

MEMORANDUM

TO: Oversight Board

FROM: James B. Morales, Interim Executive Director

SUBJECT: Resolution making findings to allow teleconferenced meetings under California Government Code Section 54953(e)

EXECUTIVE SUMMARY

The State Legislature recently adopted, and the Governor signed, urgency legislation (Assembly Bill No. 361) that requires the bodies subject to the Brown Act (which includes the Oversight Board) to make certain findings if they wish to continue meeting remotely during the existing pandemic-related state of emergency.

Staff recommends that the Oversight Board make the findings in the resolution accompanying this memorandum and authorize the continuation of Oversight Board meetings by teleconferencing.

DISCUSSION

Under the Brown Act, Cal. Health & Safety Code §§ 54950 et seq., a body must conduct public meetings in person and provide an opportunity for members of the public to attend and participate in the meetings. The Brown Act provides a very limited exception for meetings to occur by teleconferencing and requires, among other things, that each teleconferencing location be accessible to the public and that members of the public be permitted to participate in the meeting at the teleconferencing location. Historically, the Oversight Board has not used the Brown Act's narrow exception for teleconferenced meetings.

In March 2020, Governor Newsom declared a state of emergency because of the COVID-19 pandemic and issued numerous executive orders to protect the public health. This state of emergency remains in effect. Among those orders was a suspension of the requirements that public bodies meet in person and of the limitations on teleconferenced meetings. As a result, the governing bodies of local agencies were able to conduct meetings entirely remotely without providing the public an opportunity to participate in person at the site(s) of the teleconferenced meeting. Nonetheless, the executive order preserved the Brown Act's requirements that the local agency provide the public with the opportunity to observe and address agency members at a meeting, albeit remotely.

The Governor's order suspending the in-person meeting requirements of the Brown Act was set to expire on September 30, 2021. Prior to that expiration, the State Legislature adopted, and the Governor signed, on September 16, 2021, Assembly Bill No. 361, an urgency statute that became effective immediately upon the Governor's signature. AB 361 amends the Brown Act to allow local governmental bodies to continue meeting remotely during a state of emergency, provided that the local body make certain findings to justify the continued use of teleconferenced meetings. These findings include that the public body is holding a meeting "during a proclaimed state of emergency," and 1) state or local officials have imposed or recommended measures to promote social distancing," or 2) "as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees." Cal. Govt. Code § 54953 (e) (1).

As noted above, the emergency order for the State of California remains in effect. At the local level, Mayor Breed declared, on February 25, 2020, a local emergency, and on March 6, 2020 the City's Health Officer declared a local health emergency, and both those declarations also remain in effect. Moreover, the City's Health Officer has issued at least one order (Health Officer Order No. C19-07y, available online at www.sfdph.org/healthorders) and one directive (Health Officer Directive No. 2020-33i, available online at www.sfdph.org/directives) that continue to recommend measures to promote physical distancing and other social distancing measures, such as masking, in certain contexts. The City's Department of Public Health, in coordination with the City's Health Officer, has advised that boards and commissions should consider meeting remotely if feasible to reduce risks to health and safety. In light of these facts, the Oversight Board may make the appropriate findings to continue meeting remotely. The resolution accompanying this memorandum contains those findings.

If the Oversight Board continues to meet remotely, AB 361 also requires that the meetings follow certain procedures and standards, identified in Exhibit 1 to the resolution, that are generally consistent with its past practices. Finally, AB 361 requires that the Oversight Board renew every 30 days the authorization to meet remotely and make additional findings in future resolutions that it "has reconsidered the circumstances of the state of emergency" and that either "the state of emergency continues to directly impact the ability of the members to meet safely in person" or that "state or local officials continue to impose or recommend measures to promote social distancing." Cal. Health & Safety Code § 54953 (e) (3) (B). Accordingly, if the Oversight Board wishes to hold remote meetings more than 30 days after it makes these findings, those meetings will be subject to the Oversight Board renewing the findings.

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James B. Morales
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James B. Morales

Interim Executive Director