

RECREATION COMMISSION STAFF REPORT

Title: Resolution making findings to allow the Recreation Commission to meet virtually during the COVID-19 pandemic declared emergency.

Meeting Date: October 5, 2021

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RECOMMENDATION:

Adopt the resolution making findings to allow the Recreation Commission to meet virtually during the COVID-19 pandemic declared emergency.

BACKGROUND:

On September 15, 2021, the Governor signed Assembly Bill (AB) 361, amending the Ralph M. Brown Act to allow local agencies to continue conducting public meetings remotely during a state of emergency, so long as certain requirements are met.

Governor Newsom subsequently signed Executive Order N-15-21, which generally suspends the application of Assembly Bill (“AB”) 361 until October 1, 2021. AB 361 is urgency legislation amending the Brown Act to allow legislative bodies of local agencies to meet remotely with relaxed teleconferencing requirements during declared emergencies under certain conditions.

Executive Order N-15-21 clarifies that the existing rules and procedures governing remote meetings will generally apply through September 30, 2021. These existing requirements were originally provided by Executive Order N-29-20 and extended by Paragraph 42 of Executive Order N-08-21. The updated procedural requirements of AB 361 will immediately apply, however, to any local legislative body that meets remotely to determine whether as a result of a proclaimed emergency, meeting in person would present imminent risks to the health or safety of attendees.

Under the urgency legislation, a local agency may utilize the more “relaxed” Brown Act teleconferencing requirements in any of the following circumstances:

- There is a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing; or
- There is a proclaimed state of emergency, and the local agency’s meeting is 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; or

- There is a proclaimed state of emergency, and the local agency has determined, by majority vote, that as a result of the emergency meeting in person would present an imminent risk to the health or safety of attendees.

AB 361 defines a “state of emergency” as a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act. Importantly, this includes the current state of emergency proclaimed by the Governor due to the COVID-19 Pandemic.

To continue to rely on the relaxed teleconferencing provisions, the local agency must reconsider the circumstances of the state of emergency and make the following findings by majority vote, every 30 days:

- The state of emergency continues to directly impact the ability of the members to meet safely in person; or
- State or local officials continue to impose or recommend measures to promote social distancing.

Attached is a letter from Bryan Wheeler, Director of Public Health for Mono County recommending that physical/social distancing measures continue to be practiced throughout Mono County. This includes legislative bodies subject to the Brown Act.

Virtual Meeting Requirements Under AB 361

For all remote meetings held under AB 361, local agencies are required to meet the following public participation and notice requirements (note that some of these requirements differ from what had been in place under the Prior Orders):

Meeting agendas and notices must describe how members of the public may access the meeting and offer public comment and identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option.

The public must have the opportunity to address the legislative body and comment in real time. The local agencies may still allow for the public to submit comments in advance of the meeting, but the local agency must also provide an option for the public to comment in real time.

If a timed public comment period is provided on an agenda, whether on a specific agenda item or in general, registration and the public comment period cannot close until the time has elapsed. If public comment is taken separately on each agenda item, the legislative body must allow a reasonable amount of time per item to allow members of the public the opportunity to provide public comment, register, or otherwise be recognized for the purpose of providing public comment.

Local agencies are permitted to use platforms which, incidental to their use and deployment, may require users to register for an account with that platform so long as the platform is not under the control of the local agency.

If there is a disruption in the broadcast of a public meeting using the call-in option or the internet-based option, or there is a disruption within the agency's control which prevents members of the public from offering comments, the agency must not take any action on items appearing on the agenda until full access is restored.

Meeting agendas are not required to be posted at all teleconference locations, and local agencies are not required to make each teleconference location accessible to the public, provided that members of the public are afforded the opportunity to provide public comment remotely.

ANALYSIS:

The Recreation Commission has expressed an interest in continuing to utilize the virtual meeting process. AB 361 creates statutory exemptions to the Brown Act that extend flexibility for remote public meetings during proclaimed emergencies, through January 1, 2024. State and local agencies must give the public notice and an opportunity to comment and participate at meetings in real time, even using remote means, and they must comply with certain prerequisites in order to rely on the remote meeting provision. While this new law relaxes certain remote meeting requirements relating to member participation, agendas, and public accessibility at remote locations, the underlying aim of the Brown Act remains - to ensure meetings of local agencies be open and public.

The current process used for Commission meetings meets the requirements of AB 361. The process does allow for in-person comments at the council chambers (437 Old Mammoth Road, Suite Z). Public comments generally and on specific items are allowed for in real time including via Zoom which may be accessed through a published link or phone number. The Recreation Commission continues to accept public comments in writing or by email. Email comments are accepted during Commission meeting as well as prior.

The Commission will need to reconsider the circumstances and need for remote meetings every 30 days. This item will need to come back for consideration at the November 2, 2021 Recreation Commission meeting. This process will continue until the emergency is terminated or the Commission determines it is safe to reconvene in-person meetings and not utilize the flexibility provided under AB 361.

Attachments:

- A. Resolution
- B. Memorandum from Bryan Wheeler, Director of Public Health recommending Social Distancing and Virtual Meetings