



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

## Meeting Agenda Planning Commission

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Wednesday, September 29, 2021

6:00 PM

Via Video Conference

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### Special Meeting

#### MEETING CALLED TO ORDER

#### PLEDGE OF ALLEGIANCE

#### ROLL CALL

#### PLEASE TAKE NOTICE

*Due to state and county health orders and to minimize the spread of COVID-19, Planning Commissioners and staff will be participating in this meeting via video conference. The Governor's executive Orders N-25-20, N-29-20, and N-15-21 suspend certain requirements of the Brown Act and allow the meeting to be held virtually.*

*The meeting will be live-streamed on the City's website at <https://city.fortbragg.com/> and on Channel 3. Public Comment regarding matters on the agenda may be made by joining the Zoom video conference and using the Raise Hand feature when the Chair or Acting Chair calls for public comment. Any written public comments received after agenda publication will be forwarded to the Commissioners as soon as possible after receipt and will be available for inspection at City Hall, 416 N. Franklin Street, Fort Bragg, California. All comments will become a permanent part of the agenda packet on the day after the meeting or as soon thereafter as possible, except those written comments that are in an unrecognized file type or too large to be uploaded to the City's agenda software application. Public comments may be submitted to Sarah Peters, [speters@fortbragg.com](mailto:speters@fortbragg.com).*

#### ZOOM WEBINAR INVITATION

*You are invited to a Zoom webinar.*

*When: Sep 29, 2021 06:00 PM Pacific Time (US and Canada)*

*Topic: Planning Commission*

*Please click the link below to join the webinar:*

*<https://us06web.zoom.us/j/88327545097>*

*Or Telephone:*

*US: +1 720 707 2699 or +1 253 215 8782 (\*6 mute/unmute, \*9 raise hand)*

*Webinar ID: 883 2754 5097*

***TO SPEAK DURING PUBLIC COMMENT PORTIONS OF THE AGENDA VIA ZOOM, PLEASE JOIN THE MEETING AND USE THE RAISE HAND FEATURE WHEN THE CHAIR OR ACTING CHAIR CALLS FOR PUBLIC COMMENT ON THE ITEM YOU WISH TO ADDRESS.***

#### **1. PUBLIC COMMENTS ON: (1) NON-AGENDA & (2) CONSENT CALENDAR ITEMS**

*MANNER OF ADDRESSING THE PLANNING COMMISSION: All remarks and questions shall be addressed to the Planning Commission; no discussion or action will be taken pursuant to the Brown Act. No person shall*

*Speak without being recognized by the Chair or Acting Chair. Public comments are restricted to three (3) minutes per speaker.*

*TIME ALLOTMENT FOR PUBLIC COMMENT ON NON-AGENDA ITEMS: Thirty (30) minutes shall be allotted to receiving public comments. If necessary, the Chair or Acting Chair may allot an additional 30 minutes to public comments after Conduct of Business to allow those who have not yet spoken to do so. Any citizen, after being recognized by the Chair or Acting Chair, may speak on any topic that may be a proper subject for discussion before the Planning Commission for such period of time as the Chair or Acting Chair may determine is appropriate under the circumstances of the particular meeting, including number of persons wishing to speak or the complexity of a particular topic. Time limitations shall be set without regard to a speaker's point of view or the content of the speech, as long as the speaker's comments are not disruptive of the meeting.*

*BROWN ACT REQUIREMENTS: The Brown Act does not allow action or discussion on items not on the agenda (subject to narrow exceptions). This will limit the Commissioners' response to questions and requests made during this comment period.*

## **2. STAFF COMMENTS**

## **3. MATTERS FROM COMMISSIONERS**

## **4. CONSENT CALENDAR**

*All items under the Consent Calendar will be acted upon in one motion unless a Commissioner requests that an individual item be taken up under Conduct of Business.*

## **5. DISCLOSURE OF EX PARTE COMMUNICATIONS ON AGENDA ITEMS**

## **6. PUBLIC HEARINGS**

## **7. CONDUCT OF BUSINESS**

- 7A. [21-517](#) Receive Report and consider Adoption of Planning Commission Resolution Making the Legally Required Findings to Authorize the Conduct of Remote "Telephonic" Meetings During the State of Emergency

