

**SUBJECT:** Consideration of a Resolution Authorizing the City to Implement Teleconferenced Public Meetings Pursuant to Assembly Bill 361

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**RECOMMENDATION:** Adopt the Resolution Authorizing the City to Implement Teleconferenced Public Meetings Pursuant to Assembly Bill 361.

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**BACKGROUND:** On September 20, 2021, Governor Gavin Newsom signed Executive Order N-15-21 clarifying that cities may continue to meet remotely in accordance with procedures established by prior Executive Orders. Assembly Bill 361 (AB 361) allows cities to continue to meet remotely during proclaimed states of emergency under modified Brown Act requirements that are similar but not identical to the rules and procedures established by the previous Executive Brown Act Orders.

AB 361 authorizes local agencies to use teleconferencing without complying with the teleconferencing requirements imposed by the Ralph M. Brown Act during a declared state of emergency, when state or local health officials have imposed or recommend measures to promote social distancing during the proclaimed state of emergency.

**DISCUSSION:** On June 11, 2021, Governor Newsom issued Executive Order N-08-21, which among other things rescinded his prior Executive Order N-29-20 and set a date of October 1, 2021, for public agencies to transition back to public meetings held in full compliance with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

As the Delta variant has surged in California, the legislature has taken action to extend the COVID-19 exceptions to the Brown Acts's teleconference requirements, subject to some additional safeguards. AB 361 allows a local agency to use teleconferencing in any of the following circumstances without complying with the Brown Act provisions:

- 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.

A local agency that holds a meeting under these circumstances would be required by AB 361 to follow the steps listed below, in addition to giving notice of the meeting and posting agendas as required under the Brown act. These additional requirements are intended to protect the public's right to participate in the meetings of local agency legislative bodies.

Pursuant to AB 361 local agencies are required to do all of the following in addition to meeting notice requirements under the Brown Act:

- Allow the public to access the meeting and require that the agenda provide an opportunity for the public to directly address the legislative body pursuant to the Brown Act's other teleconferencing provisions.
- In each instance when the local agency provides notice of the teleconferenced meeting or posts its agenda, give notice for how the public can access the meeting and provide public comment.
- Identify and include in the agenda an opportunity for all persons to attend via a call-in or an internet-based service option; the legislative body needs not provide a physical location for the public to attend or provide comments.
- Conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the public.
- Stop the meeting until public access is restored in the event of a service disruption that either prevents the local agency from broadcasting the meeting to the public using the call-in or internet-based service option or is within the local agency's control and prevents the public from submitting public comments (any actions taken during such a service disruption can be challenged under the Brown Act's existing challenge provisions).
- Not require comments be submitted in advance (though the legislative body may provide that as an option) and provide the opportunity to comment in real time.
- Provide adequate time for public comment, either by establishing a timed public comment period or by allowing a reasonable amount of time to comment.
- If the legislative body uses a third-party website or platform to host the teleconference, and the third-party service requires users to register to participate, the legislative body must provide adequate time during the comment period for users to register and may not close the registration comment period until the comment period has elapsed.

The City of Selma currently adheres to the above listed requirements.

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 every 30 days to continue using the bill's exemption to the Brown Act teleconferencing rules:

- The legislative body has reconsidered the circumstances of the emergency; and
- Either of the following circumstances exist: The state of emergency continues to directly impact the ability of members to meet safely in person, or State or local officials continue to impose or recommend social distancing measures.

The goal 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 contains an urgency clause, which became effective upon signing with a sunset of January 1, 2024.

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**RECOMMENDATION:** Adopt the Resolution Authorizing the City to Implement Teleconferenced Public Meetings Pursuant to Assembly Bill 361.

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\_\_\_\_\_/s/  
Ralph Jimenez, Interim City Manager

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09/24/2021  
Date

**RESOLUTION NO. 2021-\_\_\_\_\_**

**A RESOLUTION OF THE CITY OF SELMA, CALIFORNIA AUTHORIZING THE CITY TO IMPLEMENT TELECONFERENCED PUBLIC MEETINGS PURSUANT TO ASSEMBLY BILL 361**

**WHEREAS**, COVID-19 (also known as the “Coronavirus Disease”) is a respiratory disease which was first detected in China and has now spread across the globe, with multiple confirmed cases in California, including the City of Selma; and

**WHEREAS**, on January 31, 2020, the United States Secretary of Health and Human Services declared a public health emergency based on the threat caused by COVID-19, and the President of the United States issued a Proclamation Declaring a National Emergency Concerning COVID-19 beginning March 1, 2020; and

