

OFFICE OF THE CITY ATTORNEY
Long Beach, California

C-1

CHARLES PARKIN
City Attorney

MICHAEL J. MAIS
Assistant City Attorney

January 4, 2022

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Adopt Resolution making findings pursuant to Government Code Section 54953(e)(3) to authorize City legislative bodies to follow the teleconference meeting provisions of Government Code Section 54953(e)(1)-(2). (Citywide)

DISCUSSION

On September 30, 2021, the Ralph M. Brown Act (Brown Act) "waivers" for teleconference meetings of legislative bodies contained within the Governor of California's Executive Order N-08-21 expired. On September 16, 2021, the Governor signed into law Assembly Bill 361 (AB 361), which allows for similar practices during declared states of emergency where certain requirements are met and which took effect on October 1, 2021, pursuant to the Governor's Executive Order N-15-21.

On September 30, 2021, the Long Beach Health Officer recommended teleconference meetings, to the extent possible, of the City's legislative bodies, to promote social distancing measures to minimize the spread of COVID-19 for the protection of the community, staff, presenters, and legislative body members. This recommendation currently remains in place. In order to allow teleconference meetings with "waivers" to continue under AB 361, the City Council must make monthly findings reconsidering the circumstances of the state of emergency, and find that state or local officials continue to impose or recommend measures to promote social distancing.

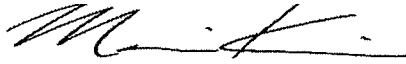
If adopted, the attached Resolution would make such findings pursuant to Government Code Section 54953(e)(3) to authorize City legislative bodies to follow the teleconference meeting provisions of Government Code Section 54953(e)(1)-(2).

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,

CHARLES PARKIN, City Attorney

By 

Monica J. Kilaita
Deputy City Attorney

MJK:vr

ATTACHMENT: CITY COUNCIL RESOLUTION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LONG BEACH MAKING FINDINGS PURSUANT TO GOVERNMENT CODE SECTION 54953(e)(3) TO AUTHORIZE CITY LEGISLATIVE BODIES TO FOLLOW THE TELECONFERENCE MEETING PROVISIONS OF GOVERNMENT CODE SECTION 54953(e)(1)-(2)

WHEREAS, on March 12, 2020, the Governor of California issued Executive Order N-25-20 which, among other things, took the unprecedented action of temporarily suspending certain requirements of the Ralph M. Brown Act (“Brown Act”) in light of the spread of COVID-19, an ongoing public health state of emergency; and

WHEREAS, Executive Order N-25-20 still required legislative bodies to provide a publicly accessible location from which members of the public would be able to observe a public meeting and offer public comment during a meeting; and

WHEREAS, as such, on March 17, 2020, the Governor issued Executive Order N-29-20, which further suspended various requirements of the Brown Act for public meetings, and replaced the Brown Act portion of Executive Order N-25-20 in its entirety; most notably, legislative bodies were no longer required to provide a physical location for the public to observe or provide public comment during a public meeting; and

WHEREAS, on June 15, 2021, the Governor issued Executive Order N-08-21, which, among other things, replaced the Brown Act portion of Executive Order N-29-20, but still allowed for certain Brown Act temporary suspensions, such as not having to provide a physical location for the public to observe or provide public comment during a public meeting and allowing all legislative body members to participate from outside the body’s jurisdictional boundaries, and stated that such suspensions would expire on September 30, 2021; and

1 WHEREAS, on September 16, 2021, the Governor signed into law
2 Assembly Bill 361 (“AB 361”), which allows for similar “waivers” of teleconference
3 meetings under the Brown Act during declared states of emergency where certain
4 conditions are met, and which took effect immediately as an urgency bill; and

5 WHEREAS, on September 20, 2021, the Governor issued Executive Order
6 N-15-21 to temporarily suspend the teleconferencing provisions of AB 361 until October
7 1, 2021; and

8 WHEREAS, AB 361 includes key “waivers” of normal teleconferencing
9 requirements including, but not limited to, the ability of a legislative body to allow public
10 access and comment via phone or internet only and to allow even a quorum of the
11 legislative body to take meetings from locations outside the body’s jurisdictional
12 boundaries without specifying the location or posting agendas at each teleconference
13 location; and