**Attachments:** [Staff Item Summary Report](#)

[ATT - #1 RESO Authorizing Remote Meetings](#)

[ATT - #2 Executive Order N-15-21](#)

[ATT - #3 Gov Code Section 54953](#)

[ATT - #4 Fort Bragg - AB 361 - Remote Meetings \(002\)](#)

[ATT - #5 County COVID-19 Dashboard 09-26-2021](#)

[ATT - #6 Public Comment](#)

## **ADJOURNMENT**

*The adjournment time for all Planning Commission meetings is no later than 9:00 p.m. If the Commission is still in session at 9:00 p.m., the Commission may continue the meeting upon majority vote.*





# City of Fort Bragg

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## Text File

File Number: 21-517

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**Agenda Date:** 9/29/2021

**Version:** 1

**Status:** Business

**In Control:** Planning Commission

**File Type:** Resolution

**Agenda Number:** 7A.

Receive Report and consider Adoption of Planning Commission Resolution Making the Legally Required Findings to Authorize the Conduct of Remote "Telephonic" Meetings During the State of Emergency



**CITY OF FORT BRAGG**

416 N. FRANKLIN, FORT BRAGG, CA 95437  
PHONE 707/961-2823 FAX 707/961-2802

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**PLANNING COMMISSION ITEM SUMMARY REPORT**

**MEETING DATE:** SEPTEMBER 29, 2021  
**TO:** PLANNING COMMISSIONERS  
**FROM:** SARAH PETERS, ADMINISTRATIVE ASSISTANT  
**AGENDA ITEM TITLE:** Receive Report and Consider Adoption of Planning Commission Resolution Making the Legally Required Findings to Authorize the Conduct of Remote "Telephonic" Meetings During the State of Emergency

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**BACKGROUND AND OVERVIEW:**

On March 4, 2020, Governor Newsom declared a state of emergency. That declaration is still in effect. Since March 12, 2020, Executive Orders from the Governor relaxed various Brown Act meeting requirements to allow remote meetings and to temporarily suspend the Brown Act provisions requiring the physical presence of members at the public meeting. The most recent extension of that authorization will expire at the end of September 2021.

Starting October 1, and running through the end of 2023, to participate in remote meetings, public agencies must comply with the requirements of new subsection (e) of Government Code section 54953 (Attachment 3). Adoption of this resolution will allow the Planning Commission to continue to meet remotely via video conference. After the adoption of this initial resolution and its findings, the Planning Commission will need to make the same determination every 30 days. The City Attorney's office recommends (Attachment 4) that the simplest course of action is for the Planning Commission to approve a consent calendar item at each subsequent meeting to make the legally required finding described in Government Code subsection (e)(3) to thereby allow the legislative body to continue to meet remotely.

**FOR CONSIDERATION:**

- In the August 5, 2021 Health Order, County Health Officer Andy Coren, MD, stated that the Delta variant has been circulating in the county since May 2021, and that this variant is highly transmissible in indoor settings. Also stated in this order is that

one of the major drivers of COVID-19 transmission in Mendocino County is small gatherings.

- We are still in a declared state of emergency. As of September 17, County Health Officer Andy Coren, MD, stated that COVID-19 remains widespread in Mendocino County. He urged all members of the community to take the virus seriously and protect those that are medically vulnerable or ineligible for vaccination.
- Dr. William Miller, Medical Director and Chief of the Medical Staff at Adventist Health, writes in the September 23, 2021 edition of The Miller Report, that due to the county's surge in COVID cases, all three hospitals in our county are at capacity and all are dealing with serious staffing shortages.
- As of September 26, 2021, there have been 7,002 COVID-19 cases and 82 deaths in Mendocino County (32 since July). The largest number of cases by source is Community Spread. Of the 7,002 COVID-19 cases, the incidence in school age children (6-18 years old) is 14 percent. The incidence in people over age 18 is 83 percent. The majority of attendees at Planning Commission meetings are in this latter category.
- Per the most recently published county COVID-19 dashboard, the 7-Day average of new positive cases per day is 35.86, and the number of cases on the North Coast to date is 757.
- Noticing requirements established by the City's Land Use Codes Require Public Hearing Notices be distributed at least 10 days before a hearing. This requirement means, that City staff must send notice to the local newspaper at least 17 days in advance of a hearing to ensure sufficient publication noticing. In order for the notice language to be legal, we must identify the place in which the hearing will be held, and a modification in this prior to a hearing could invalidate a land use entitlement.

