




Agenda Item No: 5.b
Meeting Date: November 15, 2021

SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: City Attorney

Prepared by: Lisa Goldfien,
Assistant City Attorney

City Manager Approval: _____ 

TOPIC: USE OF TELECONFERENCING FOR PUBLIC MEETINGS DURING STATE OF EMERGENCY

SUBJECT: RESOLUTION PURSUANT TO ASSEMBLY BILL 361 MAKING FINDINGS AND CONFIRMING THE NEED FOR CONTINUED USE OF TELECONFERENCING TO HOLD PUBLIC MEETINGS OF THE SAN RAFAEL CITY COUNCIL AND CITY BOARDS AND COMMISSIONS DURING THE CONTINUING STATE OF EMERGENCY RELATING TO THE COVID-19 PANDEMIC

RECOMMENDATION:

Adopt the resolution pursuant to Assembly Bill 361 making findings and confirming the need for continued use of teleconferencing to hold public meetings of the San Rafael City Council and City boards and commissions during the continuing state of emergency relating to the COVID-19 pandemic

BACKGROUND:

The Ralph M. Brown Act (“Brown Act”) requires that except as specifically provided, “meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body”. (Gov. Code §54953(a).) For many years, the Brown Act has authorized members of a local agency’s legislative body to attend a public meeting by teleconference in compliance with strict procedural requirements. Under Government Code section 54953(b)(3), to use teleconferencing, at least a quorum of the legislative body must participate from locations within agency’s boundaries, and the agency must give notice of each teleconference location, post an agenda at each teleconference location, provide for public access to each teleconference location, and allow members of the public to address the Council at each teleconference location.

On March 4, 2020, Governor Newsom declared a statewide state of emergency in connection with the COVID-19 pandemic. Subsequently, on March 18, 2020, the Governor issued Executive Order [No. N-29-20](#) suspending the Brown Act’s requirements for in-person meetings and facilitating the use of teleconferencing for public meetings during the state of emergency. The Executive Order authorized public meetings to be held by teleconference only, provided that notice and accessibility requirements are met, members of the public are allowed to observe and address the legislative body at the meeting, and there is a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities. This order has allowed the City Council and the City’s other formal boards

FOR CITY CLERK ONLY

Council Meeting: _____

Disposition: _____

and commissions to hold their public meetings using teleconferencing technologies, with the requisite notice and public participation; however, the order was due to expire on September 30, 2021, and without legislative action, in-person meetings and the strict teleconferencing procedures of the Brown Act would again be required.

Because the statewide state of emergency continues and the COVID-19 pandemic still poses a health risk for public meetings, on September 16, 2021, Governor Newsom signed into law as an urgency measure Assembly Bill (AB) 361. [AB 361](#) amends the Brown Act provisions governing the use of teleconferencing for public meetings of a local agency's legislative bodies, allowing more liberal teleconferencing requirements to continue during the current and future state-declared emergencies.

ANALYSIS:

Executive Order N-29-20 has now expired, but AB 361 is now in effect, and its amendments to the Brown Act will allow the City to continue to hold its meetings using teleconferencing technology after September 30. Government Code section 54953, as amended by AB 361, now provides in new subsection (e)(1), that during the current and any future state-declared state of emergency, the legislative body of a local agency may use teleconferencing without complying with the procedural requirements of Government Code section 54953(b)(3) in any of three circumstances:

(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.

Certain additional requirements would apply under the new law, however, including specific requirements as to how public comment must be allowed and heard, with which the City already complies. In addition:

- In the event of a disruption which prevents the City from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the City's control which prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption which prevents the public agency from broadcasting the meeting may be challenged pursuant to Section 54960.1.
- If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:
 - The legislative body has reconsidered the circumstances of the state of emergency.
 - 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.
- (ii) State or local officials continue to impose or recommend measures to promote social distancing.

The resolution before the City Council is intended to comply with the requirement to make specified findings every 30 days. The resolution finds that the state of emergency continues in effect, that measures to promote social distancing are still being imposed by the state and county, and that the state of emergency directly impacts the ability of the public and the members of the City's Council, boards, and commissions to meet safely in person. The proposed resolution confirms the City Council's determination that all public meetings of the City's legislative bodies (the Council and all formal boards and commissions) should continue to be held using only teleconferencing technology.

