



DATE: October 10, 2022

TO: Honorable Mayor and Members of the City Council through City Manager

FROM: Eric Danly, City Attorney
Dylan Brady, Assistant City Attorney

SUBJECT: Resolution Making Required Findings and Authorizing the City Manager to Implement Teleconferenced Public Meetings for the City Council and All City Subordinate Bodies Pursuant to Assembly Bill 361

RECOMMENDATION

It is recommended that the City Council adopt a Resolution (Attachment 1) making required findings and authorizing the City Manager to implement teleconferenced public meetings for the City Council and all City subordinate bodies pursuant to Assembly Bill 361.

BACKGROUND

On October 4, 2021, City Council adopted Resolution No. 2021-163 N.C.S., on November 1, 2021, City Council adopted Resolution No. 2021-176 N.C.S., on November 15, 2021, City Council adopted Resolution No. 2021-183 N.C.S., on December 6, 2021, City Council adopted Resolution No. 2021-189 N.C.S., on January 3, 2022, City Council adopted Resolution No. 2022-001 N.C.S., on January 24, 2022, City Council adopted Resolution No. 2022-008 N.C.S., on February 7, 2022, City Council adopted Resolution No. 2022-020 N.C.S., on March 7, 2022, City Council adopted Resolution No. 2022-029 N.C.S., on April 4, 2022, City Council adopted Resolution No. 2022-045 N.C.S., on May 2, 2022, City Council adopted Resolution No. 2022-068 N.C.S., on May 16, 2022, City Council adopted Resolution No. 2022-081 N.C.S., on June 6, 2022, City Council adopted Resolution No. 2022-94 N.C.S., on June 20, 2022, City Council adopted Resolution No. 2022-107 N.C.S., on July 18, 2022, City Council adopted Resolution No. 2022-119 N.C.S. on August 8, 2022, City Council adopted Resolution No. 2022-133, and on September 12, 2022 City Council adopted Resolution No. 2022-138 N.C.S. authorizing the City Manager to implement teleconferenced public meetings in compliance with Government Code Section 54953. These sixteen Resolutions stated that the continuance of teleconference meetings, “may be extended by the adoption of subsequent resolutions as permitted pursuant to AB 361.” This item and subsequent resolutions will need to be adopted every 30 days pursuant to Government Code Section 54953 to continue teleconference meetings due to COVID-19.

The Ralph M. Brown Act (Brown Act) allows for meetings via teleconferencing subject to certain requirements, including that the legislative body notice each teleconference location of each member that will be participating in the public meeting, that each teleconference location be accessible to the public, that members of the public be allowed to address the legislative body at each teleconference location, that the legislative body post an agenda at each teleconference location, and that at least a quorum of the legislative body participate from locations within the boundaries of the local agency's jurisdiction. (Government Code Section 54953(b)(3)). To prevent the spread of COVID-19, the Centers for Disease Control and Prevention (CDC) still recommends that people stay at least "6 feet away from other people", "avoid crowds", and "wear a mask." Accordingly, the CDC's recommendations may conflict with holding public meetings in the City Council chambers and the Government Code's requirements that the public be admitted to the teleconference locations.

In an effort to reduce the spread of COVID-19 at public meetings, on March 17, 2020, Governor Newsom signed Executive Order No. N-29-20, which suspends the Brown Act's requirements for teleconferencing during the COVID-19 pandemic, provided that specified notice and accessibility requirements are met, and that members of the public are allowed to observe and address the legislative body at the teleconference meeting. On June 11, 2021, Governor Newsom issued Executive Order N-08-21, which extended the provision of Order N-29-20 concerning conducting of public meetings through September 30, 2021. The City of Petaluma has been holding teleconference public meetings for the City Council and all of its subordinate bodies in accordance with these two executive orders during the COVID-19 pandemic.