14 WHEREAS, AB 361 provides public participation safeguards, such as
15 requiring the legislative body to conduct teleconference meetings in a way that protects
16 the statutory and constitutional rights of the parties and public appearing before the
17 legislative body; requiring that the legislative body take no further action if there is a
18 disruption that prevents the agency from broadcasting the meeting to the public using the
19 call-in or internet-based service option, or if there’s a disruption within the agency’s
20 control which prevents members of the public from offering public comment using the
21 call-in or internet-based service option; not requiring public comments to be submitted in
22 advance of the meeting and providing the public opportunity to address the legislative
23 body and offer comment in real time; and the like; and

24 WHEREAS, in order to apply the teleconferencing standards with “waivers”
25 under AB 361, there are certain conditions which must be met; and

26 WHEREAS, first, AB 361 requires one of the following three conditions to
27 be met by the legislative body: (1) the legislative body holds a meeting during a
28 proclaimed state of emergency, and state or local officials have imposed or

1 recommended measures to promote social distancing; (2) the legislative body holds a
2 meeting during a proclaimed state of emergency for the purpose of determining, by a
3 majority vote, whether as a result of the emergency, meeting in person would present
4 imminent risks of health or safety of attendees; or (3) the legislative body holds a meeting
5 during a proclaimed state of emergency and has determined, by a majority vote, that as a
6 result of the emergency, meeting in person would present imminent risks to the health or
7 safety of attendees; and

8 WHEREAS, currently, there is a continuing state of emergency concerning
9 the COVID-19 pandemic at both the State and City of Long Beach levels, and, on
10 September 30, 2021, the City of Long Beach Health Officer issued a recommendation for
11 the continuation of virtual public meetings, to the extent possible, in order to promote
12 social distancing measures for the protection of the community, staff, presenters, and
13 legislative body members, and such recommendation remains in place; and

14 WHEREAS, second, a legislative body must also make the following
15 findings every 30 days, starting with no later than 30 days after teleconferencing for the
16 first time under AB 361, by a majority vote: (1) the legislative body has reconsidered the
17 circumstances of the state of emergency; and (2) either the state of emergency continues
18 to directly impact the ability of the members to meet safely in person, or state or local
19 officials continue to impose or recommend measures to promote social distancing; and

20 WHEREAS, the City Council now desires to, again, make the required
21 monthly findings as specified in Government Code section 54953(e)(3) in order to allow
22 the City Council, and all City commissions, committees, boards, or other bodies subject
23 to the Brown Act, to continue to hold meetings pursuant to the teleconference
24 requirements of Government Code section 54953(e)(1)-(2); and

25 WHEREAS, the City Council also desires to authorize the City Council, and
26 City commissions, committees, boards, or other bodies subject to the Brown Act, to opt
27 for in-person and/or hybrid (a combination of virtual and in-person) meetings to the extent
28 possible based on varying circumstances, including but not limited to meetings that may

1 be of a quasi-judicial nature or those bodies that have already been meeting in person as
2 circumstances have allowed, and to do so while complying with the City Health Officer’s
3 recommended protocols, wherever feasible;

4 NOW, THEREFORE, the City Council of the City of Long Beach resolves as
5 follows:

6 Section 1. Pursuant to Government Code section 54953(e)(3), the City
7 Council hereby reconsiders the state of emergency of the COVID-19 pandemic and finds
8 that the City Health Officer continues to recommend measures to promote social
9 distancing such as remote meetings of legislative bodies. The City Health Officer’s
10 recommendation is attached hereto as Attachment “A”.

11 Section 2. The City Council authorizes the Council and all City of Long
12 Beach legislative bodies, including all City commissions, committees, and boards, to
13 continue to hold teleconference meetings in accordance with Government Code section
14 54953(e)(1)-(2).

15 Section 3. The City Council recognizes that City legislative bodies may
16 have varying circumstances and considerations and, as such, hereby authorizes the
17 Council, and City commissions, committees, boards, or other bodies subject to the Brown
18 Act, to opt for in-person and/or hybrid (a combination of virtual and in-person) meetings to
19 the extent possible, including but not limited to meetings that may be of a quasi-judicial
20 nature or those bodies that have already been meeting in person as circumstances have
21 allowed. Such meetings must comply (wherever feasible) with the Health Officer’s
22 recommendation with respect to protocols for in-person meetings.

23 Section 4. This resolution shall take effect immediately upon its adoption
24 by the City Council, and the City Clerk shall certify the vote adopting this resolution.

