



Local Agency Formation Commission of Napa County
Subdivision of the State of California

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We Manage Local Government Boundaries, Evaluate Municipal Services, and Protect Agriculture

Agenda Item 8d (Action)

TO: Local Agency Formation Commission
FROM: Brendon Freeman, Executive Officer
DeeAnne Gillick, General Counsel
MEETING DATE: October 4, 2021
SUBJECT: Consider Resolution Approving Continued Remote Teleconference Commission Meetings due to COVID-19 Emergency

RECOMMENDATION

It is recommended the Commission adopt the Resolution of the Local Agency Formation Commission of Napa County declaring its intent to continue remote teleconference only meetings due to the Governor's Proclamation of State Emergency and state regulations related to physical distancing due to the threat of COVID-19 consistent with California Assembly Bill (AB) 361 and amended California Government Code section 54953.

BACKGROUND

We have been conducting our Commission meetings under the Governor's Executive Orders issued in connection with the COVID-19 pandemic and its related health and safety risks. The Executive Orders modified certain requirements of the Brown Act. Specifically, the Executive Orders did the following:

- Waived the requirement that there be a physical meeting location open to the public to attend Commission meetings and comment during the meeting;
• Waived the requirement that the agenda identify and notice each teleconference location of each member of the Commission that is participating by teleconference;
• Waived the requirement that each teleconference location be accessible to the public;
• Waived the requirement that members of the public be able to address the Commission at each teleconference location;
• Waived the requirement that local agencies post agendas at all teleconference locations;
• Waived the requirement that at least a quorum of the Commission participate from within the boundaries of the territory of the Commission's jurisdiction;

Margie Mohler, Vice Chair
Councilmember, Town of Yountville

Mariam Aboudamous, Commissioner
Councilmember, City of American Canyon

Beth Painter, Alternate Commissioner
Councilmember, City of Napa

Diane Dillon, Chair
County of Napa Supervisor, 3rd District

Brad Wagenknecht, Commissioner
County of Napa Supervisor, 1st District

Ryan Gregory, Alternate Commissioner
County of Napa Supervisor, 2nd District

Kenneth Leary, Commissioner
Representative of the General Public

Eve Kahn, Alternate Commissioner
Representative of the General Public

Brendon Freeman
Executive Officer

The Governor's Executive Orders expired on September 30, 2021. The Legislature approved as an urgency matter AB 361, which was signed by the Governor on September 16, 2021, which amends the Brown Act to allow continued flexibility for public meetings following the expiration of the Governor's Executive Orders.

Similar to the Executive Orders, AB 361 provides similar modified requirements listed above with some additional requirements which are as follows:

- Agencies cannot require that written comments be submitted in advance of a meeting and agencies may only close the comment period at the same time it is closed during the meeting.
- Agencies must clearly advertise the means by which the public can observe the meeting and offer comment during the meeting via either a call in or internet based option. The public must be given an opportunity for the public to comment directly during the meeting.
- In the event of a disruption in broadcasting the meeting, the legislative body shall take no further action until meeting access is restored to the public.

In order for the Commission to continue the relaxed teleconference meeting rules under AB 361, the Commission meetings must meet one of the following provisions:

- (A) The local agency is holding a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing; or
- (B) The local agency is holding a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees; or
- (C) The local agency is holding a meeting during a proclaimed state of emergency and has 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.

AB 361 allows for remote only meetings due to immediate health and safety concerns. The AB 361 modified meeting rules can only be used in the event there is a Governor issued state of emergency. The Governor's COVID-19 state of emergency satisfies this requirement.

The second prong of item (A) above is satisfied currently as state officials imposed and recommended measures to promote social distancing. California Division of Occupational Safety and Health ("Cal/OSHA") regulations related to COVID-19 recommend physical distancing and regulates "close contact" which occurs when individuals are within six feet of another in certain circumstances. Staff prepared the agenda and noticed this October 4, 2021 Commission meeting due to satisfying these provisions of AB 361 authorizing remote only teleconference meetings.

