



NOYO HARBOR DISTRICT AGENDA ITEM SUMMARY

AGENDA ITEM #:

MEETING DATE: 11/11/21

TITLE

Resolution of The Noyo Harbor Commission Authorizing Teleconference Meetings Pursuant To Government Code 54953 in Compliance with AB 361

RECOMMENDED ACTION

Approve resolution

ANALYSIS

By Michael G. Colantuono & Abigail Mendez of Colantuono, Highsmith & Whatley, October 18, 2021

"Governor Gavin Newsom signed AB 361 (Rivas, D-San Benito County) September 16, 2021 to establish exceptions to teleconference requirements of the Brown Act during states of emergency. AB 361 took effect immediately on the Governor's signature. It provides a means to continue to respect public health advice during the pandemic as to the conduct of local government meetings even on the expiration of the Governor's executive orders which had covered that ground previously. It requires an initial resolution of a Brown Act body to invoke the new authority and then monthly resolutions thereafter. A puzzle is how to respect these mandates for agencies which do not meet every 30 days.

Governor Newsom has issued several Executive Orders during the COVID-19 pandemic. These set aside the following Brown Act requirements that typically apply when a public agency meets electronically:

1. Notices and agendas must be posted for each teleconference location from which members of the legislative body will be participating;
2. Teleconference locations must be accessible to the public;
3. The public may participate in the meeting from each teleconference location;
4. At least a quorum of the members participate from within the jurisdiction.

The orders allowed public agencies to meet virtually without compliance with these restrictions so long as they “allow members of the public to observe and address the meeting telephonically or otherwise electronically.” However, the Governor issued Executive Order N-08-21 on June 11, 2021 to sunset these orders on September 30, 2021.

AB 361 amends the Brown Act to allow “a local agency to use teleconferencing” during a state of emergency without meeting ordinary Brown Act teleconferencing requirements. It defines “state of emergency” by cross-reference to Government Code section 8625, which empowers the Governor (not Public Health Officers or other local officials) to proclaim a state of emergency. The Governor’s proclamation of a state of emergency must be written and AB 361’s relaxation of Brown Act requirements is effective upon the Governor’s issuance of a declaration.

During such an emergency, local agencies are not subject to the Brown Act teleconferencing requirements described above if any of these standards is met:

1. Social distancing is imposed or recommended by state or local officials;
2. The legislative body is meeting to determine, by majority vote, whether in-person meetings present an imminent risk to those in attendance; or
3. The legislative body has already decided, by majority vote, that in-person meetings pose an imminent risk to those attending, and meetings must continue.

If any of those circumstances exists, a local agency may meet electronically without complying with ordinary Brown Act requirements so long as:

- Notice of the meeting is given as otherwise required by the Brown Act, i.e., posting agendas at least 24 or 72 hours in advance in the usual places and online.
- An agenda must state how members of the public can participate in a meeting and offer public comment, including by call-in option and/or internet-based service option – like the “chat” features of meeting software. If meeting access is disrupted (e.g., by technology failures), the agency cannot act on agenda items until public access is restored.
- An agency can encourage, but not require public comments to be submitted in advance of the meeting, but must provide an opportunity for real-time participation, which can be oral or written (i.e., voicemail, email, or chat features of meeting platforms).

- If an agency provides a timed public comment period for each agenda item (i.e., 20 minutes per item), it cannot close public comment until that time has run. If it does not provide a timed public comment period for an agenda item, then it must allow a reasonable amount of time for public comment.

Local agencies must either allow a stated amount of time to provide public comment on each agenda item or leave public comment open for each item for a reasonable amount of time. This is intended to allow members of the public “the opportunity to register” to submit comment, or to actually comment. Therefore, AB 361 disallows public agencies from closing public comment on items when there is no immediate public participation. It may make sense to place an item at the end of the agenda to hear any late comment from those who had technological obstacles to commenting earlier.

A local agency must make the following findings by majority vote within 30 days of teleconferencing for the first time under AB 361 and every 30 days thereafter:

1. The legislative body has reconsidered the circumstances of the state of emergency.
2. One of the following circumstances exists:
 - a. The state of emergency continues to directly impact the ability of members to meet safely in person; or
 - b. State or local officials continue to impose or recommend measures to promote social distancing.

In other words, local agencies must adopt a resolution making the findings above within 30 days of its first teleconference meeting under AB 361. Then, they must re-adopt those findings every 30 days. AB 361 does not provide any express exception to the 30-day finding requirement for public agencies that meet monthly or less frequently. Accordingly, it may be wise for such agencies to readopt the initial resolution authorizing meetings under AB 361 each time they meet.

Finally, AB 361 appears to allow local agencies to continue holding meetings by teleconference after the Governor rescinds a state of emergency as long as social distancing measures are still imposed or recommended. The review findings only require that the local agency **reconsider** the circumstances of the state of emergency, not that the state of emergency continues. The social distancing measures must be recommended or imposed by a “local official,” which is an undefined term not limited to public health officials.

AB 361 is a helpful long-term replacement of the Governor's short-term orders that will assist local government in balancing public participation in local meetings with public safety while this pandemic remains with us."

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The attached resolution is offered to the Commission to establish the ability to meet partially or wholly by teleconferencing.

By continuing to offer teleconferencing to the Commission and to the Public we will fulfill our obligation for the safety of the Public and for open and transparent meetings that could gain more public participation. It will allow Commissioners to participate during periods of health issues or being out of town and not able to attend in person.

Commission meetings would also be hybrid meetings in the sense that some Commissioners and the Public could attend in person and some could participate by teleconferencing.

One more benefit is that teleconferencing would give us a low to no cost way to record our meetings and even post past meetings on our web page.

#### **FISCAL IMPACT**

Cost of setting up equipment

#### **ATTACHMENTS**

Resolution 2021-X

#### **ITEM SPONSOR**

Commissioner Shoemaker

#### **HARBORMASTER SIGNATURE**

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Anna Neumann, Harbormaster