

**PLEASANT VALLEY RECREATION AND PARK DISTRICT
STAFF REPORT / AGENDA REPORT**

TO: BOARD OF DIRECTORS

FROM: MARY OTTEN, GENERAL MANAGER

DATE: January 5, 2022

SUBJECT: CONSIDERATION AND ADOPTION OF RESOLUTION NO. 697 PROCLAIMING A LOCAL EMERGENCY PERSISTS AND AUTHORIZING THE USE OF REMOTE TELECONFERENCE MEETING PROCEDURES BY THE BOARD OF DIRECTORS AND ALL STANDING COMMITTEES OF THE DISTRICT FOR THE INITIAL 30-DAY PERIOD BEGINNING JANUARY 5, 2022 THROUGH FEBRUARY 4, 2022 PURSUANT TO THE RALPH M. BROWN ACT AS AMENDED BY ASSEMBLY BILL NO. 361

SUMMARY

In March 2020, the Governor, on behalf of the State of California, issued various executive orders which relaxed requirements under the Ralph M. Brown Act (Brown Act) allowing public agencies the flexibility to successfully continue conducting public meetings during the COVID-19 Pandemic. On September 30, 2021, the State rescinded those orders. However, in lieu of the rescinded executive orders, the State passed Assembly Bill 361 (AB 361) which modified the Brown Act and provides essentially the same flexibility for conducting public meetings during a declared emergency until January 1, 2024. As a result, in accordance with the requirements of AB 361, local agencies must adopt a resolution to use the modified public meeting provisions provided for in AB 361.

BACKGROUND

A number of laws have changed since the beginning of the COVID pandemic related to the Brown Act as it relates to teleconferenced public meetings (which includes telephone and other virtual access platforms such as Zoom), both from Governor Newsom's Executive Orders and recently from the enactment of Assembly Bill 361, which took effect October 1, 2021. These allow continued remote teleconference meetings without traditional Brown Act compliance, provided certain findings can be made related to the ongoing state of emergency and subject to adherence to certain new noticing and public participation requirements.

The District, as well as all public agencies in California, must now invoke and adhere to AB 361 and its modifications of certain elements of remote public meetings, or else revert to traditional Brown Act compliance. The major change associated with continuing remote meetings under AB 361 is that the public must now be allowed to make comments in real-time during the public comment period, either telephonically or virtually (e.g., Zoom). No physical location for public comment need be provided.

The other major change is that all public agencies, if they want to continue to conduct public meetings remotely, must adopt a resolution every 30 days making the findings of necessity to do so and affirming the measures in place to allow remote public comments by the public.

ANALYSIS

In March of 2020, at the onset of the COVID-19 pandemic, Governor Newsom proclaimed a State of Emergency in California and issued Executive Order N-25-20 to facilitate the ability of legislative bodies to meet using remote/virtual platforms to comply with health orders. Since that time, several other Executive Orders have issued that further modified the requirements related to the conduct of teleconferenced meetings and the right of public participation therein during the state of emergency. The Executive Orders collectively operated to remove certain requirements for teleconferenced meetings, including that each teleconference location be accessible to the public, and that members of the public be able to address the legislative body at each teleconference location.

The Executive Orders allowed the District Board and each of the District's legislative bodies, commissions, and committees subject to the Brown Act to modify how meetings were conducted to protect the health and safety of the legislative bodies, staff, and the public, while ensuring the transparency and accessibility for open and public meetings. However, those executive orders expired on October 1, 2021.

On September 16, 2021, Governor Newsom signed AB 361 into law. AB 361 was made effective October 1, 2021, to correspond to the timing of expiration of the executive orders.

AB 361 allows legislative bodies to continue to utilize remote/virtual platforms for meetings during a state of emergency proclaimed by the Governor that includes the District, provided that one of the following three criteria is met:

- i) State or local officials have imposed or recommended measures to promote social distancing; or
- ii) The legislative body is meeting for the purpose of determining, by majority vote, whether as a result of the state of emergency, meeting in person would present imminent risks to the health or safety of attendees; or
- iii) The legislative has previously determined, by majority vote, that, as a result of the state of emergency, meeting in person would present imminent risks to the health or safety of attendees.

Initial Findings

The proclaimed statewide declaration of emergency related to COVID-19 remains in effect. Accordingly, if just one of the three foregoing criteria are met, then the District can conduct meetings remotely pursuant to Government Code § 54953(e) as amended by AB 361, subject to compliance with certain alternative noticing and public participation requirements as detailed below, and in doing so are excused from compliance with the onerous requirements referenced above that would otherwise apply to remote teleconferenced meetings under Government Code § 54953(b)(3).

Findings For Continued Reliance on AB 361 (Future Meetings, if needed)

After 30 days following the initial invocation of AB 361, continued reliance on AB 361 for subsequent meetings requires the following:

1. Either the “state of emergency” must remain active or state or local officials have imposed or recommended measures to promote social distancing; and
2. No later than 30 days after teleconferencing for the first time under AB 361 rules, and every 30 days thereafter, the legislative body, by majority vote, finds that it has reconsidered the circumstances of the state of emergency and at least one of the following circumstances exist:
 - a. The state of emergency continues to impact the ability of the members to meet safely in person; or
 - b. State or local officials continue to impose recommended measures to promote social distancing.

Rules For Public Participation Under AB 361

If a public agency invokes AB 361, the alternative notice and participation requirements for teleconferenced meetings are as follows:

1. No physical location is required for public attendance or public comment. However, the public must be able to access and participate in the meeting through a call-in or an internet-based service, and instructions for how to participate must appear in the posted notices or agenda;
2. Teleconferenced meetings must protect the statutory and constitutional rights of the parties and the public;
3. Legislative bodies may allow public comments to be submitted prior to a meeting, but must also allow the public to participate in real time through call-in or internet-based service. A legislative body cannot require public comments be submitted in advance of the meeting;
4. If there is any disruption of the call-in or internet-based service, the legislative body must suspend the meeting and take no further action until the problem is fixed;
5. When providing a public comment period, whether after each item or during a general comment period, a legislative body must allow reasonable time for members of the public

to comment, and must also include reasonable time for members to register with the third-party internet website or online platform (e.g, Zoom), if applicable.

These provisions of AB 361 are effective until January 1, 2024. This means these provisions may be invoked any time there is a proclaimed state of emergency by the Governor (e.g., wildfires) and the District Board can make at least one of the enumerated findings.

In light of the continuing COVID-19 emergency, and the continued threats to health and safety posed by indoor meetings with large attendance, staff recommends adoption of the proposed resolution making the findings required to initially invoke AB 361. Doing so will allow the meetings of the District Board and each of the District's legislative bodies to occur by teleconference, without adhering to the teleconferencing requirements set out in Government Code Section 54953(b)(3) that would otherwise apply absent invocation of AB 361.

Continued reliance on AB 361 will require adoption of a new resolution making the required findings every 30 days.

RECOMMENDATION

It is recommended that the Board adopt Resolution No. 697 proclaiming a local emergency persists and authorizing the use of remote teleconference meeting procedures by the Board of Directors and all standing committees of the District for the initial 30-day period beginning January 5, 2022 through February 4, 2022 pursuant to the Ralph M. Brown Act as amended by Assembly Bill No. 361.

ATTACHMENT

- 1) Resolution No. 697 (3 pages)