DISCUSSION

If the Commission desires to continue to meet only remotely, the Commission needs to formally vote and adopt a resolution providing direction to staff and finding that the provisions of AB 361 exist. In addition, AB 361 requires the Commission to continually evaluate the COVID-19 emergency and determine if teleconference only meetings will continue due the circumstances of the state of the emergency and facts related to the potential risks to the health and safety of meeting attendees.

COVID-19 continues to pose significant health risks and is highly contagious. Deaths and illnesses due to the virus continue and modified procedures and restrictions apply due to these health and safety concerns. The proliferation of the Delta variant of the virus continues to pose significant risks.

It is recommended that the Commission approve the resolution directing staff to continue to hold remote only Commission meetings during the current COVID-19 State of Emergency and state regulations promoting physical distancing and regulating close encounters in certain situations in which people are within six feet of another. Furthermore, at the next regularly scheduled Commission meeting on December 6, 2021, the Commission will consider the status of the ongoing emergency and facts related to the health and safety of meeting attendees and provide further direction related to future Commission meetings pursuant to the provisions of AB 361.

ATTACHMENT

- 1) Resolution of the Local Agency Formation Commission of Napa County Declaring its Intent to Continue Remote Teleconference Only Meetings

RESOLUTION NO. _____

**RESOLUTION OF
THE LOCAL AGENCY FORMATION COMMISSION OF NAPA COUNTY
DECLARING ITS INTENT TO CONTINUE REMOTE TELECONFERENCE ONLY
MEETINGS DUE TO THE GOVERNOR’S PROCLAMATION OF STATE EMERGENCY
AND STATE REGULATIONS RELATED TO PHYSICAL DISTANCING DUE TO THE
THREAT OF COVID-19**

WHEREAS, the Local Agency Formation Commission of Napa County (“Commission”) is committed to preserving and nurturing public access and participation in meetings of the Commission;

WHEREAS, all meetings of 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 observe the Commission conduct its 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 State; and

WHEREAS, such conditions now exist in the State, specifically, the Governor of the State of California proclaimed a state of emergency on March 4, 2020, related to the threat of COVID-19, which remains in effect; 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 proliferation of the Delta variant of the virus continues to pose imminent risk to health and safety and directly impacts the ability of the public and the Commission to meet safely in person, accordingly, the Commission hereby recognizes 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 emergency related to COVID-19, the Commission does hereby find that the Commission shall 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 the Commission shall comply with the requirements to provide the public with access to the meetings as prescribed in paragraph (2) of subdivision (e) of section 54953; and

WHEREAS, the Commission meetings will be accessible to the public to attend electronically or via phone.

NOW, THEREFORE, BE IT RESOLVED THAT THE COMMISSION DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

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

2. State of Emergency due to COVID-19. The Board hereby recognizes the imminent threat to the health and safety of attendees at public meetings due to the impacts of COVID-19 and the importance of physical distancing to minimize any potential adverse health and safety risks.

3. Remote Teleconference Meetings. The Executive Officer is 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 of the Commission in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act for remote only teleconference meetings.

4. Reoccurring Evaluation by the Commission. The Executive Officer is hereby directed to continue to monitor the conditions and health and safety conditions related to COVID-19, the status of the Governor's state of emergency, and the state regulations related to social distancing, and present to the Commission at its next regularly scheduled meeting the related information and recommendations for remote only meetings pursuant to the provisions of Government Code section 54953(e)(3) and to extend the time during which the Commission may continue to teleconference without compliance with paragraph (3) of subdivision (b) of section 54953.

The foregoing resolution was duly and regularly adopted by the Commission at a public meeting held on October 4, 2021, after a motion by Commissioner _____, seconded by Commissioner _____, by the following vote:

AYES: Commissioners _____

NOES: Commissioners _____

ABSENT: Commissioners _____

ABSTAIN: Commissioners _____

Diane Dillon
Commission Chair

ATTEST: _____
Brendon Freeman
Executive Officer

Recorded by: Kathy Mabry
Commission Clerk

DRAFT