With a surge of COVID-19 delta variant cases and Executive Order N-08-21 sunseting on September 30, 2021, Assembly Bill 361 (AB 361) was signed by Governor Newsom on September 16, 2021, which provides procedures for public entities to continue teleconference meetings. AB 361 amends Education Code Section 89305.6, applicable to public meetings of School Boards, Government Code Section 11133 of the Bagley-Keene Opening Meeting Act. applicable to public meetings for state boards and commissions, and Government Code Section 54953 applicable to public meetings held by cities and counties. AB 361 provides an alternative to the teleconferencing requirements of Government Code Section 54953(b)(3), as long as a state of emergency exists declared by the Governor and the local legislative body makes certain factual findings regarding the state of emergency, including that meeting in person would present imminent risks to the health or safety of attendees. When there is a continuing state of emergency as declared by the Governor and when state or local officials have imposed or recommended measures to promote social distancing, AB 361 would require a legislative body to make specified findings not later than 30 days after the first teleconferenced meeting pursuant to AB 361, and to make those findings every 30 days thereafter, in order to continue to meet under these abbreviated teleconferencing procedures. The attached Resolution makes these required findings and if adopted will allow the City Council and its subordinate bodies to continue to hold public meetings by teleconference to help mitigate the spread of COVID-19.

Since May 2, 2022, City Council meetings have both been in person and via zoom, and City Council meetings will continue to be "hybrid" meetings for the foreseeable future. However, this resolution is still necessary for the other boards and commissions and their staff liaisons who have

not yet been trained on conducting hybrid meetings. Additionally, the resolution is necessary to allow commission, committee, and board members to attend their meetings virtually without having to allow the public into their homes.

DISCUSSION

The Petaluma City Council has the express power pursuant to Section 8630 of the Government Code and Section 2.32.060(A) of the Petaluma Municipal Code “to proclaim the existence or threatened existence of a ‘local emergency’ if the city council is in session” or to ratify the proclamation of a ‘local emergency’ if the City Manager declares a ‘local emergency’ while the Council is not in session. This power was exercised on March 16, 2020, when the City Council adopted Resolution No. 2020-040 N.C.S. which ratified the local emergency declaration proclamation by the City Manager related to COVID-19. The authority to proclaim a local emergency resides with the City Council, not with any of the City subordinate bodies.

Section 55 of the Petaluma City Charter states that “[t]he city council shall have the power to establish such commissions as shall be necessary for the effective accomplishment of municipal business.” Over the years, the City Council has established numerous commissions to help accomplish City business and make recommendations to City Council pursuant to Section 55 of the City Charter. The City Council has also established numerous committees to help accomplish City business and advise the Council. Such committees are not subject to Section 55 of the City Charter and have been created pursuant to the Council’s inherent legislative powers. Accordingly, Council’s decision on whether to continue teleconferenced meetings will also determine whether its subordinate bodies will also continue to have teleconferenced meetings or not.

AB 361 amends Government Code Section 54953 (part of the Brown Act) to provide an alternative to permitting the public to access the locations from which City Councilmembers are teleconferencing. In order to have teleconference public meetings without providing access to City Councilmember’s remote teleconference locations (typically, their private residences), the City Council must pass a resolution stating that:

1. The City Council has reconsidered the circumstances of the COVID-19 state of emergency and that any of the following circumstances exist;
2. The state of emergency as a result of COVID-19 continues to directly impact the ability of the members of City Council and the members of the City’s subordinate bodies to meet safely in person; and/or
3. State or local officials continue to impose or recommend measures to promote social distancing.

AB 361 requires the City Council to make these findings every 30 days to continue holding teleconference hearings without members of the City Council and the public being physically present. If the City Council adopts a resolution under AB 361 as recommended, staff will agendize a similar action once a month until the state of emergency is over, the City Council no longer believes teleconference meetings are necessary to protect the health or safety of City Council meeting attendees, or until Government Code Section 54953 expires on January 1, 2024. AB 361 refers to the “legislative body” making the findings required for the first and subsequent

teleconference meetings as permitted by the statute. Some have read the statute's use of "legislative body" to mean that city councils and each subordinate body of a city council that intends to meet by teleconference as permitted under AB-361 must make the initial and subsequent findings every 30 days. However, as noted above, none of the subordinate bodies created by the Petaluma City Council has the authority to make emergency findings or declarations. Accordingly, the attached resolution has been prepared such that the City Council's findings and authorization to conduct teleconference meetings under AB-361 apply both to the Council and to all of its subordinate bodies. If the Council adopts the resolution, staff will prepare subsequent resolutions for Council action under AB 361 the same way.