### **RECOMMENDATION:**

Staff recommends this initial resolution and its' findings be adopted in order to continue to have the flexibility to meet remotely via video conference during a time of widespread COVID-19 in the county. It would be easy to return to full in-person meetings with a majority vote not to adopt the resolution at any subsequent Planning Commission meeting.

### **ATTACHMENTS:**

ATT - #1 RESO Authorizing Remote Meetings

ATT - #2 Executive Order N-15-21

ATT - #3 Gov Code Section 54953

ATT - #4 Fort Bragg – AB 361 - Remote Meetings

ATT - #5 County Covid Dashboard 9-26-2021

RESOLUTION NO. PC \_\_\_\_-2021

**RESOLUTION OF THE FORT BRAGG PLANNING COMMISSION MAKING THE LEGALLY REQUIRED FINDINGS TO AUTHORIZE THE CONDUCT OF REMOTE “TELEPHONIC” MEETINGS DURING THE STATE OF EMERGENCY**

**WHEREAS**, on March 4, 2020, pursuant to California Gov. Code Section 8625, the Governor declared a state of emergency; and

**WHEREAS**, on September 17, 2021, Governor Newsom signed AB 361, which bill went into immediate effect as urgency legislation; and

**WHEREAS**, AB 361 added subsection (e) to Gov. Code Section 54953 to authorize legislative bodies to conduct remote meetings provided the legislative body makes specified findings; and

**WHEREAS**, as of September 19, 2021, the COVID-19 pandemic has killed more than 67,612 Californians; and

**WHEREAS**, social distancing measures decrease the chance of spread of COVID-19; and

**WHEREAS**, it is appropriate for this body to make the findings specified in subsection (3)(1) of section 54953, to thereby authorize this body and all of its standing subcommittees to meet remotely;

**NOW, THEREFORE, IT IS RESOLVED** by the Planning Commission of the City of Fort Bragg as follows:

1. This legislative body finds that as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

The above and foregoing Resolution was introduced by Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, and passed and adopted at a special meeting of the Planning Commission of the City of Fort Bragg held on the 29<sup>th</sup> day of September, 2021, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

**RECUSED:**

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Jeremy Logan  
Chair

ATTEST:

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Sarah Peters  
Administrative Assistant

**EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA**

**EXECUTIVE ORDER N-15-21**

**WHEREAS** on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

**WHEREAS** on June 11, 2021, I issued Executive Order N-08-21 to roll back certain provisions of my COVID-19-related Executive Orders and to clarify that other provisions remained necessary to help California respond to, recover from, and mitigate the impacts of the COVID-19 pandemic; and

**WHEREAS** Paragraph 42 of Executive Order N-08-21 waived and set forth certain requirements related to public meetings of local legislative and state bodies, and specified that it would be valid through September 30; and

**WHEREAS** on September 16, 2021, I signed into law Assembly Bill 361 (AB 361), which pertains to the same subject matter as Paragraph 42 of Executive Order N-08-21, which took effect immediately pursuant to an urgency clause, and which may, in some instances, have different substantive provisions than the provisions contained in Paragraph 42 of Executive Order N-08-21; and

**WHEREAS** it is necessary to provide clarity around the applicable procedures governing meetings of local legislative and state bodies until Paragraph 42 of Executive Order N-08-21 expires to further mitigate the impacts of the COVID-19 pandemic as the state continues to reopen and to ensure that critical governmental functions are not interrupted.

**NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California,** in accordance with the authority vested in me by the State Constitution and statutes, do hereby issue the following Order to become effective immediately:

**IT IS HEREBY ORDERED THAT:**

1. The provisions governing teleconference meetings in Education Code section 89305.6, Government Code section 11133, and subdivision (e) of Government Code section 54953 are suspended through September 30, 2021, except that any local legislative body that meets to take a majority vote pursuant to subparagraph (B) of paragraph (1) of subdivision (e) of Government Code section 54953 shall conduct the meeting at which such vote is taken as required by paragraph (2) of subdivision (e) of Government Code section 54953. Except as otherwise specified in this paragraph, the requirements related to public meetings of local legislative and state bodies specified in Paragraph 42 of Executive Order N-08-21 shall continue to govern such meetings through September 30, 2021.
2. This Order shall expire at 11:59 p.m. on October 1, 2021.

**IT IS FURTHER ORDERED** that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 20th day of September 2021.



\_\_\_\_\_  
GAVIN NEWSOM  
Governor of California

**ATTEST:**

\_\_\_\_\_  
SHIRLEY N. WEBER, Ph.D.  
Secretary of State

**State of California**

**GOVERNMENT CODE**

**Section 54953**

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54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. 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. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivisions (d) and (e). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, “teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action

is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) (1) A local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:

(A) 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.

(B) 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.

(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:

(A) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(B) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3. In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(C) The legislative body shall conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body of a local agency.

(D) In the event of a disruption which prevents the public agency from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments using the call-in option or internet-based service option, the body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption which prevents the public agency from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(G) (i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (F), to provide public comment until that timed public comment period has elapsed.

(ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (F), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment

period or the opportunity to register, pursuant to subparagraph (F), until the timed general public comment period has elapsed.

(3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(ii) State or local officials continue to impose or recommend measures to promote social distancing.

(4) For the purposes of this subdivision, “state of emergency” means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

(f) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

(Amended by Stats. 2021, Ch. 165, Sec. 3. (AB 361) Effective September 16, 2021. Repealed as of January 1, 2024, by its own provisions. See later operative version added by Sec. 4 of Stats. 2021, Ch. 165.)

## MEMORANDUM

**To:** Tabatha Miller, City Manager

**From:** Keith Collins, City Attorney  
By: Scott E. Porter, Assistant City Attorney

**Date:** September 20, 2021

**Subject:** AB 361 – Brown Act – Remote Meetings During State of Emergency

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### I. SUMMARY

On Friday, September 17, 2021, the Governor signed AB 361. Because the bill contained urgency findings, the law is now in effect. AB 361 allows local agencies to continue to conduct remote (“Zoom”) meetings during a declared state of emergency, provided local agencies comply with specified requirements.<sup>1</sup> Absent this legislation, local agencies would have had to return to traditional meetings beginning on October 1, 2021.

### II. BACKGROUND

On March 4, 2020, Governor Newsom declared a state of emergency. That declaration is still in effect. Since March 12, 2020,<sup>2</sup> Executive Orders from the Governor have relaxed various Brown Act meeting requirements to allow remote meetings and to temporarily suspended the Brown Act provisions requiring the physical presence of members at the public meetings. The most recent extension of that authorization will expire at the end of this month.<sup>3</sup>

Starting October 1, and running through the end of 2023, to participate in remote meetings, public agencies must comply with the requirements of new subsection (e) of Government Code section 54953.<sup>4</sup>

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<sup>1</sup> The bill also amends rules applicable to (a) the conduct of meetings of state bodies pursuant to the Bagley Keene Open Meeting Act (new Government Code § 11133) and (b) student body organizations at California State University (CSU) schools pursuant to the Gloria Romero Open Meetings Act of 2000 (new Education Code § 89305.6. Those amendments are not analyzed in this memorandum.

<sup>2</sup> On March 17, 2020, Executive Order N-29-20 superseded the March 12, 2020 Executive Order 25-20. *See* March 18, 2020 Jones & Mayer Memorandum *COVID-19 – Governor’s Order N-29-20*. Executive Order N-29-20 is available here: <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.17.20-N-29-20-EO.pdf>

<sup>3</sup> See Executive Order, ¶42.

