Item 4b

SAN MATEO LAFCo
LOCAL AGENCY FORMATION COMMISSION
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September 14, 2022

To: LAFCo Commissioners

From: Rob Bartoli, Executive Officer

Subject: Resolution to make findings relating to remote meetings under the Brown Act

Summary

On June 11, 2021, Governor Newsom issued Executive Order N-08-21, which rescinded his prior Executive Order N-29-20 and which waived, through September 30, 2021, certain provisions of the Brown Act relating to teleconferences/remote meetings by local agency legislative bodies. The Executive Order waived, among other things, the provisions of the Brown Act that otherwise required the physical presence of members of local agency legislative bodies or other personnel in a particular location as a condition of participation or as a quorum for a public meeting. These waivers set forth in the Executive Order were to expire on October 1, 2021.

On September 16, 2021, the Governor signed Assembly Bill (AB) 361, a bill that codifies certain teleconference procedures that local agencies have adopted in response to the Governor's Brown Act-related Executive Orders. Specifically, AB 361 allows a local agency to continue to use teleconferencing under the same basic rules as provided in the Executive Orders under certain prescribed circumstances or when certain findings have been made and adopted by the local agency legislative body.

In order to continue to hold video and teleconference meetings, the Commission will need to review and make findings every 30 days or thereafter that the state of emergency continues to directly impact the ability of the members to meet safely in person and that state or local officials continue to impose or recommend measures to promote social distancing. If the Commission does continue to hold video and teleconference meetings, to meet the requirements of AB 361, the Commission will need to adopt a resolution at every meeting.

The San Mateo County commissions, cities, and special districts in the County, have adopted a resolution to continue remote meetings and encouraged other legislative bodies to make

similar findings. In the County commissions' findings, they noted that the Board chambers, which LAFCo also utilizes, is located in a County building that includes court rooms and County offices that are occupied by staff. If in-person public meetings were to occur now, social distancing measures currently in place to maintain the safe occupancy of the building could be negatively impacted.

The Commission previously found, and it remains the case, that public meetings pose risks for COVID-19 spread for several reasons. These meetings may bring together people from throughout a geographic region, increasing the opportunity for COVID-19 transmission. Further, the open nature of public meetings makes it is difficult to enforce compliance with vaccination, physical distancing, masking, cough and sneeze etiquette, or other safety measures. Moreover, some of the safety measures used by private businesses to control these risks may be less effective for public agencies.

These factors combine to continue to directly impact the ability of members of the Commission to meet safely in-person and to make in-person public meetings imminently risky to health and safety.

As noted above, under AB 361, local agency bodies were required to return to in-person meetings on October 1, 2021, unless they chose to continue with fully teleconferenced meetings and made the prescribed findings related to the existing state of emergency. At its meetings of November 17, 2021, January 19, 2022, March 16, 2022, April 20, 2022, May 18, 2022, June 15, 2022, and July 20, 2022 the Commission adopted a resolution wherein the Commission found, among other things, that as a result of the continuing COVID-19 state of emergency, meeting in-person would present imminent risks to the health or safety of attendees.

The November 17, 2021 resolution also directed staff to bring an item to the Commission at a subsequent meeting to consider making the findings required by AB 361 in order to continue meeting under its provisions.

Recommended Commission Action by Resolution

Adopt a resolution finding that, as a result of the continuing COVID-19 pandemic state of emergency, meeting in-person would present imminent risks to the health or safety of attendees.

Attachments

A. Resolution finding that, as a result of the continuing COVID-19 pandemic state of emergency declared by Governor Newsom, meeting in-person for meetings of the San Mateo Local Agency Formation Commission would present imminent risks to the health and safety of attendees.

