



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** September 6, 2022  
**TO:** Adam Politzer, Interim City Manager/Executive Director  
**FROM:** Sheri Hartz, City Clerk/Secretary  
**SUBJECT:** **Remotely Held Meetings:**

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

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

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

## 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).)

All entities of the City of Emeryville have been meeting remotely since March of 2020. 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 two years 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 took 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.

The City Council and its entities meet the requirements to continue holding meetings remotely in order to ensure the health and safety of the public due to the following circumstances:

- The City is still under a state of emergency.
- The Alameda County Health Officer issuance of various health orders and updates designed to slow the spread of COVID-19 (including variants and subvariants thereof) such as vaccinations, quarantines, face covering requirements, and social distancing recommendations designed to protect public health.
- The Alameda County Health Officer, on December 8, 2021, signed into effect Health Officer Order 21-06, which states, in part, that the new COVID-19 variants are highly transmissible in indoor settings and require multicomponent prevention strategies to reduce spread and that, despite high vaccination rates, the County is experiencing substantial levels of community transmission due to the variants.
- While the risk for COVID-19 infection is highest among unvaccinated residents, the incidence of infection among fully vaccinated persons continues.

On June 24, 2022, Alameda County Public Health (“ACPH”) lifted the requirement for the public to wear masks in most indoor public settings, but stated that, while cases appear to have peaked, COVID-19 continues to circulate in our communities and residents should anticipate substantial ongoing impacts from COVID-19. The most recent data shows the testing positivity rate in Alameda County, which spiked to over 14% in July, still hovers at around 10%.

ACPH stated further that the pandemic is not over and that the virus that causes COVID-19 continues to disrupt people’s lives and disproportionately impact communities of color, older adults, and those with underlying health conditions. In conclusion, ACPH reported that since January 1st of this year, COVID-19 has caused the death of approximately 380 Alameda County residents, and continued to recommend masks, keeping events small and outdoors, and getting vaccines and boosters to lower the risk of contracting COVID-19.

Two Omicron subvariants, BA.4 and BA.5, are even more contagious than their predecessors and have caused an increase in new daily cases and hospitalizations to 6,300. The subvariants are offshoots of the strain responsible for nearly all of the virus spread in the U.S. this year.

The City Council has been and continues to be concerned about protecting the health and safety of attendees, particularly given that even fully vaccinated people have contracted the Delta and Omicron variants and subvariants, that people may have and

transmit the virus before knowing they are infected and/or if they are asymptomatic, that meetings of the City Council and its entities 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 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. The City Council and entities first made the findings at their November 2, 2021, meeting and will reconsider the findings at each of the 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 the City Council'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 approval of the appropriate above-entitled resolution.

**PREPARED BY:** Sheri Hartz, City Clerk/Secretary

**APPROVED AND FORWARDED TO THE  
CITY COUNCIL OF THE CITY OF EMERYVILLE  
CITY COUNCIL OF THE CITY OF EMERYVILLE AS SUCCESSOR AGENCY TO THE  
EMERYVILLE REDEVELOPMENT AGENCY  
BOARD OF DIRECTORS OF THE MANAGEMENT OF EMERYVILLE SERVICES  
AUTHORITY:**



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Adam Politzer, Interim City Manager/Executive Director

**ATTACHMENTS**

- Draft Resolution