<sup>4</sup> The text of new subsection (e) is within Section 3 of AB 361 and begins at the top of page 13/19 of this document: [https://leginfo.legislature.ca.gov/faces/billPdf.xhtml?bill\\_id=20210220AB361&version=20210AB36192CHP](https://leginfo.legislature.ca.gov/faces/billPdf.xhtml?bill_id=20210220AB361&version=20210AB36192CHP). If SB 339 (which currently awaiting the Governor’s signature) is adopted in its current form, then subsection (a) of existing section 54953 will also be revised as follows:

“(a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local ~~agency~~, agency in person, except as otherwise provided in this chapter. Local agencies shall conduct meetings subject to this chapter consistent with applicable state and federal civil rights laws, including, but not limited to, any applicable language access and other nondiscrimination obligations.”

**A. Remote Meeting Rules Through December 31, 2023**

Cities and other local agencies have until September 30, 2021 to conduct remote public meetings pursuant to the Governor’s Executive Order.<sup>5</sup> In most respects, SB 361 does not change how most local agencies will operate, except in one main respect.

**1. New: Declaration of “Imminent Risks to Health or Safety of Attendees”**

**a. Initial Remote Meeting**

For the first remote public meeting a legislative body on or after October 1, such meeting is only allowed if it is during a state of emergency<sup>6</sup> proclaimed by the Governor, and at least one of the following is true:

- 1) “[S]tate or local officials have imposed or recommended measures to promote social distancing”<sup>7</sup>; or
- 2) The legislative body is holding a meeting for the purpose of determining “whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.” That is, the legislative body will be determining whether there is such risk.
- 3) By “majority vote”<sup>8</sup> the legislative body determined that “*as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.*” That is, the legislative body already determined there is such risk.

The text of this rule states that it applies to any “legislative body” which is to meet remotely. The Brown Act defines “legislative body” broadly to include *every* body subject to the Brown Act, including City Councils, Planning Commissions, etc.<sup>9</sup> Thus, taken literally, *every* body subject to the Brown Act (City Council, Planning Commission, etc.) must make its own determination of whether the emergency presents “imminent risks to the health or safety of attendees.” The League of California City’s Brown Act committee considered this language and interpreted it as meaning either (1) the city council may make the finding on behalf of all city committees; or (2) each committee in the city must make its own finding. Cities may wish to speak directly with their City Attorney to determine how best to proceed given this language.

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<sup>5</sup> Earlier today, Governor Newsom issued Executive Order N-15-21 to clarify that local agencies which are conducting remote meetings through September 30 *must* still conduct their actions in accord with Paragraph 42 of Executive Order N-08-21. The order is available here: <https://www.gov.ca.gov/wp-content/uploads/2021/09/9.20.21-executive-order.pdf>. He suspended the operative provisions in AB 361 until the end of the month, except that local agencies can opt to make the initial finding of the need to meet remotely under 54953(e)(1)(B), discussed on this page.

<sup>6</sup> Gov’t Code §54953(g)(4) defines “state of emergency” as a state of emergency proclaimed by the Governor. California has been in a state of emergency since March 4, 2020, as authorized by Government Code § 8625.

<sup>7</sup> It is important to distinguish social distancing recommendations (e.g., stay 6 feet apart) from other safety protocols such as masking and vaccines.

<sup>8</sup> This would include a majority of a quorum. If, for example, there are 5 members of a legislative body, but only 3 are in attendance at a meeting, then 2 would constitute a majority of those in attendance, and therefore may vote to conduct the meeting remotely.

<sup>9</sup> Gov’t Code 54952 defines “legislative body.”

### **b. Subsequent Remote Meetings**

Any time after the first remote meeting of the legislative body, it can meet remotely if both of the following apply:

1. State/local emergency/social distancing. Either:
  - a. “a state of emergency remains active” or
  - b. “state or local officials have imposed or recommended measures to promote social distancing” and
2. 30 days. Within the last 30 days (which vote may occur at that meeting) the legislative body has made the following findings by majority vote “(A) *The legislative body has reconsidered the circumstances of the state of emergency. (B) Any of the following circumstances exist (i) The state of emergency continues to directly impact the ability of the members to meet safely in person. (ii) State or local officials continue to impose or recommend measures to promote social distancing.*”

Subsection (e)(3) states that after the legislative body makes this determination, the legislative body must make this determination “every 30 days thereafter.” That makes sense for legislative bodies which meet every 30 days – they can meet multiple times in that 30-day period without having to make the findings at every meeting.