Staff plans to agendize the same type of resolution at each regular City Council meeting during the pendency of the statewide state of emergency, so that the Council may continue to reconsider these findings at least every 30 days.

The Brown Act amendments adopted by AB 361 will be operative until January 1, 2024, and will then expire unless extended by new legislation.

FISCAL IMPACT:

There is no fiscal impact associated with the adoption of the attached resolution.

OPTIONS:

The City Council has the following options to consider on this matter:

1. Adopt the resolution as proposed.
2. Adopt a modified resolution.
3. Direct staff to return with more information.
4. Take no action.

RECOMMENDED ACTION:

Adopt the resolution pursuant to Assembly Bill 361 making findings and confirming the need for continued use of teleconferencing to hold public meetings of the San Rafael City Council and City boards and commissions during the continuing state of emergency relating to the COVID-19 pandemic.

ATTACHMENTS:

1. Resolution

RESOLUTION NO.

**RESOLUTION OF THE SAN RAFAEL CITY COUNCIL PURSUANT TO ASSEMBLY BILL 361
MAKING FINDINGS AND CONFIRMING THE NEED FOR CONTINUED USE OF
TELECONFERENCING TO HOLD PUBLIC MEETINGS OF THE SAN RAFAEL CITY COUNCIL
AND CITY BOARDS AND COMMISSIONS DURING THE CONTINUING STATE OF
EMERGENCY RELATING TO THE COVID-19 PANDEMIC**

WHEREAS, on March 4, 2020 Governor Newsom issued a proclamation pursuant to Government Code Section 8625 declaring a state of emergency in California due to the COVID-19 pandemic; and

WHEREAS, the Ralph M. Brown Act (Gov. Code §§ 54950 et seq.) (hereafter, the “Brown Act”) provides in Government Code section 54953 that “all meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided by this chapter”; and

WHEREAS, Government Code section 54953(b)(3) permits the legislative body of a local agency to use teleconferencing for the benefit of the public and the legislative body in connection with any meeting or proceeding authorized by law, subject to specified procedural requirements including, but not limited to, the posting of agendas at all teleconference locations, the opportunity for members of the public to address the legislative body directly at each teleconference location, and that at least a quorum of the members of the legislative body participate from locations within the boundaries of the territory over which the legislative body exercises jurisdiction; and

WHEREAS, Government Code section 54953(e), added by Assembly Bill 361 effective September 16, 2021, provides, in section 54953(e)(1), that during a state of emergency proclaimed pursuant to Government Code section 8625, the legislative body of a local agency may hold a meeting using teleconferencing without complying with the procedural requirements of section 54953(b)(3), provided that the legislative body complies with the requirements of section 54953(e)(2); and

WHEREAS, pursuant to Government Code section 54953(e)(3), if a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, then in order to continue to teleconference without compliance with the requirements of section 54953(b)(3), the legislative body shall make specified findings at least every 30 days; and

WHEREAS, the City Council has reconsidered the circumstances of the proclaimed COVID-19-related state of emergency and finds that it remains active; and

WHEREAS, the City Council finds that state and/or local officials continue to impose or recommend measures to promote social distancing, as follows:

- a. The July 28, 2021 California Department of Public Health Guidance for the Use of Face Coverings recommending universal masking indoors statewide to promote social distancing is still in effect; and

- b. The August 2, 2021 Marin County Department of Public Health order requiring all people to wear masks in public indoor settings to promote social distancing is still in effect; and

WHEREAS, the City Council finds that the state of emergency continues to directly impact the ability of the members of the City Council and other City boards and commissions to meet safely in person;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of San Rafael that in order to protect the safety of the members of the public, the City Council and all City boards and commissions, for the 30 days following adoption of this resolution, public meetings of the City’s legislative bodies shall continue to be held using teleconferencing technology in compliance with the requirements of Government Code section 54953(e)(2) and all other applicable laws.

I, Lindsay Lara, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of San Rafael, held on Monday, the 15th day of November 2021, by the following vote, to wit:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

Lindsay Lara, City Clerk