



City of Long Beach

Working Together to Serve

Memorandum

Office of the City Attorney

DATE: September 30, 2021

To: Mayor and Members of the City Council

FROM: Charles Parkin, City Attorney
Monica Kilaita, Deputy City Attorney

SUBJECT: UPDATE: AB 361 Extends Virtual Brown Act Meetings During State of Emergency With Certain Conditions

On August 19, 2021, we informed you that Executive Order N-08-21, which, among other things, contained certain Ralph M. Brown Act (“Brown Act”) “waivers” with respect to holding virtual meetings, expires on September 30, 2021.

Although this is still the case, on September 16, 2021, the Governor of California signed into law [Assembly Bill 361 \(AB 361\)](#), which allows for similar “waivers” during declared states of emergency where certain requirements are met and which took effect immediately as an urgency bill. On September 20, 2021, the Governor issued [Executive Order N-15-21](#) to temporarily suspend the teleconferencing provisions of AB 361, which will now take effect beginning **October 1, 2021**.

AB 361 waivers include, but are not limited to, the ability to allow public access and comment via phone or internet only and to allow legislative body members to take meetings from locations outside the body’s jurisdictional boundaries. It is important to note that if any member of a legislative body participates remotely using AB 361 “waivers”, the requirements of AB 361 are automatically triggered for the entire body.

The Long Beach Health Officer has recommended virtual meetings, to the extent possible, to promote social distancing measures to minimize the spread of COVID-19. As such, **legislative bodies of the City may hold remote meetings with AB 361 “waivers” beginning on or after October 1, 2021**. Should the City Council desire to allow virtual meetings with “waivers” to continue citywide, the Council must make **monthly** findings reconsidering the circumstances of the state of emergency, and find that state or local officials continue to impose or recommend measures to promote social distancing.

This memo provides a detailed overview of AB 361 requirements for virtual meetings subject to the Brown Act which take place during a state of emergency, the actions that must be taken by the City Council, or other legislative bodies, to continue such format of meetings without complying with normal teleconferencing requirements, and recommended next steps.

I. AB 361 REQUIREMENTS AND “WAIVERS”:

Pursuant to AB 361, the City may use teleconferencing without posting agendas at teleconference locations, identifying in the notice and agenda each teleconference location, making each teleconference location accessible to the public, ensuring that a quorum of members are participating from locations within the City’s jurisdictional boundaries, or allowing an opportunity for the public to address the legislative body directly at each teleconferencing location if:

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

On September 30, 2021, Dr. Anissa Davis, the City’s Health Officer, issued a recommendation to hold remote meetings pursuant to AB 361, to the extent possible, to promote social distancing measures in an effort to minimize the spread of COVID-19. As such, the following **“waivers” and requirements** are in place for teleconference meetings of the City’s legislative bodies:

- Anytime notice of the time of the teleconferenced meeting is given or the agenda is posted, notice of the means by which members of the public may access the meeting and offer public comment must also be given.
- The agenda must identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option (no physical location for public attendance or comment is required).
- The teleconference meetings must be conducted in a way that protects the statutory and constitutional rights of the parties and public appearing before the legislative body.
- If there is a disruption that prevents the City from broadcasting the meeting to the public using the call-in or internet-based service option, or if there’s a disruption within the City’s control which prevents members of the public from offering public comments using the call-in or internet-based service option, the body shall take no further action on items on the agenda until public access via the call-in or internet-based service option is restored (actions taken on agenda items during such disruptions which prevent broadcasting the meeting may be challenged under Government Code section 54960.1).
- Public comments shall not be required to be submitted in advance of the meeting, and the public must be provided an opportunity to address the legislative body and offer comment in real time.
- A person who desires to provide public comment through an internet website or other online platform which is not under the control of the legislative body and that requires

registration to log in to a teleconference may be required to register by the third-party website or platform.

- A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register or otherwise be recognized for the purpose of providing public comment.

II. MONTHLY FINDINGS REQUIRED BY LEGISLATIVE BODY:

Under AB 361, if a state of emergency is active, or state or local officials have imposed or recommended measures to promote social distancing, and in order to utilize the above-specified teleconferencing “waivers,” a legislative body must make the following findings every 30 days, starting with no later than 30 days after teleconferencing for the first time under AB 361, by a majority vote:

- The legislative body has reconsidered the circumstances of the state of emergency; and
- One of the following circumstances exists:
 - The state of emergency continues to directly impact the ability of the members to meet safely in person; or
 - State or City officials continue to impose or recommend measures to promote social distancing.

We believe the City Council’s monthly findings may be applied to the meetings of all City bodies subject to the Brown Act. Nonetheless, the Brown Act defines “legislative body” to include “[a] commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body.”¹ As such, pursuant to AB 361, should the Council not take such action on behalf of all City bodies, the individual bodies may authorize the “waivers” in the same manner and on a monthly basis as they see fit.

