - ii. state or local officials continue to impose or recommend measures to promote social distancing.

The proposed resolution, if adopted by majority vote, would authorize continued teleconferenced meetings under AB 361 rules for an additional 30-day period commencing from adoption of the resolution, based on findings of reconsideration of the state of emergency, which remains in effect, and that state and local officials continue to impose or recommend measures to promote social distancing.

II. RECOMMENDATION

ADOPT Resolution No. 23-033, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, THE CARSON HOUSING AUTHORITY BOARD, AND THE CARSON SUCCESSOR AGENCY BOARD, MAKING FINDINGS RELATED TO THE CONTINUED EXISTENCE OF A STATE OF EMERGENCY DUE TO COVID-19 AND RE-AUTHORIZING THE MEETINGS OF THE LEGISLATIVE BODIES OF THE CITY OF CARSON, CARSON SUCCESSOR AGENCY AND CARSON HOUSING AUTHORITY TO BE CONDUCTED VIA REMOTE TELECONFERENCING IN ACCORDANCE WITH GOVERNMENT CODE SECTION 54953(e) FOR A CONTINUED 30-DAY PERIOD." (Exhibit No. 1)"

III. ALTERNATIVES

DO NOT adopt the proposed resolution. However, in that event, the legislative bodies and their commissions, boards and committees that are subject to the Brown Act will need to revert to traditional Brown Act compliance effective February 16, 2023, unless another subsequent resolution is adopted by that time.

IV. BACKGROUND

On March 4, 2020, Governor Newsom proclaimed a State of Emergency in California related to the COVID-19 pandemic. He then issued Executive Order N-25-20 to facilitate the ability of legislative bodies to meet using remote/virtual platforms to comply with health

orders. Since then, several other Executive Orders were issued that further modified the requirements related to the conduct of teleconferenced meetings and the right of public participation therein during the state of emergency. The Executive Orders collectively operated to remove certain onerous requirements that previously applied to teleconference meetings under the Brown Act, including that each teleconference location be accessible to the public and that members of the public be able to address the legislative body at each teleconference location.

The Executive Orders allowed the Housing Authority, Successor Agency, City Council, Planning Commission and other City boards, commissions and committees that are subject to the Brown Act to modify how meetings were conducted to protect the health and safety of staff and the public while ensuring the transparency and accessibility for open and public meetings. However, those executive orders expired on October 1, 2021.

On September 16, 2021, Governor Newsom signed AB 361 into law. AB 361 was made effective October 1, 2021, to correspond to the timing of expiration of the executive orders.

AB 361 allows legislative bodies to continue to utilize remote/virtual platforms for meetings during a state of emergency proclaimed by the Governor, provided that at least one of the following three criteria is met with respect to the subject meeting:

- State or local officials have imposed or recommended measures to promote social distancing;
- The legislative body holds a meeting for the purpose of determining, by majority vote, whether as a result of the state of emergency, meeting in person would present imminent risks to the health or safety of attendees; or
- The legislative body has determined, by majority vote, that, as a result of the state of emergency, meeting in person would present imminent risks to the health or safety of attendees.

Under AB 361, where these conditions are met, the legislative body may opt to conduct remote teleconferenced meetings in compliance with the alternative noticing and public participation requirements set forth in Gov't Code Section 54953(e) instead of the onerous requirements of Gov't Code Section 54953(b)(3). The alternative requirements include the following:

1. No physical location is required for public attendance or public comment. However, the public must be able to access and participate in the meeting through a call-in or an internet-based service, and instructions for how to participate must appear in the posted notices or agenda;
2. Teleconferenced meetings must protect the statutory and constitutional rights of the parties and the public;
3. The public must be able to attend the meeting via call-in option or internet-based service option;

4. Legislative bodies may allow public comments to be submitted prior to a meeting, but must also allow the public to participate in real time through call-in or internet-based service. A legislative body cannot require public comments be submitted in advance of the meeting;
5. If there is any disruption of the call-in or internet-based service, the legislative body must suspend the meeting and take no further action until the problem is fixed;
6. When providing a public comment period, whether after each item or during a general comment period, a legislative body must allow reasonable time for members of the public to comment, and must also include reasonable time for members to register with a third-party host, if applicable. Timed public comment periods cannot be closed until that timed public comment period has elapsed.

Initial Findings (Resolution No. 21-132)

Resolution No. 21-132 was adopted by the City Council, Successor Agency Board and Housing Authority Board on October 5, 2021, making the findings necessary for initial invocation of AB 361, including that the proclaimed state of emergency related to COVID-19 remained in effect and state and local officials have imposed or recommended measures to promote social distancing.

The City Council subsequently adopted Resolution 21-150 on November 3, 2021, Resolution 21-161 on November 16, 2021, Resolution 21-167 on December 7, 2021, Resolution 22-002 on January 4, 2022, Resolution 22-014 on February 1, 2022, Resolution 22-028 on March 1, 2022, Resolution 22-040 on March 15, 2022, Resolution 22-052 on April 5, 2022, Resolution 22-069 on May 3, 2022, Resolution 22-089 on May 17, 2022, Resolution 22-090 on June 8, 2022, Resolution 22-140 on July 5, 2022, Resolution 22-158 on August 2, 2022, Resolution 22-182 on September 6, 2022, Resolution 22-207 on October 4, 2022, Resolution 22-222 on November 1, 2022, Resolution 22-234 on November 15, 2022, Resolution 22-250 on December 6, 2022, Resolution 23-006 on January 3, 2023, and Resolution 23-025 on January 17, 2023, all of which allowed for 30 days of teleconferencing. Resolution 23-025 authorized the legislative bodies to meet pursuant to Government Code § 54953(e) until the earlier of (i) February 16, 2023, or (ii) such time as the legislative bodies adopt a subsequent resolution in accordance with Government Code § 54953(e)(3) to extend the time during which they may continue to teleconference without compliance with Government Code § 54953(b)(3).

Subsequent Resolution 23-033 is now being recommended for adoption by the City Council at the February 7, 2023, City Council meeting to ensure continued authorization for holding teleconferenced meetings as needed through March 9, 2023, or subject to the termination of the California State of Emergency, whichever occurs first.

Findings For Continued Reliance on AB 361 (Proposed Resolution)

Continued reliance on AB 361 for meetings after expiration of the effective period of Resolution No. 21-132 requires the following:

1. Either the state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing; and
2. No later than 30 days after teleconferencing for the first time under AB 361 rules, and every 30 days thereafter, the legislative body, by majority vote, finds that it has reconsidered the circumstances of the state of emergency and any of the following circumstances exist:
 - a. The state of emergency continues to directly impact the ability of the members to meet safely in person;
 - b. State or local officials continue to impose or recommend measures to promote social distancing.

The Governor's proclaimed state of emergency related to COVID-19 remains active and in effect within the boundaries of the City. In light of this and the continuing recommendations by the State and local (Los Angeles County) Departments of Public Health of social distancing as one mechanism for preventing the spread of COVID-19 (particularly in the absence of other mitigation strategies such as vaccines and masking and for persons with compromised health), as reflected in current health officer orders and related orders and guidance, the proposed resolution contains the findings necessary to continue to hold meetings under AB 361 rules for an additional 30-day period. Continued reliance on AB 361 thereafter would require adoption of a further resolution making the required findings every 30 days.

V. FISCAL IMPACT

There is no fiscal impact associated with this staff report.

VI. EXHIBITS

1. Resolution No. 23-033 (pgs. 6 - 12)

Prepared by: City Attorney's Office and City Manager's Office