***But what if more than 30 days elapse between meetings?*** This may occur if a legislative body meets only intermittently, such as quarterly. Also, a meeting might get cancelled (which is especially likely during the holiday season). Likewise, if, for example, the legislative body meets only once a month on the “second Tuesday of the month”, and any particular month has 5 Tuesdays, you might have as many as 34 days between meetings, rather than the maximum of 30.

A plain reading of the statute means that *every* time a legislative body meets after the first such meeting, it must have a meeting within 30 days – even if the only item on the agenda is to determine the need to meet remotely. This is the safest route, given that this complies with the letter of the law.

But some cities are likely to find this impractical. Did the legislature truly intend to require legislative bodies to call a meeting for the sole purpose of preserving the right to future remote meetings? Courts are reluctant to attribute to the Legislature an intent to create “an illogical or confusing scheme.”<sup>10</sup> If a city is willing to accept the legal risk for these situations, it can take the position that the statute was meant to still allow remote meetings if more than 30 days had passed, provided that at the very first meeting since the last time the findings were made, the legislative body makes the requisite findings. That is, the legislature did not mean what it said, and that the 30-day language was meant to help, rather than hinder the operation of local government.

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<sup>10</sup> *Landrum v. Superior Court*, 30 Cal.3d 1, 9 (1981). *Friedman v. City of Beverly Hills* (1996) 47 Cal. App. 4th 436 [Strict construction does not mandate unreasonable or absurd interpretations which frustrate the apparent intent of the Legislature].

In support of this position, the city could point out that the drafters failed to consider that by using the phrase “legislative bodies,” the text of the statute taken literally applies to all “legislative bodies” associated with an entity (e.g., Planning Commission) rather than just the primary legislative body (e.g., City Council) – they assumed that City Councils meet at least once a month. In making that determination, the legislature made the confusing (accidental?) decision that rather than allowing the City Council to make the decision on behalf of all the City’s legislative bodies, every legislative body must make that decision itself. This confusing scheme might be one piece of evidence that the legislature only intended the statute to apply to City Councils.

In short, the city could argue that the legislature did not mean what it said – the problem with this position, of course, is that it is contrary to the plain wording of the statute. Courts tend to look first to the letter of the law, and only look to the purpose of the law if the court determines that the statute is unclear.<sup>11</sup>

As a practical matter, if a city intends to conduct meetings remotely, the city should consider adding to every agenda for every legislative body (or just the City Council?) a consent calendar item to reaffirm the findings described above, which are required to allow the remote meetings. Otherwise, the city runs the risk of forgetting to include the reaffirmation on any particular meeting agenda. Even if the city were to closely track the 30-day period, it would be easy to go beyond 30 days. Some months have five Tuesdays. Some months have 31 days. Sometimes meetings are cancelled.

## **2. “New” Rules Which Will Not Change How Most Cities Have Been Conducting Remote Meetings**

The rest of the requirements within AB 361 put into law what most cities were already doing in practice.

**Noticed Public Meetings:** A remote meeting must be noticed and allow members of the public to access the meeting and the agenda. The notice of the meeting must state how the public can access the meeting and offer public comment. The agenda must “identify and include an opportunity for all persons to attend via call-in or via an internet-based service option.” It is not required that the agenda be posted at the location of each public official participating in the meeting.

**Due Process:** Although this was already required pursuant to the common law, it is now a statutory requirement that “the legislative body shall conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body of a local agency.” This means, for example, in a quasi-judicial proceeding (e.g., hearing on a conditional use permit), the city must ensure that the applicant is given an opportunity to be heard, and to respond in real time to all evidence presented during the hearing. Likewise, all members of the public with a property interest or a liberty interest (e.g., neighbors commenting on a

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<sup>11</sup> *Building Industry Assn. v. City of Camarillo* (1986) 41 Cal.3d 810, 818 [when the language of a statute is clear, there is no room for interpretation].

conditional use permit) likewise have a right to be heard. If the applicant or those immediately affected by the project are unable to hear or to participate in the meeting, depending upon the facts, this may constitute a due process violation, and the meeting should be suspended or delayed until full participation may once again occur.