III. NEXT STEPS:

In order to ensure timely compliance with AB 361, and seeing as the Long Beach Health Officer has recommended remote meetings, to the extent possible, to promote social distancing in light of COVID-19, it is recommended that the City Council makes monthly findings to allow virtual meetings with AB 361 “waivers” to continue for City legislative bodies, including all commissions, committees, and boards of the City.

On a monthly basis and starting in October 2021, the City Attorney’s Office will agendaize items at meetings of the City Council to determine whether the Council will allow virtual meetings with AB 361 “waivers” to continue for the City’s legislative bodies. In accordance with the Health Officer’s recommendation, attached hereto, all bodies choosing to meet in person due to varying

¹ Gov. Code § 54952(b).

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circumstances and/or conditions should, wherever feasible, adhere to the recommended protocols in an effort to minimize the spread of COVID-19.

Please do not hesitate to contact the City Attorney's Office should you have any questions or concerns.

MJK:vr

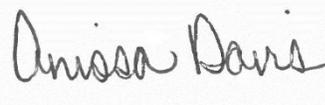
Attachment: Recommendation Regarding Physical Distancing and Virtual Meetings

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cc: All City Boards and Commissions
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Doug Haubert, City Prosecutor
Tom Modica, City Manager
Linda Tatum, Assistant City Manager
All Dept Heads
Chris Garner, General Manager, Water Department
Mario Cordero, Executive Director, Harbor Department
Christina Pizarro-Winting, Executive Director, Civil Service
Monique DeLaGarza, City Clerk

Date: September 30, 2021

To: Thomas B. Modica, City Manager 

From: Dr. Anissa Davis, Long Beach Health Officer 

For: Mayor and Members of the City Council and all Boards and Commissions

Subject: **Recommendation Regarding Physical Distancing and Virtual Meetings**

Assembly Bill 361 (AB 361), which becomes effective on October 1, 2021, allows for certain waivers of Brown Act teleconference requirements during declared states of emergency when certain conditions have been met. These “waivers” promote physical distancing to minimize the spread of COVID-19 by allowing legislative body members to take meetings from outside the body’s jurisdictional boundaries, as well as allowing public access and comment through phone and/or internet services only, among other things which seek to protect the community and staff. One condition to authorize such virtual meetings of legislative bodies is that state or local health officials have imposed or recommended measures to promote physical distancing during a proclaimed state of emergency. Accordingly, I am making the following recommendations for the City’s legislative bodies to meet virtually, to the extent possible, under the relevant provisions of AB 361, and that this recommendation be forwarded to those bodies.

I strongly recommend that physical distancing measures continue to be practiced throughout Long Beach communities, including at meetings of the City Council, including its boards, commissions, and committees (hereafter “the City”), to minimize the spread of COVID-19.

While unvaccinated individuals are more likely to contract COVID-19, the California Department of Public Health and the Centers for Disease Control caution that the Delta variant of COVID-19 is more transmissible than prior variants of COVID-19. Delta is more transmissible than prior variants of COVID-19, it may cause more severe illness, and both vaccinated and unvaccinated individuals are at risk for contracting the Delta variant resulting in spreading COVID-19 to other members of our communities. (See <https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html>). Physical distancing, masking, staying home when sick, and frequent handwashing remain crucial infection control measures to prevent the spread of COVID-19, including its variants.

To the extent possible, virtual meetings are strongly recommended as they allow for the participation of the community, City staff, presenters, Councilmembers, commissioners, committee members, and board members with no risk of contagion. As an alternative, the City could implement hybrid meetings (i.e. meetings that are both in-person and virtual) with infection control measures outlined below to minimize the spread of COVID-19 while operating in-person.

Recommendation Regarding Physical Distancing and Virtual Meetings

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Where in-person meetings are deemed necessary based on varying circumstances and/or conditions, I strongly recommend that infection control measures are implemented, including: (1) where feasible, maintaining at least six-foot physical distance from other individuals, even when wearing a face mask; (2) washing hands with soap and water for at least twenty seconds or use hand sanitizer that contains at least 60 percent alcohol, as frequently as possible; (3) covering coughs or sneezes (into the sleeve, elbow, or tissue, not hands); (4) regularly cleaning and disinfecting high-touch surfaces; (5) avoid physically intimate forms of greeting such as shaking hands, hugging, and kissing; (6) stay home when sick; (7) to the extent feasible, avoid eating and drinking in public places; and (8) wearing a face mask securely over one's mouth and nose.

This recommendation does not apply to those meetings of a quasi-judicial nature that have been meeting in person prior to September 20, 2021, (e.g. where it is necessary to allow for credibility determinations of witnesses).

I will continue to evaluate this recommendation on an ongoing basis and this recommendation will remain in place until amended, replaced, or repealed. If you have any questions regarding this recommendation, please do not hesitate to contact me.

CC: CHARLES PARKIN, CITY ATTORNEY
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