25 ///

26 ///

27 ///

28 ///

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 W. Ocean Boulevard, 9th Floor
Long Beach, CA 90802

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I hereby certify that the foregoing resolution was adopted by the City
Council of the City of Long Beach at its meeting of _____, 2022,
by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____


Absent: Councilmembers: _____

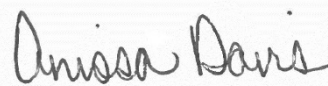
Recusal(s): Councilmembers: _____

City Clerk

EXHIBIT “A”

Date: September 30, 2021

To: Thomas B. Modica, City Manager 

From: Dr. Anissa Davis, Long Beach Health Officer 

For: Mayor and Members of the City Council and all Boards and Commissions

Subject: **Recommendation Regarding Physical Distancing and Virtual Meetings**

Assembly Bill 361 (AB 361), which becomes effective on October 1, 2021, allows for certain waivers of Brown Act teleconference requirements during declared states of emergency when certain conditions have been met. These “waivers” promote physical distancing to minimize the spread of COVID-19 by allowing legislative body members to take meetings from outside the body’s jurisdictional boundaries, as well as allowing public access and comment through phone and/or internet services only, among other things which seek to protect the community and staff. One condition to authorize such virtual meetings of legislative bodies is that state or local health officials have imposed or recommended measures to promote physical distancing during a proclaimed state of emergency. Accordingly, I am making the following recommendations for the City’s legislative bodies to meet virtually, to the extent possible, under the relevant provisions of AB 361, and that this recommendation be forwarded to those bodies.

I strongly recommend that physical distancing measures continue to be practiced throughout Long Beach communities, including at meetings of the City Council, including its boards, commissions, and committees (hereafter “the City”), to minimize the spread of COVID-19.

While unvaccinated individuals are more likely to contract COVID-19, the California Department of Public Health and the Centers for Disease Control caution that the Delta variant of COVID-19 is more transmissible than prior variants of COVID-19. Delta is more transmissible than prior variants of COVID-19, it may cause more severe illness, and both vaccinated and unvaccinated individuals are at risk for contracting the Delta variant resulting in spreading COVID-19 to other members of our communities. (See <https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html>). Physical distancing, masking, staying home when sick, and frequent handwashing remain crucial infection control measures to prevent the spread of COVID-19, including its variants.

To the extent possible, virtual meetings are strongly recommended as they allow for the participation of the community, City staff, presenters, Councilmembers, commissioners, committee members, and board members with no risk of contagion. As an alternative, the City could implement hybrid meetings (i.e. meetings that are both in-person and virtual) with infection control measures outlined below to minimize the spread of COVID-19 while operating in-person.

Recommendation Regarding Physical Distancing and Virtual Meetings

September 30, 2021

Page 2 of 2

Where in-person meetings are deemed necessary based on varying circumstances and/or conditions, I strongly recommend that infection control measures are implemented, including: (1) where feasible, maintaining at least six-foot physical distance from other individuals, even when wearing a face mask; (2) washing hands with soap and water for at least twenty seconds or use hand sanitizer that contains at least 60 percent alcohol, as frequently as possible; (3) covering coughs or sneezes (into the sleeve, elbow, or tissue, not hands); (4) regularly cleaning and disinfecting high-touch surfaces; (5) avoid physically intimate forms of greeting such as shaking hands, hugging, and kissing; (6) stay home when sick; (7) to the extent feasible, avoid eating and drinking in public places; and (8) wearing a face mask securely over one's mouth and nose.

This recommendation does not apply to those meetings of a quasi-judicial nature that have been meeting in person prior to September 20, 2021, (e.g. where it is necessary to allow for credibility determinations of witnesses).

I will continue to evaluate this recommendation on an ongoing basis and this recommendation will remain in place until amended, replaced, or repealed. If you have any questions regarding this recommendation, please do not hesitate to contact me.

CC: CHARLES PARKIN, CITY ATTORNEY
DOUGLAS P. HAUBERT, CITY PROSECUTOR
LAURA L. DOUD, CITY AUDITOR
LINDA F. TATUM, ASSISTANT CITY MANAGER
KEVIN JACKSON, DEPUTY CITY MANAGER
TERESA CHANDLER, DEPUTY CITY MANAGER
REBECCA G. GARNER, ADMINISTRATIVE DEPUTY CITY MANAGER
MONIQUE DE LA GARZA, CITY CLERK
DEPARTMENT HEADS