



Council Agenda Report

To: Mayor Uhring and the Honorable Members of the City Council

Prepared by: Kelsey Pettijohn, City Clerk

Approved by: Steve McClary, City Manager

Date prepared: October 3, 2023 Meeting date: October 9, 2023

Subject: Hybrid Meetings and AB 361

RECOMMENDED ACTION: 1) Receive an update on AB 361 and AB 2449; 2) Consider discontinuing or suspending hybrid meetings, rescinding or ceasing to make the AB 361 findings, and/or provide direction on how hybrid meetings will operate after January 1, 2024; and 3) Provide direction on the meeting format for Commission, Committee, and Board meetings, if appropriate.

FISCAL IMPACT: There is no fiscal impact associated with the recommended action.

STRATEGIC PRIORITY: This item is part of the day-to-day operations identified in the Adopted FY 2023-24 Strategic Priority Project List.

DISCUSSION: The City currently conducts all Brown Act meetings in a virtual or hybrid format pursuant to AB 361. As AB 361 approaches its sunset on January 1, 2024, and incidents of Zoom bombing increase, the Council may wish to consider discontinuing hybrid meetings now or provide direction on how meetings should be conducted after AB 361 sunsets.

On March 27, 2023, the City Council launched the hybrid meeting pilot program and subsequently directed the Planning Commission to conduct its meetings in a hybrid format beginning July 17, 2023. These hybrid meetings have been conducted pursuant to AB 361 and allowed members of the public and the City Council to participate in-person or remotely. All other Commissions, Committees and Board continue to meet virtually pursuant to AB 361.

AB 361 Sunset

AB 361 terminates on January 1, 2024. While there is some ambiguity in the statute, its provisions provide that so long as the Council can make the findings required by AB 361, and specifically that State or local officials continue to impose or recommend measures to promote social distancing, remote meetings may continue pursuant to AB 361's provisions until its termination date.

City Council and Planning Commission Meetings

Once AB 361 sunsets or the required findings are no longer made, the Council may continue to offer the public the opportunity to participate remotely, although it is not required under the Brown Act. If the Council would like to continue conducting hybrid meetings after AB 361, it should consider whether it wants all meetings to be conducted in a hybrid manner, or if some types of meetings (such as trainings and workshops) should be conducted exclusively in-person. Trainings and workshops with a quorum of the Council or Planning Commission must be public meetings, but conducting them in a hybrid manner limits the spaces in which these meetings can be held. This limitation may impact the options for conducting such trainings and workshops.

If hybrid meetings are to continue, the Council should also consider how it would like to conduct meetings when the City or the community experiences technical difficulties that prevent remote participation. Remote participation is a required component under AB 361, but once the City stops operating under its provisions the City would have the option to conduct a meeting where technical issues prevent remote participation—so long as it informs the public that remote participation is not guaranteed, and that the City will not stop a meeting if technical issues arise and prevent remote participation. Should the Council desire to conduct meetings in such a situation, Staff will need to update the notice on the agenda to clarify that the meeting will not be cancelled if technical difficulties occur.

Zoom Bombing

Dozens of cities in California, including Malibu, have experienced incidents of Zoom bombing in recent weeks from groups attempting to disrupt public meetings by making racist and anti-Semitic remarks. In response to these incidents, many cities are suspending hybrid meetings or limiting the time for each public speaker.

All individuals have the right to speak at a public meeting. If the City continues to allow remote participation it may be forced to endure these types of incendiary and hateful comments at its meetings. Such comments negatively impact the community, and also delay and disrupt the City's ability to conduct its meetings. Cities that do not allow remote participation have avoided being impacted by the Zoom disruptions, while other cities with hybrid participation options have not. Without remote/hybrid participation, individuals must

show up in person to make these kinds of statements, and also cannot login under multiple false names to gain additional time to speak.

Teleconferencing Considerations

After AB 361 sunsets or the findings are terminated, Councilmembers will only be able to participate remotely under the Brown Act's general teleconferencing provisions, or AB 2449's alternate teleconferencing provisions (if hybrid meetings continue).

The Brown Act's general teleconferencing provisions allow Councilmembers to teleconference during a meeting provided the teleconference location is open to the public and noticed on the agenda and at least a quorum of the Council participates within the City's jurisdiction.

AB 2449 is only applicable if the Council continues to offer members of the public the opportunity to participate remotely. AB 2449 offers an alternative teleconference option that allows Councilmembers to teleconference during hybrid meetings without publicly noticing their teleconference location if they provide notice of their need to appear remotely for "just cause" or they request the council allow them to participate remotely due to "emergency circumstances."

"Just cause" is defined as:

- Childcare or caregiving need that requires them to participate remotely.
- A contagious illness that prevents a member from attending in person.
- A need related to a physical or mental disability as defined in Sections 12926 and 12926.1 not otherwise accommodated by the ADA
- Travel while on official business of the legislative body or another state or local agency

"Emergency circumstances" is defined as physical or family medical emergency that prevents a member from attending in person.

The legislative body must approve a teleconference request made due to emergency circumstances and these teleconference provisions may not be used by a member of the legislative body to teleconference for a period of more than three consecutive months or 20% of the regular meetings within a calendar year. Remote appearances due to just cause are limited to twice per calendar year.

There are a number of onerous requirements for any meeting where AB 2449's provisions are implemented, including that in the event there is a disruption that interrupts the Council's broadcast to the public, or a disruption within the City's control preventing the public from offering public comment, the Council cannot take any further action until such

service is restored. If the Council continues to allow remote participation after AB 361's provisions no longer apply to the City, staff will bring back a policy and a plan to meet the technical requirements of AB 2449.

Commission and Subcommittee Meetings

After AB 361 sunsets or the findings are no longer made, Commission and Subcommittee meetings will return to in-person meetings. Meetings will be conducted at City Hall and members of the public will be able to participate in-person or via correspondence submitted before the meeting.

Pursuant to the Malibu Municipal Code, Commissioners are subject to attendance requirements. If a Commissioner is absent from three successive regular meetings without being excused by the commission or is absent for any reason for more than six regular meetings in any twelve (12) month period, the office of such member shall be deemed vacated. As it can be more challenging to attend in-person meetings than virtual meetings, staff will remind Commissioners of the attendance requirements before in-person meetings resume.

ATTACHMENTS: None.