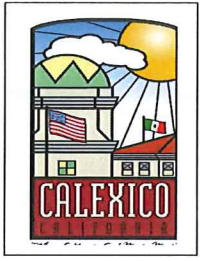


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CITY COUNCIL AGENDA STAFF REPORT

DATE: November 17, 2022

TO: Mayor and City Council

APPROVED BY: Esperanza Colio Warren, City Manager 

PREPARED BY: Best Best & Krieger LLP, City Attorney

SUBJECT: Approval of a Resolution to Continue Fully or Partially Virtual Public Meetings (AB 361)

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Recommendation:

It is recommended that the City Council adopt a Resolution to continue fully or partially virtual public meetings.

Background:

The Brown Act generally allows for teleconference or virtual meetings, provided that the physical locations of the council members joining by teleconference are posted on the agenda, that those locations are open to the public and that a quorum of the council members is located within the City. Newly enacted AB 361 provides an exception to these procedures in order to allow for fully virtual meetings during proclaimed emergencies, including the COVID-19 pandemic.

In March of 2020, Governor Newsom issued Executive Order N-29-20, which suspended portions of the Brown Act relating to teleconferencing, enabling fully virtual meetings without having to post the location of the council members attending virtually. Many cities and other public agencies have been holding public meeting using virtual platforms since this time. In June of 2021, Governor Newsom issued Executive Order N-08-21, which provided that the exceptions contained in EO N-29-20 would sunset on September 30, 2021.

On September 10, 2021, the Legislature adopted AB 361, which allows public agencies to hold fully virtual meetings under certain circumstances. Governor Newsom signed the bill into law on September 16, 2021. Because it contained an urgency provision, it took immediate effect. The Governor then suspended AB 361 until October

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2, allowing a transition period from the prior Executive Order.

Under AB 361, cities can hold meetings without a public meeting space and without providing notice of the council members' teleconference locations if there is a Governor-proclaimed state of emergency and either state or local officials are imposing or recommending measures to promote social distancing or the City Council determines that meeting in person will be unsafe for attendees. If the virtual meeting is due to social distancing recommendations, the City Council does not have to make any findings at its first meeting under AB 361. However, to continue meeting virtually, the City Council must find that state or local officials still at least recommend measure to promote social distancing. The findings must be made within 30 days of the first meeting and every thirty days thereafter.

Discussion

On March 4th, 2020, the Governor proclaimed a state of emergency due to the COVID-19 pandemic. The state of emergency remains in effect as of the publication of this report.

Virtual meetings are currently allowed under AB 361 because state and local officials are continuing to recommend measures to promote social distancing. In the case of the pandemic, the requisite standards for holding virtual meetings are low. The City Council would only have to find that any state or local official is recommending measures to promote social distancing. Under the plain language of the statute, there does not have to be an order requiring social distancing, and the recommendation only needs to come from a state or local official. Nothing in the bill requires that the recommendation be a formal recommendation of a local health officer or in any sort of formal guideline.

Under AB 361, the "local agency" – which the Brown Act defines as the City, not the City Council - may utilize virtual meetings if the "legislative body" makes the required findings. As defined in the Brown Act, a "legislative body" includes both the City Council and all committees and commissions. Because the City Council is the most appropriate board to make findings and policy decisions on behalf of the City, the proposed resolution contains a two-pronged approach: It provides that all commissions and committees shall be authorized to utilize virtual meeting procedures for 30 days, and authorizes each individual commission or committee to make findings in support of virtual meetings if the City Council has not renewed or terminated the resolution. Thus, the proposed resolution provides the City Council with the flexibility to allow its commissions and committees to host virtual meetings, while still maintain the City Council's jurisdiction to require in-person meetings as warranted.

