

RESOLUTION NO. 2021-104

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA REGARDING THE RALPH M. BROWN ACT (CALIF. GOVT. CODE §§54950-54963) AND ASSEMBLY BILL 361, MAKING CERTAIN FINDINGS, AND AUTHORIZING THE CITY TO IMPLEMENT REMOTE TELECONFERENCED PUBLIC MEETINGS OF THE CITY COUNCIL FOR THE PERIOD OCTOBER 5, 2021 THROUGH NOVEMBER 4, 2021.

WHEREAS, COVID-19 is a respiratory disease which has now spread across the world with multiple confirmed cases in California and in the City of Marina; and

WHEREAS, under authority provided by Government Code section 8625 on March 4, 2020, Governor Newsom issued a Proclamation of State of Emergency in response to the COVID-19 pandemic; and

WHEREAS, the Governor's proclaimed state of emergency remains in effect; and

WHEREAS, on March 13, 2020, the City Manager as the City's Director of Emergency Services proclaimed a State of Emergency in the City of Marina due to COVID-19 which was subsequently ratified by the City Council on March 17, 2020, and, after having been supplemented twice, that proclaimed state of emergency remains in effect; and

WHEREAS, the City Council is committed to preserving and nurturing public access and participation in its public meetings; and

WHEREAS, all meetings of the City Council 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 City Council conduct its business; and

WHEREAS, the Brown Act, Government Code section 54953, makes provisions for remote teleconferencing participation in meetings by members of a legislative body; and

WHEREAS, on March 17, 2020, Governor Newsom issued Executive Order N-29-20 that suspended the teleconference rules set forth in Government Code section 54953(b)(3) provided certain requirements were met and followed and subject to the existence of certain conditions; and

WHEREAS, on June 11, 2021, Governor Newsom issued Executive Order N-08-21 that clarified the suspension of the teleconferencing rules set forth in Government Code section 54953(b)(3) would continue to be suspended through September 30, 2021; and

WHEREAS, On September 16, 2021, Governor Newsom signed Assembly Bill 361 that provides that, during a state of emergency declared by the Governor pursuant to Government Code section 8625, a legislative body subject to the Brown Act may continue to meet without fully complying with the teleconference rules set forth in Government Code section 54953(b)(3) provided state or local officials have imposed or recommended measures to promote social distancing or the legislative body determines that meeting in person would present imminent risks to the health and safety of attendees, and further requires that certain findings be made by the legislative body every thirty (30) days; and

WHEREAS, on September 20, 2021, Governor Newsom signed Executive Order N-15-21, clarifying the cities may continue to meet remotely in accordance with the procedures established by prior Executive Orders; and

WHEREAS, the City Council is empowered to take actions necessary to protect public health, welfare and safety within the City; and

WHEREAS, the City Council has an important governmental interest in protecting the health, safety and welfare of those who participate in its meetings subject to the Brown Act; and.

WHEREAS, the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15378(b)(5) in that adopting a resolution authorizing the City Council to conduct teleconference public meetings does not meet CEQA's definition of a "project" because the action does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, and because the action constitutes organizational or administrative activities of government that will not result in direct or indirect physical changes in the environment and is exempt pursuant to Section 15269(c) of the CEQA Guidelines, as specific actions necessary to prevent or mitigate an emergency; and

WHEREAS, the City Council has considered all information related to this matter, as presented at the public meeting of the City Council identified herein, including any supporting reports by City staff and any information presented during the public meeting

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MARINA DOES HEREBY RESOLVE AS FOLLOWS:

1. The Recitals set forth above are true and correct and are incorporated into this Resolution as findings of the City Council by this reference
2. The City Council finds and determines such conditions as described in the Recitals above and other conditions described herein now exist in the City, specifically:
 - i. The Monterey County Health Officer has issued health advisory and guidance for businesses that recommends continuance of COVID-19 prevention practices which include maximizing social distancing and maintaining a distance of six feet from another person whenever possible.
 - ii. The California Department of Public Health ("CDPH") and the federal Centers for Disease Control and Prevention ("CDC") caution that the Delta variant of COVID-19 is currently the dominant strain of COVID-19 in the country, is more transmissible than prior variants of the virus, 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.
 - iii. Other variants of COVID-19 exist and it is unknown at this time whether other variants may result in a new surge in COVID-19 cases.
 - iv. As of September 29, 2021, Monterey County COVID-19 risk level was rated as high with 13.4 new daily cases reported per 100,000 persons.
 - v. Due to the seriousness of the current COVID-19 pandemic situation, the CDPH has required that all unvaccinated people wear facial coverings indoors, and the CDC and CDPH recommend that all persons regardless of vaccination status wear facial coverings indoors.

3. The City Council does hereby: (i) affirm that State and local health officials have made the recommendations concerning social distancing described in the Recitals and in Section 2 herein; and (ii) find and determine that the conditions described in the Recitals and in Section 2 herein have caused, and will continue to cause, conditions of peril to the safety of persons within the City and present imminent risks to the health or safety of attendees and thus intends to invoke the provisions of AB 361 related to teleconferencing of its public meeting as provided in subdivision (e) of Government Code section 54953.
4. As a consequence of the state emergency, the City Council does hereby find and determine that its meetings and all meetings of its constituent bodies subject to the Brown Act shall be conducted without compliance with paragraph (3) of subdivision (b) of Government Code section 54953, as authorized by subdivision (e) of section 54953, and that all its teleconferenced meetings 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.
5. The City Manager 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 in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.
6. This Resolution shall take effect immediately upon its adoption and shall be effective until the earlier of (i) November 4, 2021, or (ii) such time as the City Council adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the City Council of the City of Marina may continue to teleconference its public meetings without compliance with paragraph (3) of subdivision (b) of section 54953 of the California Government Code.

