



Air Pollution Control District
San Luis Obispo County

TO: Hearing Board, Air Pollution Control District
FROM: Gary E. Willey, Air Pollution Control Officer
DATE: September 28, 2021
SUBJECT: Consideration of Adopting a Resolution Authorizing Remote Teleconference Meetings and Provide Staff Direction as Needed

RECOMMENDATION

It is recommended that your Board:

1. Adopt a resolution authorizing remote teleconference meetings.
2. Discuss and provide direction to staff as needed.

DISCUSSION

On March 4, 2020, Governor Newsom issued a Proclamation of State of Emergency in response to the COVID-19 pandemic. That proclamation remains in effect. As a result of the state of emergency, the Governor issued executive orders that waived the normally strict provisions of the Brown Act relating to holding and participating in meetings via teleconferencing. Executive Order N-29-20 allowed bodies subject to the Brown Act to meet without a physical meeting location, so long as various requirements were met, including providing the public the opportunity to observe and participate in the meeting telephonically or electronically. Executive Order No. N-08-21 extended the suspension of the Brown Act's normal teleconferencing rules through September 30, 2021.

On September 16, 2021, Governor Newsom signed AB 361. This legislation amends the Brown Act to allow legislative bodies subject to the Brown Act to meet via teleconference during a proclaimed state of emergency in accordance with teleconference procedures established by AB 361 rather than under the Brown Act's more narrow standard rules for participation. If the Hearing Board desires to continue to meet remotely via teleconference after September 30, 2021, the Board is required to adopt a resolution making the requisite findings under AB 361. AB 361 allows a board, commission, or committee subject to the Brown Act, called "legislative bodies" under the Brown Act, to meet via teleconference without following the normal Brown Act teleconference rules if any of the following circumstances exist:

- A. 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.
- B. 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.
- C. The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(Gov't Code §54953(e)(1))

If a meeting is held via teleconference under these provisions, the meeting body must provide public access to the meeting and opportunity for the public to address the members of the legislative body as required by AB 361.

AB 361 also requires periodic review of the determination to continue to meet via teleconference. If the state of emergency remains active, then no later than 30 days after meeting via teleconference for the first time pursuant to AB 361, the body must make a subsequent finding that the body “has reconsidered the circumstances of the state of emergency” and determined that in-person meetings continue to pose a risk to public health. Accordingly, staff proposes returning to this Board with subsequent resolutions so long as the state of emergency persists.

**AIR POLLUTION CONTROL DISTRICT
HEARING BOARD
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA**

28 day September, 2021

RESOLUTION NO. HB2021-001

A RESOLUTION OF THE SAN LUIS OBISPO COUNTY AIR POLLUTION CONTROL DISTRICT HEARING BOARD PROCLAIMING A LOCAL EMERGENCY, RATIFYING THE PROCLAMATION OF A STATE OF EMERGENCY BY GOVERNOR NEWSOM'S ORDER DATED MARCH 4, 2020, AND AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF THE LEGISLATIVE BODIES OF THE SAN LUIS OBISPO COUNTY AIR POLLUTION CONTROL DISTRICT HEARING BOARD FOR THE PERIOD OF SEPTEMBER 28, 2021, TO OCTOBER 28, 2021, PURSUANT TO BROWN ACT PROVISIONS

Recitals

WHEREAS, the San Luis Obispo County Air Pollution Control District Hearing Board ("APCD Hearing Board") is committed to preserving and nurturing public access and participation in meetings of the Hearing Board; and

WHEREAS, all meetings of the APCD Hearing Board's legislative bodies 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 APCD Hearing Board's legislative bodies conduct their 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 jurisdictions that are within the APCD Hearing Board's boundaries, caused by natural, technological or human-caused disasters; and

WHEREAS, it is further required that state or local officials have imposed or recommended measures to promote social distancing, or, the legislative body meeting in person would present imminent risks to the health and safety of attendees; and

WHEREAS, such conditions now exist in the jurisdiction of the APCD Hearing Board, specifically, the State of Emergency declared by Governor Newsom on March 4, 2020, due to COVID-19, and the Proclamation of Local Emergency declared by the County of San Luis Obispo on March 13, 2020; and

WHEREAS, on September 1, 2021, the San Luis Obispo County Health Officer issued Order Number 6 requiring face coverings in all public indoor settings attributable to the rise in SARS-CoV-2 Delta Variant; and

WHEREAS, the APCD Hearing Board does hereby find that the rise in SARS-CoV-2 Delta Variant has caused, and will continue to cause, conditions of peril to the safety of persons within the District that are likely to be beyond the control of services, personnel, equipment, and facilities of the APCD Hearing Board, and desires to proclaim a local emergency exists and ratify the proclamation of state of emergency by the Governor of the State of California and the San Luis Obispo County Health Officer's Order Number 6; and

WHEREAS, as a consequence of the local emergency, the APCD Hearing Board does hereby find that the legislative bodies of the APCD Hearing Board shall continue to 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 such legislative bodies shall comply with the requirements to provide the public with access to meetings as prescribed in paragraph (2) of subdivision (e) of section 54953; and

WHEREAS, the APCD Hearing Board is committed to ensure that the public has access to meetings and the opportunity to participate as required by the Government Code and AB 361.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Hearing Board of the San Luis Obispo County Air Pollution Control District, as follows:

1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.
2. Proclamation of Local Emergency. The Hearing Board hereby proclaims that a local emergency now exists, and COVID-19 has caused, and will continue to cause, conditions of peril to the safety of persons within the jurisdiction of the APCD Hearing Board that are likely to be beyond the control of services, personnel, equipment, and facilities of the APCD Hearing Board.
3. Ratification of Governor's Proclamation of a State of Emergency. The Hearing Board hereby ratifies the Governor of the State of California's Proclamation of State of Emergency, effective as of its issuance date of March 4, 2020.
4. Remote Teleconference Meetings. The Air Pollution Control Officer and Staff of the APCD Hearing Board are 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.
5. Effective Date of Resolution. This Resolution shall take effect on September 28, 2021, and shall be effective until the earlier of (i) October 28, 2021, or such time the APCD Hearing Board adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the legislative bodies of the APCD Hearing Board may continue to teleconference without compliance with paragraph (3) of subdivision (b) of section 54953.

On motion of Director _____ seconded by Director _____
and passed and adopted on the following roll call vote:

Ayes:

Noes:

Absent:

Abstaining:

Chair, Air Pollution Control District Hearing Board
San Luis Obispo County

Attest:

Alyssa Roslan, Air Pollution Control District Hearing Board Clerk

Approved as to Form and Legal Effect:

Tim McNulty
Air Pollution Control District Hearing Board Counsel

Date: _____