AB 361 allows the use of fully virtual meetings under the foregoing conditions, but it does not prohibit hybrid meetings. By adopting the proposed resolution, and continuing to renew it as conditions warrant, the City Council and any subordinate boards are not precluded from holding meetings that have some traditional components and some virtual or telephonic components. The City Council (and other City boards) may hold

meetings where some members join in the Council Chambers and some members join virtually. The City Council may also continue to allow both live and virtual public comments, together with reduced capacity in the Chambers as conditions warrant. For any hybrid meetings, AB 361 requires that members of the public be able to make live public comments directly to the Council or other board using telephonic or electronic means and that the agenda identify the means for making public comments.

As noted above, by adopting the proposed Resolution, the City Council is not prohibited from returning to fully in-person meetings. The Resolution is intended to provide the option to utilize the AB 361 procedures in lieu of the Brown Act's standard teleconferencing requirements. At future City Council meetings, a consent calendar item will be placed on each agenda to reconsider and potentially renew the Resolution.

Fiscal Impact:

Adoption of the resolution is not expected to have a fiscal impact.

Attachment:

1. Draft Resolution to Continue Fully or Partially Virtual Public Meetings (AB 361).

RESOLUTION 2022-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, MAKING FINDINGS AND DETERMINATIONS UNDER AB 361 FOR CONTINUED VIRTUAL MEETINGS

WHEREAS, the Ralph M. Brown Act (Gov. Code § 54950 et seq.) generally requires local agencies meeting via teleconference, including through other virtual or electronic means, to provide public access at each location in which members of the legislative body are teleconferencing; and

WHEREAS, the Legislature recently enacted Assembly Bill 361 (AB 361), which amended Government Code section 54953 to allow local agencies to meet fully virtually during a proclaimed state of emergency if state or local officials have imposed or recommended measures to promote social distancing; and

WHEREAS, the City Council finds that the Governor issued a proclamation declaring a state of emergency on March 4, 2020 due to the COVID-19 pandemic, pursuant to section 8625 of the California Emergency Services Act; and

WHEREAS, the City Council has reconsidered the circumstances of the state of emergency and finds that state or local officials continue to recommend measures to promote social distancing; and

WHEREAS, the City Council desires that the City of Calexico, including all commissions, committees, and other Brown Act bodies shall continue to hold virtual meetings pursuant to AB 361 and Government Code section 54953(e).

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Calexico, as follows:

SECTION 1. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

SECTION 2. The City Council and all other commissions, committees or other Brown Act bodies of the City shall be authorized to continue to meet virtually in accordance with Government Code section 54953(e) and without compliance with section 54953(b)(3).

SECTION 3. This Resolution does not prevent or prohibit the City Council or any commission, committee or other Brown Act body of the City from holding hybrid meetings (containing both virtual and in-person components) or from meeting in-person, provided such meetings comply with AB 361 and with all state and local health orders. Commissions, committees and other Brown Act bodies shall comply with all rules established by the City Council and/or City Manager for attendance at meetings.

SECTION 4. The City Council shall take action to renew this Resolution every thirty days for as long as any state or local officials continue to recommend any measures to promote social distancing, but the City Council may terminate the Resolution at any time. In the event that more than 30 days pass between regular City Council meetings, the City Council shall take action to renew this Resolution prior to taking any action or engaging in any deliberation or discussion in a virtual meeting; renewal of this Resolution may occur either at the beginning of the next regular meeting or at a special meeting called for such purposes. In the event this Resolution has lapsed, and the City Council has not terminated it, any commission, committee or other Brown Act board of the City shall be authorized to, and shall, make any required findings in order to meet virtually under AB 361.

SECTION 5. Severability. If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City Council hereby declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion thereof.

SECTION 6. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Callexico, California, at a regular meeting held on this 16th day of November, 2022.

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

Javier Moreno, Mayor

ATTEST:

Gabriela T. Garcia, City Clerk

APPROVED AS TO FORM:

Carlos Campos, City Attorney

State of California)
County of Imperial) ss.
City of Calexico)

I, Gabriela T. Garcia, City Clerk of the City of Calexico do hereby certify the above Resolution No. 2022-_____ was approved at a regular City Council meeting held on the 16th day of November, 2022, by the following vote to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Gabriela T. Garcia, City Clerk