PASSED AND ADOPTED by the City Council of the City of Marina at a special meeting duly held this 5th day of October 2021, by the following vote:

AYES, COUNCIL MEMBERS: Medina Dirksen, Biala, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: Burnett, Berkley

ABSTAIN, COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

Honorable Mayor and Members
of the Marina City Council

City Council Special Meeting
of October 5, 2021

**CITY COUNCIL CONSIDER ADOPTING A RESOLUTION REGARDING
THE RALPH M. BROWN ACT AND ASSEMBLY BILL 361, MAKING
CERTAIN FINDINGS, AND AUTHORIZING THE CITY TO IMPLEMENT
REMOTE TELECONFERENCED PUBLIC MEETINGS OF THE CITY
COUNCIL FOR THE PERIOD COMMENCING OCTOBER 5, 2021
THROUGH NOVEMBER 4, 2021.**

REQUEST:

It is requested that the City Council consider: Adopting Resolution No. 2021- , regarding the Ralph M. Brown Act (California Government Code §§54950-54963, hereinafter the “Brown Act”) and Assembly Bill 361, making certain findings, and authorizing the City to implement remote teleconferenced public meetings of the City Council for the period October 5, 2021 through November 4, 2021.

BACKGROUND:

On September 20, 2021, Governor Newsom signed Executive Order N-15-21, clarifying the cities may continue to meet remotely in accordance with the procedures established by prior Executive Orders. Assembly Bill 361 (AB 361) allows cities to continue to meet remotely during states of emergency proclaimed by the Governor under modified Brown Act requirements that are similar to but not identical to the rules and procedures established by the previous Executive Orders relating to the relaxation of the Brown Act requirements during the COVID-19 pandemic.

AB 361 authorizes local agencies to use teleconferencing without complying with teleconferencing requirement imposed by the Brown Act during a declared state of emergency when state or local health officials have imposed or recommended measures to promote social distancing during the proclaimed state of emergency or when the legislative body had determined by majority vote that meeting in person would present imminent risks to the health or safety of attendees.

ANALYSIS:

On June 11, 2021, Governor Newsom issued Executive Order N-08-21 which among other things rescinded his prior Executive Order N-29-20 and set the date of October 1, 2021, for public agencies to transition back to public meetings held in full compliance with the Brown Act.

As the Delta variant has surged in California, the legislature has taken action to extend the COVID-19 exemptions to the Brown Act’s teleconference requirements, subject to some additional requirements. AB 361 allows a local agency to use teleconferencing in any of the following circumstances without complying with the Brown Act provisions:

1. The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.
2. The legislative body holds 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.

3. The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote taken at a meeting held for the purpose described in 2 above, that as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

A local agency that holds a meeting under any of these circumstances would be required by AB 361 to follow the steps listed below, in addition to giving notice of the meeting and posting agendas as required under the Brown Act. These additional requirements are intended to protect the public's right to participate in the meetings of local agency legislative bodies.

Pursuant to AB 361 local agencies are required to do all of the following in addition to meeting notice requirements under the Brown Act:

- Allow the public to access the meeting and require that the agenda provide an opportunity for the public to directly address the legislative body pursuant to the Brown Act's other teleconferencing provisions.
- In each instance when the local agency provides notice of the teleconferenced meeting or posts its agenda, give notice for how the public can access the meeting and provide public comment.
- Identify and include in the agenda an opportunity for all persons to attend via a call-in or an internet-based service option; the legislative body need not provide a physical location for the public to attend or provide comments.
- Conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the public.
- Stop the meeting until public access is restored in the event of a service disruption that either prevents the local agency from broadcasting the meeting to the public using the call-in or internet-based service option or is within the local agency's control and prevents the public from submitting public comments (any action taken during such a service disruption could be challenged under the Brown Act's existing challenger provisions).
- Not require comments be submitted in advance (though the legislative body may provide that as an option) and provide the opportunity to comment in real time.
- Provide adequate time for public comment, either by establishing a timed public comment period or by allowing a reasonable amount of time to comment.
- If the legislative body uses a third-party website or platform to host the teleconference, and the third-party service requires users to register to participate, the legislative body must provide adequate time during the comment period for users to register and may not close the registration comment period until the comment period has elapsed.

The City of Marina currently adheres to the above-listed requirements.

AB 361 provides that if the state of emergency remains active for more than 30 days, a local agency must make the following findings by majority vote every 30 days to continue using the bill's exemption to the Brown Act teleconferencing requirements:

- The legislative body has reconsidered the circumstances of the emergency; and

- Either of the following circumstances exist: the state of emergency continue to directly impact the ability of members to meet safely in person or State or local officials continue to impose or recommend social distancing measures.

The goal of AB 361 is to improve and enhance public access to local agency meetings during the COVID-19 pandemic and future applicable emergencies by allowing broader access through teleconferencing options. AB 361 contained an urgency clause and became effective on September 16, 2021, with a sunset of January 1, 2024.

FISCAL IMPACT:

None identified.

CONCLUSION:

This request is submitted for City Council consideration and possible adoption of a resolution regarding the Ralph M. Brown Act (California Government Code §§54950-54963) and Assembly Bill 361, making certain findings, and authorizing the City to implement remote teleconferenced public meetings of the City Council for the period October 5, 2021 through November 4, 2021.

Respectfully submitted,

Robert Rathie
City Attorney's Office
City of Marina

REVIEWED/CONCUR:

Layne Long
City Manager
City of Marina