**WHEREAS**, in response to COVID-19, the Governor of the State of California issued a Proclamation of a State of Emergency in response to COVID-19 on March 4, 2020; and

**WHEREAS**, the City Council of the City of Selma adopted a proclamation of a local emergency related to the COVID-19 virus on March 16, 2020; and

**WHEREAS**, the Selma City Council has the explicit power “to proclaim the existence or threatened existence of a “local emergency” if the city council is in session” or ratify the proclamation of a “local emergency” if the City Manager declares one while Council is not in session; Accordingly this authority resides with City Council not with any of the Committees, Commissions, and Boards (“CCBs”); and

**WHEREAS**, to mitigate the spread of COVID-19 the Centers for Disease Control and Prevention recommends that people “Avoid crowded spaces,” “Choose events that take place outside with enough space for attendees to stay at least six-feet apart,” and to “Have a virtual gathering”; and

**WHEREAS**, on March 17, 2020, the Governor issued Executive Order N-29-20, which suspended and modified the teleconferencing requirements under the Brown Act (California Government Code Section 54950 et seq.) so that legislative bodies can hold public meetings via teleconference (with audio or video communications, without a physical meeting location), as long as the meeting agenda identifies the teleconferencing procedures to be used; and

**WHEREAS**, on June 11, 2021, the Governor issued Executive Order N-08-21, which extended the provision of N-29-20 concerning the conduct of public meetings through September 30, 2021; and

**WHEREAS**, California Assembly Bill 361 was signed into law on September 16, 2021 and amended Government Code Section 54953; and

**WHEREAS**, AB 361 has several requirements to make sure that the public is able to watch and make public comments during the teleconferenced public meetings, including:

- To provide notice of the means by which members of the public may access the meeting and offer public comment, including an opportunity for all persons to attend via a call-in option or an internet-based service option;
- The Legislative Body cannot take further action on agenda items when there is a disruption which prevents the public agency from broadcasting the meeting, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments, until public access is restored;
- Prohibiting the legislative body from requiring public comments to be submitted in advance of the meeting and would specify 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; and

**WHEREAS**, Government Code Section 54953(b)(3) permits public meetings by teleconference but requires agendas be posted at all teleconference locations, each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public; and

**WHEREAS**, Government Code Section 54953(e)(3)(A-B) provides an alternative to having public meetings in accordance with Government Code Section 54953(b)(3) when City Council has reconsidered the circumstances of the COVID-19 state of emergency and that the following circumstances exist:

1. 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 Committee's, Commission's, and Boards to meet safely in person; and
2. The State of California and the City of Selma continue to impose or recommend measures to promote social distancing.

**WHEREAS**, the City of Selma continues to impose or recommend measures to promote social distancing, which includes but is not limited to:

1. Requiring non-vaccinated staff and civilians to wear masks in City buildings.
2. Posting COVID-19 safety measures in City buildings.

**WHEREAS**, 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 authorizing the City Manager to conduct teleconferenced public meetings for all the City's Committees, Commissions, and Boards 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; and

**WHEREAS**, the City Council has considered all information related to this matter, as presented at the public meetings of the City Council identified herein, including any supporting reports by City Staff, and any information provided during public meetings.

**NOW THEREFORE BE IT RESOLVED**, that the City Council of the City of Selma hereby:

1. Declares that the above recitals are true and correct and are incorporated into this resolution as findings of the City Council.
2. Finds that 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 authorizing the City Manager to conduct teleconferenced public meetings for all the City's Committees, Commissions, and Boards 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
3. Finds that City Council has reconsidered the circumstances of the COVID-19 state of emergency and that the following circumstances exist:
  - 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 Committee's, Commission's, and Boards to meet safely in person; and
  - The State of California and the City of Selma continue to impose or recommend measures to promote social distancing.
4. Declares that as a result of the findings in provision 3 above, that the City is authorized to implement teleconferenced public meetings for all the City's Committees, Commissions, and Boards pursuant to Assembly Bill 361.
5. If any section, subsection, sentence, clause, phrase or word of this resolution is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction or preempted by state legislation, such decision or legislation shall not affect the validity of the remaining portions of this resolution. The City Council hereby declares that it would have passed and adopted this resolution and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional, unlawful or otherwise invalid.

6. This Resolution shall become effective immediately and shall be reconsidered by the City Council in 30 days to assess the state of emergency and determine whether or not to continue with the provisions set forth in AB 361.

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The foregoing resolution was approved and adopted at a special meeting of the City Council of the City of Selma held on the 27th day of September 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

\_\_\_\_\_  
Scott Robertson, Mayor

ATTEST:

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Reyna Rivera, City Clerk