



Legislation Details (With Text)

File #: 21-801
Type: Consent Calendar **Status:** Passed
File created: 10/21/2021 **In control:** City Council/Public Financing Authority
On agenda: 11/2/2021 **Final action:** 11/2/2021
Title: Comply with new Brown Act provisions identified in Assembly Bill 361 and adopt Resolution No. 2021-62 finding that the proclaimed state of emergency continues to impact the ability to meet safely in person
Attachments: 1. Att #1 Resolution 2021-62, 2. Att #2 Assembly Bill 361

Date	Ver.	Action By	Action	Result
11/2/2021	1	City Council/Public Financing Authority	approved	Pass

REQUEST FOR CITY COUNCIL ACTION

SUBMITTED TO: Honorable Mayor and City Council Members

SUBMITTED BY: Robin Estanislau, CMC, City Clerk

PREPARED BY: Robin Estanislau, CMC, City Clerk

Subject:

Comply with new Brown Act provisions identified in Assembly Bill 361 and adopt Resolution No. 2021-62 finding that the proclaimed state of emergency continues to impact the ability to meet safely in person

Statement of Issue:

On September 16, 2021, Governor Newsom approved Assembly Bill 361 (Rivas) that amends the Ralph M. Brown Act to include a new authorization that allows all local agencies to host remote meetings and remote public comments. The authorization, which largely extends the provisions of the Governor’s Executive Order N-29-20 (approved March 17, 2020) and Executive Order N-35-20 (approved March 21, 2020), is in effect until January 1, 2024. To comply with the new provisions identified in AB 361, City Council must adopt a resolution to continue to allow meetings of the City Council and all City boards, commissions and committees to be conducted remotely as needed due to health and safety concerns for the public.

Financial Impact:

Not applicable.

Recommended Action:

Adopt Resolution 2021-62, “A Resolution of the City Council of the City of Huntington Beach Finding That the Proclaimed State of Emergency Continues to Impact the Ability to Meet Safely in Person.”

Alternative Action(s):

Do not adopt Resolution No. 2021-62, and direct staff accordingly.

Analysis:

Prior to the onset of the COVID-19 pandemic, the Brown Act provided specific rules related to a local legislative body's ability to teleconference for meetings or proceedings:

- At least a quorum of the members of the legislative body must participate from locations within the boundaries of the applicable local agency's territory;
- The teleconference location(s) must be identified in the notice and agenda of the meeting or proceeding;
- The teleconference location(s) must post an agenda (general posting requirements apply);
- The teleconference location(s) must be made accessible to the public; and
- The teleconference location(s) must provide a means for the public to address the legislative body.

In response to the COVID-19 pandemic, Governor Newsom approved in March of 2020 Executive Orders N-29-20 and N-35-20, declaring a state of emergency and offering exemptions to several of the Brown Act's traditional teleconferencing rules as to allow local agencies to continue to function during "stay-at-home" orders. The Act's teleconference quorum and agenda posting requirements as previously described were effectively suspended until September 30, 2021.

AB 361, approved by the Governor on September 16, 2021, establishes clear rules for teleconference meetings during emergencies. The bill allows local agencies to continue to meet via teleconference without complying with the Brown Act's traditional teleconference rules (agenda posting, physical access and quorum requirements for teleconferencing), but only during a state of emergency as proclaimed by the Governor in which 1) state and local health officials have imposed or recommended measures to promote social distancing, or 2) the legislative body has determined (or is meeting to determine) by a majority vote that meeting in person would present imminent risk to the health or safety of the meeting attendees. The new authority clearly includes, but is not limited to, emergencies arising from a pandemic.

Verification: A provision of the new legislation now requires local agencies to verify **every 30 days** that the exemption from traditional teleconference requirements is still necessary. Specifically, the legislative body must make findings no later than 30 days after the first teleconference and every 30 days thereafter that:

- The legislative body has reconsidered the state of emergency circumstances; and
- Either i) the state of emergency continues to directly impact the ability of the members to meet safely in person, or ii) state or local officials continue to impose or recommend measures to promote social distancing.

It is recommended that local agencies take care to ensure their board(s) make the appropriate findings at least every 30 days to ensure compliance with this verification requirement.

AB 361 also prescribes that local agencies must:

- Give timely notice of the meeting and post agendas as required by the Act;
- Allow members of the public to access the meeting and directly address the legislative body as provided by GC Section 54954.3. Each agenda must provide notice of the means by which

the public may access the meeting and offer public comment. The agenda must identify and include an opportunity for all persons to attend **via a call-in option OR an internet-based service option**.

- Continue teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and public appearing before the legislative body;
- In the event of a service disruption that prevents broadcasting the meeting or in the event of a disruption within the local agency's control that prevents public comment for members of the public using the call-in option or internet-based option, stop the meeting and take no further action on agenda items until the public access is restored. Actions taken on agenda items during a disruption may be subject to challenge pursuant to GC Section 54960.1; and,
- Must abolish any requirement that public comments be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time.

The provisions of AB 361 sunset on January 1, 2024 and are provided as Attachment #2.

Environmental Status:

Not applicable.

Strategic Plan Goal:

Non Applicable - Administrative Item

Attachment(s):

1. Resolution No. 2021-62
2. Assembly Bill 361