



Council Agenda Report

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

Prepared by: Steve McClary, Interim City Manager
Kelsey Pettijohn, City Clerk
John Cotti, Interim City Attorney

Date prepared: October 4, 2021

Meeting date: October 11, 2021

Subject: Findings to Hold Virtual City Council, Commission, Committee, Board and Other City Bodies Meetings Under AB 361

RECOMMENDED ACTION: It is recommended that the City Council adopt Resolution No. 21-60 making findings and determinations under AB 361 for the continuation of virtual meetings and authorizing virtual City Council, Commission, Board, and other City meetings pursuant to AB 361.

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

WORK PLAN: This item was not included in the Adopted Work Plan for Fiscal Year 2021-2022.

DISCUSSION: On March 17, 2020, Governor Gavin Newsom issued Executive Order N-29-20 suspending certain provisions of the Ralph M. Brown Act in order to allow for local legislative bodies to conduct their meetings completely telephonically or by other electronic means. As the City Council is well aware, this allowed City Council meetings to be conducted by Zoom with councilmembers and staff all joining from remote locations.

The suspension of certain provisions of the Brown Act was further extended by the Governor on June 11, 2021 by the issuance of Executive Order N-08-21 which continued to allow for complete virtual City Council (and other legislative body) meetings until September 30, 2021.

With the pending expiration of the Governor's Executive Order along with the uncertainty that surrounded the Governor's potential recall, the Governor signed into law Assembly Bill 361. Effective October 1, 2021, AB 361 allows local government to continue to

conduct remote virtual meetings so long as there is a state-proclaimed state of emergency and the legislative body makes mandatory findings.

AB 361 allows legislative bodies to meet virtually, provided there is a state of emergency, and either (1) state or local officials have imposed or recommended measures to promote social distancing; or (2) the legislative body determines by majority vote that meeting in person would present imminent risks to the health and safety of attendees.

AB 361 preserves many of the provisions of the earlier executive orders, while also adding new requirements to the management of remote and teleconference public meetings in order to better achieve the levels of transparency that the Brown Act demands. Specifically, AB 361 imposes two new rules on remote public meetings:

1. Local governments and agencies hosting teleconference meetings in lieu of traditional in-person public meetings must permit direct public comment during the teleconference, and must leave open the opportunity for public comment until the comment period for a given item is closed during the ordinary course of the meeting. The opportunity to make public comment must be of a sufficient duration so as to allow actual public participation.
2. Any action by the governing body during a public teleconference meeting must occur while the agency is actively and successfully broadcasting to members of the public through a call-in option or an internet-based service option. If a technical disruption within the agency's control prevents members of the public from either viewing the meeting of the public agency, or prevents members of the public from offering public comment, the agency must cease all action on the meeting agenda until the disruption ends and the broadcast is restored. Action taken during an agency-caused disruption may be challenged as a violation of the Brown Act.

The City has been implementing the above stated requirements for conducting public meetings and is in full compliance with AB 361, thus there will be no change of the currently established procedures. Teleconference accessibility via call-in option or an internet-based service option (via the Zoom Webinars platform) is listed on the published agenda for each meeting as well as on the City's website and the City provides access for public comment opportunities in real time.

In order to continue to qualify for AB 361's waiver of in-person meeting requirements, the Council must, within thirty (30) days of its first meeting under AB 361, and every thirty (30) days thereafter, make findings that (a) state or local officials continue to recommend measures to promote social distancing, or that (b) an in-person meeting would constitute

an imminent risk to the safety of attendees. The findings need not be in the form of a resolution, but a resolution is helpful in formalizing these findings.

The enclosed Resolution makes the required findings under AB 361, and if adopted, it will allow the City to continue to offer teleconference accessibility for public meetings after September 30, 2021, to help mitigate the spread of COVID-19, as well as during other state-proclaimed emergencies where physical attendance may present a risk.

Lastly, it is important to note that having virtual meetings under the provisions of AB 361 is optional. If the Council wishes, it may meet in person. In addition, hybrid meetings are permissible. If the Council will meet only or partially in person, it should ensure compliance with the Los Angeles County Health Officer's recommendations for local public meetings.

ATTACHMENTS:
Resolution No. 21-60

RESOLUTION NO. 21-60

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU MAKING FINDINGS AND DETERMINATIONS UNDER AB 361 FOR THE CONTINUATION OF VIRTUAL MEETINGS AND AUTHORIZING VIRTUAL CITY COUNCIL, COMMISSION, BOARD, AND OTHER CITY MEETINGS PURSUANT TO AB 361

The City Council of the City of Malibu does hereby find, order, and resolve as follows:

SECTION 1. Recitals.

A. The Ralph M. Brown Act (Gov. Code § 54950 et seq.) generally requires local agencies meeting via teleconference, including through other virtual or electronic means, to provide public access at each location in which members of the legislative body are teleconferencing;

B. On September 16, 2021 the Governor signed AB 361 (in effect as of October 1, 2021 – Government Code Section 54953(e)), which allows legislative bodies to meet virtually provided there is a state of emergency, and either (1) state or local officials have imposed or recommended measures to promote social distancing; or (2) the legislative body determines by majority vote that meeting in person would present imminent risks to the health and safety of attendees;

C. The Governor issued a proclamation declaring a state of emergency on March 4, 2020 due to the COVID-19 pandemic, pursuant to section 8625 of the California Emergency Services Act, and this proclaimed state of emergency currently remains in effect;

D. State or local officials continue to impose and recommend measures to promote social distancing and because of the ongoing threat of COVID-19, meeting in person would present imminent risks to the health and safety of attendees;

E. The City Council has considered the circumstances of the state of emergency and finds that the continuation of virtual meetings will allow for full participation by members of the public until social distancing recommendations are lifted; and

F. The City Council of the City of Malibu desires to continue to hold virtual meetings pursuant to AB 361 and Government Code section 54953(e).

SECTION 2. Teleconference Meetings: Consistent with the provisions of Government Code Section 54953(e), the City Council finds and determines that the City Council and all other legislative bodies of the City of Malibu created by the City Council shall continue to meet virtually in accordance with Government Code section 54953(e) and without compliance with section 54953(b)(3) based upon the findings and determinations hereby made by the City Council.

SECTION 3. Effective Date. This Resolution shall take effect immediately upon its adoption and remain in effect for 30 days or until such time as the City Council adopts a subsequent resolution

in accordance with Government Code section 54953(e)(3) to extend the time during which the City Council and all other legislative bodies of the City of Malibu may continue to teleconference without compliance with Government Code §54953(b)(3).

SECTION 4. *Severability.* If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City Council hereby declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion thereof.

SECTION 5. The City Clerk shall certify the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED, and ADOPTED this 11th day of October 2021.

PAUL GRISANTI, Mayor

ATTEST:

KELSEY PETTIJOHN, City Clerk
(seal)

APPROVED AS TO FORM:
THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

JOHN COTTI, Interim City Attorney