Attachment A

RESOLUTION NO. 1294

RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION OF THE COUNTY OF SAN MATEO FINDING THAT, AS A RESULT OF THE CONTINUING COVID-19 PANDEMIC STATE OF EMERGENCY DECLARED BY GOVERNOR NEWSOM, MEETING IN PERSON FOR MEETINGS OF THE COMMISSION WOULD PRESENT IMMINENT RISKS TO THE HEALTH OR SAFETY OF ATTENDEES

RESOLVED, by the Local Agency Formation Commission of the County of San Mateo, State of California, that

WHEREAS, on March 4, 2020, the Governor proclaimed pursuant to his authority under the California Emergency Services Act, California Government Code section 8625, that a state of emergency exists with regard to a novel coronavirus (a disease now known as COVID-19); and

WHEREAS, on June 4, 2021, the Governor clarified that the "reopening" of California on June 15, 2021 did not include any change to the proclaimed state of emergency or the powers exercised thereunder, and as of the date of this Resolution, neither the Governor nor the Legislature have exercised their respective powers pursuant to California Government Code section 8629 to lift the state of emergency either by proclamation or by concurrent resolution in the state Legislature; and

WHEREAS, on March 17, 2020, Governor Newsom issued Executive Order N-29-20 that suspended the teleconferencing rules set forth in the California Open Meeting law, Government Code section 54950 et seq. (the "Brown Act"), provided certain requirements were met and followed; and

WHEREAS, on September 16, 2021, Governor Newsom signed AB 361 that provides that a legislative body subject to the Brown Act may continue to meet without fully complying with the teleconferencing rules in the Brown Act provided the legislative body determines that meeting in person would present imminent risks to the health or safety of attendees, and further requires that certain findings be made by the legislative body every thirty (30) days; and,

WHEREAS, the Local Agency Formation Commission of the County of San Mateo has an important governmental interest in protecting the health, safety and welfare of those who participate in its meetings; and,

WHEREAS, at its meeting of July 20, 2022, the Local Agency Formation Commission of the County of San Mateo adopted, by unanimous vote, a resolution wherein this Commission found, *inter alia*, that as a result of the continuing COVID-19 state of emergency, meeting in-person
would present imminent risks to the health or safety of attendees; and

WHEREAS, the Local Agency Formation Commission of the County of San Mateo has not met since

its July 20, 2022 meeting; and

WHEREAS, the Commission has reconsidered the circumstances of the state of emergency and finds that the state of emergency continues to impact the ability of members of the Commission to meet in-person because there is a continuing threat of COVID-19 to the community, and because Commission meetings have characteristics that give rise to risks to health and safety of meeting participants (such as the increased mixing associated with bringing together people from across the community, the need to enable those who are immunocompromised or unvaccinated to be able to safely continue to participate fully in public governmental meetings, and the challenges with fully ascertaining and ensuring compliance with vaccination and other safety recommendations at such meetings); and

WHEREAS, the Commission has an important governmental interest in protecting the health, safety and welfare of those who participate in its meetings; and

WHEREAS, in the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, the Commission deems it necessary to find that meeting in-person would present imminent risks to the health or safety of attendees, and thus intends to invoke the provisions of AB 361 related to teleconferencing;

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that

1. The recitals set forth above are true and correct.
2. The Commission has reconsidered the circumstances of the state of emergency caused by the spread of COVID-19.
3. The Commission finds that the state of emergency caused by the spread of COVID-19 continues to directly impact the ability of members of the Commission to meet safely in person.
4. The Commission finds that meeting in person would present imminent risks to the health or safety of attendees and directs staff to continue to agendize public meetings of the Commission only as online teleconference meetings.
5. Staff is directed to return at subsequent Commission meetings after the adoption of this resolution with an item for the Commission to consider making the findings required by AB 361 in order to continue meeting under its provisions.
6. Staff is directed to take such other necessary or appropriate actions to implement the intent and purposes of this resolution.

Regularly passed and adopted this _____day of_____.

Ayes and in favor of said resolution:

Commissioners: _____

_____

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_____

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_____

Noes and against said resolution:

_____

Commissioners Absent and/or Abstentions:

Commissioners: _____

_____
Chair
Local Agency Formation Commission
County of San Mateo
State of California

ATTEST:

_____ Date: _____
Executive Officer
Local Agency Formation Commission

I certify that this is a true and correct copy of the resolution above set forth.

Date:_____

_____
Clerk to the Commission
Local Agency Formation Commission