



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: November 16, 2021

TO: Christine Daniel, City Manager

FROM: Sheri Hartz, City Clerk

SUBJECT: Resolution Of The City Council Of The City Of Emeryville Making Required Findings To Allow The Continuation Of Remotely Held Meetings Of The City Council And All City Committees And Commissions, (Except The Planning Commission Which Will Make Its Own Findings), Pursuant To AB 361
(In Conjunction with Successor Agency Agenda Item X.X, and MESA Agenda Item X.X)

Resolution Of The City Council Of The City Of Emeryville As Successor Agency To The Emeryville Redevelopment Agency ("Successor Agency") Making Required Findings To Allow The Continuation Of Remotely Held Meetings Of The Successor Agency Pursuant To AB 361
(In Conjunction with City Council Agenda Item X.X, and MESA Agenda Item X.X)

Resolution Of The Board Of Directors Of The Management Of Emeryville Services Authority ("MESA") Making Required Findings To Allow The Continuation Of Remotely Held Meetings Of MESA Pursuant To AB 361
(In Conjunction with the City Council Agenda Item XX.X and Successor Agency Agenda Item X.X)

RECOMMENDATION

Staff recommends that the appropriate above-entitled resolution for each legislative body be considered for approval.

BACKGROUND

On March 4, 2020, the Governor of the State of California ("Governor") issued a Proclamation of a State of Emergency due to COVID-19. Such proclamation remains in effect, as are the facts, circumstances, and emergency under which it was issued.

On March 17, 2020, the Governor issued Executive Order N-29-20 allowing local legislative bodies to hold meetings via teleconference and to make meetings accessible electronically without it constituting a violation of the open meeting laws found in the Ralph M. Brown Act (California Government Code Sections 54950 et seq., "Brown Act").

On March 19, 2020, the City Council adopted Resolution No. 20-23 ratifying the City Manager as Director of Emergency Services Proclamation of Local Emergency dated March 17, 2020.

Since the enactment of the Executive order, local legislative bodies in California have been able to hold public meetings by “teleconference” (a term that includes video conferencing) without complying with all of the Brown Act requirements for teleconference meetings, as follows:

- Giving notice of each teleconference location from which a member would be participating in a public meeting and specifically identifying each teleconference location in the meeting notice and on the agenda, including the full address and room number;
- Assuring that each teleconference location is accessible to the public;
- Allowing members of the public to address the body at each teleconference location;
- Posting agendas at all teleconference locations; and
- During teleconference meetings, at least a quorum of the members of the local body must participate from locations within the boundaries of the territory over which the local body exercises jurisdiction.

There has been an increase in public participation at public meetings that are held via teleconference during the course of the pandemic. (Little Hoover Commission, “The Government of Tomorrow: Online Meetings”, Report 261 (June 2021).)

In March 2020, staff transitioned holding public meetings to TPX, its existing technology, and thereafter to Zoom for all City meetings. Remote meetings have allowed the City Council, Successor Agency, MESA Board, City Council Committees, and the City’s community advisory bodies to continue to conduct City business from the safety of their individual locations. The usage of remote technology for public meetings over the last 18 months has allowed the City to ensure the public’s continued access to meetings while also ensuring the public’s safety.

On June 11, 2021, the Governor issued Executive Order N-08-21, which, among other things, rescinded his prior Executive Order N-29-20 and set a date of October 1, 2021, for public agencies to transition back to public meetings held in full compliance with the Brown Act.

DISCUSSION

Subsequent to the above-mentioned Executive Order issuance, and because of the Delta variant surge in California, the legislature has taken action to extend the COVID-19 exceptions to the Brown Act’s teleconference requirements, subject to additional safeguards. AB 361, signed by the Governor on September 16, 2021, allows a local agency to continue to use teleconferencing without complying with the Brown Act provisions above in any of the following circumstances:

- The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

- The legislative body holds a meeting during a proclaimed state of emergency for the **purpose of determining**, by majority vote whether, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
- The legislative body holds a meeting during a proclaimed state of emergency and **has determined**, by majority vote, that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

MESA meets the requirements to continue holding meetings remotely in order to ensure the health and safety of the public if:

- MESA is still under a state of emergency.
- The Alameda County Health Officer has issued various health orders and updates designed to slow the spread of COVID-19 (including variants thereof) such as vaccinations, quarantines, face covering requirements, and social distancing recommendations designed to protect public health.
- The Alameda County Health Officer is strongly recommending teleconferenced meetings as those meetings present the lowest risk of transmission of SARS-CoV-2, the virus that causes COVID-19, and further recommends social distancing and face masking of all attendees.

Due to the rise in COVID-19 cases, including due to the Delta variant, MESA continues to be deeply concerned about protecting the health and safety of attendees, particularly given that even fully vaccinated people have contracted the Delta variant, that people may have and transmit the virus before knowing they are infected and/or if they are asymptomatic, that meetings of MESA can exceed fifteen minutes, and that its meeting facilities are limited in space with seats close together.

AB 361 also provides that, if the state of emergency remains active for more than 30 days, a local agency must make the following findings by majority vote 30 days after it first implements the bill's exemptions to the Brown Act teleconferencing rules and every 30 days thereafter to continue using them:

- (A) The legislative body has reconsidered the circumstances of the state of emergency.
- (B) Any of the following circumstances exist:
 - (i) The state of emergency continues to directly impact the ability of the members to meet safely in person.
 - (ii) State or local officials continue to impose or recommend measures to promote social distancing.

MESA will have to put an item on the agenda once every 30 days to make findings regarding the circumstances of the emergency and vote to continue using the law's exemptions. The MESA Board first made the findings at its November 2, 2021, meeting and will reconsider the findings at each of its subsequent meetings or every 30 days, whichever is less, until the state of emergency ends.

The stated aim of AB 361 is “to improve and enhance public access to local agency meetings during the COVID-19 pandemic and future applicable emergencies, by allowing broader access through teleconferencing options” consistent with Executive Order N-29-20. The bill sunsets as of January 1, 2024.

FISCAL IMPACT

There is no impact to MESA’s finances at this time.

STAFF COMMUNICATION WITH THE PUBLIC

No significant contact has been made with the public on this matter.

CONFLICT OF INTEREST

No conflict exists regarding this matter.

CONCLUSION

Staff recommends that MESA consider approving the above-entitled resolution.

PREPARED BY: Sheri Hartz, City Clerk
Thai Nam Pham, Deputy City Clerk

**APPROVED AND FORWARDED TO THE
BOARD OF DIRECTORS OF THE MANAGEMENT OF EMERYVILLE SERVICES
AUTHORITY:**



Christine Daniel, Executive Director

ATTACHMENTS

- Draft Resolution