The Sonoma County Health Officer is recommending social distancing, and the City has implemented or is preparing to implement the Health Officer's orders by:

- Requesting staff and visitors to wear masks inside City buildings;
- Posting COVID-19 safety measures on the City's social media pages;
- Limiting the hours that the public may enter City Hall;
- Placing hand sanitizer stations in City Hall; and
- Providing online services such as EnergGov to allow the public to access City services, including obtaining permits, online rather than in person.

AB 361 also includes requirements intended to ensure that the public is able to watch teleconference meetings and participate by making public comments during the meetings. These requirements are already being implemented by the City, and include:

- Providing notice of the means by which members of the public may access teleconference meetings and offer public comment, including providing an opportunity for all persons to attend via a call-in option or an internet-based service option.
- The Legislative Body being prohibited from taking further action on agenda items when there is a disruption which prevents the public agency from broadcasting the meeting to members of the public, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments, prohibiting the legislative body from taking further action on agenda items until public access is restored.
- Prohibiting the legislative body from requiring public comments to be submitted in advance of the meeting and specifying that the legislative body must provide an opportunity for the public to address the legislative body and offer comment in real time.
- Prohibiting the legislative body from closing the public comment period until the public comment period has elapsed or until a reasonable amount of time has elapsed.

Additionally, in anticipation of returning to in-person City Council and subordinate body meetings in the future, on August 2, 2021, the City Council passed an ordinance allocating part of the City's American Rescue Plan Act funds to improvements to the City Council chambers for when in person public meetings can safely resume.

On October 7, 2021, Governor Newsom vetoed Assembly Bill 339 (AB 339) which sought to require hybrid (virtual and in person) public meetings for jurisdictions that contain a population of at least 250,000 people. As part of Governor Newsom's veto message he stated that AB 339

“would set a precedent of tying public access requirements to the population of jurisdictions. This patchwork approach may lead to confusion...limits flexibility and increases costs for the affected local jurisdictions.” And that we are still in “a declared state of emergency...” and “could put the health and safety of the public and employees at risk depending on the nature of the declared emergency.” Even if AB 339 was adopted the City would not be subject to AB 339 due to its population. Regardless, the City is in the process of conducting hybrid meetings as the City believes that hybrid meetings will provide the greatest access to the public.

If the AB 361 Resolution is not passed then the City will not be conducting “teleconferenced meetings” as defined under Government Code Section 54953 of the Brown Act. This means that Councilmembers and all of the subordinate boards and commission members will need to conduct the meetings in person even if the City moves to hybrid meetings. If a Councilmember, or subordinate body member were to teleconference into the meeting, the location of where they are participating would need to be accessible to the public.

Besides AB 361, there are currently two Assembly Bills working its way through the California Legislature that if signed into law, would provide local agencies greater flexibility to conduct teleconferenced meetings. Assembly Bill 1944 would allow the legislative body member to conduct meetings from private locations without having to allow the public into their private location if the meeting agenda identifies the legislative body members who are participating remotely and where they are participating remotely. Assembly Bill 2449 would allow some members to teleconference as long as a quorum is present at a single location that is present to the public. Staff will continue to monitor these two Assembly Bills and provide updates when appropriate.

PUBLIC OUTREACH

This agenda item was noticed in compliance with the California Brown Act.

COUNCIL GOAL ALIGNMENT

This action helps achieve the following City Council goals: Workplan Item #161 Increase community engagement through programs that attract new followers. Complete Latinx outreach strategy and begin implementing recommendations from the strategy. Workplan Item #169 Develop guidelines and policies to reopen city facilities in a way that supports safety and flexibility for city staff.

CLIMATE ACTION/SUSTAINABILITY EFFORTS

There is no climate action or sustainability impacts associated with this item.

ENVIRONMENTAL REVIEW

The proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15378(b)(5), in that adopting a resolution making required findings and authorizing the City Manager to implement teleconferenced public

meetings for the City Council and all City subordinate bodies pursuant to Assembly Bill 361 does not meet CEQA's definition of a "project," because the action does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, and because the action constitutes organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment. and is exempt pursuant to Section 15269(c) of the CEQA Guidelines, as specific actions necessary to prevent or mitigate an emergency.

FINANCIAL IMPACTS

There are no direct financial impacts from enactment of the proposed resolution.

ALTERNATIVES

If this resolution is not passed all subordinate body meetings will need to be in person.

ATTACHMENTS

1. Draft Resolution