**Broadcasting Disruptions:** If there is a disruption which prevents 1) the broadcasting of the meeting to the public or 2) which is “within the local agency’s control which prevents members of the public from offering public comments using the call-in option or internet-based service option”, the body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or via the internet-based service option is restored. If, for example, a sole member of the public is having their own isolated technical difficulties such that they are unable to offer public comment, because this is not under the city’s control, the city is not required to delay the meeting (unless that person has due process rights, as described above, which might require a delay).

**Public Comments:** The local agency cannot require public comments to be submitted in advance of the meeting, and must allow the public to address the local agency in real time. It is not required that the local agency provide a physical location from which the public may attend or comment.<sup>12</sup>

**Registration to Comment:** If the city uses a third-party internet website or other on-line platform (e.g., Zoom), and the third-party platform requires registration to log in to the meeting, the third-party platform may require them to provide that login information.

**Timed Comments:** Local agencies cannot close a timed public comment “until that timed public comment period has elapsed.” This rule is best interpreted as meaning that the city cannot have the practice of limiting public comment to only those who initially “raised their hands” to speak. Rather, the city must allow people to add themselves to the public commenting queue during the period in which other members of the public are commenting. For cities that do not limit public speakers to a specific amount of time, they are required to “allow a reasonable amount of time per agenda item” to allow public comment, to register, and to be recognized for public comment.

### **III. CONCLUSION**

With one main exception, cities that were meeting remotely were already complying with the majority, if not all, of the procedures of the new law. The main difference is that now, to meet remotely, the legislative body must make an initial determination of whether “*as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.*” A simple motion, approved by majority vote would be sufficient to make this initial finding. As described on page 2 of this memorandum, this finding is but one of three ways to initially participate, although it is recommended as the easiest way to guarantee legal compliance. Such motion could be on the consent calendar.

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<sup>12</sup> Government Code § 54953(e)(2)(B).

If the legislative body has made that initial determination to conduct remote meetings, the simplest course of action thereafter is for each subsequent meeting (until there is no longer a desire to meet remotely), the legislative body approve a consent calendar item to make the legally required finding described in subsection (e)(3), to thereby allow that legislative body to continue to meet remotely. Such subsequent consent calendar agenda description could state the following:

*Staff Recommendation: Find as follows: “The [insert name of legislative body] reconsidered the circumstances of the state of emergency declared by the Governor and at least one of the following is true: (1) The state of emergency, continues to directly impact the ability of the members of this legislative body to meet safely in person; and/or (2) State or local officials continue to impose or recommend measures to promote social distancing.”*

Although it is not legally required, some cities may prefer that both the initial determination, and all subsequent determinations be made via resolution of that legislative body. If this is the desire of the city, attached as **Exhibit A** is a model resolution for the initial determination. **Exhibit B** is a model resolution for each subsequent determination. The resolutions could also be approved via the consent calendar.

Should you have any questions or comments, feel free to contact your City Attorney or Scott E. Porter at (310) 666-8893.

**EXHIBIT A – MODEL RESOLUTION FOR INITIAL MEETING**

RESOLUTION NO. \_\_\_\_

A RESOLUTION OF THE [*NAME OF LEGISLATIVE BODY*] OF THE CITY OF \_\_\_\_\_ MAKING THE LEGALLY REQUIRED FINDINGS TO AUTHORIZE THE CONDUCT OF REMOTE “TELEPHONIC” MEETINGS DURING THE STATE OF EMERGENCY

WHEREAS, on March 4, 2020, pursuant to California Gov. Code Section 8625, the Governor declared a state of emergency;

WHEREAS, on September 17, 2021, Governor Newsom signed AB 361, which bill went into immediate effect as urgency legislation;

WHEREAS, AB 361 added subsection (e) to Section 54953 to authorize legislative bodies to conduct remote meetings provided the legislative body makes specified findings;

WHEREAS, as of September 19, 2021, the COVID-19 pandemic has killed more than 67,612 Californians;

WHEREAS, social distancing measures decrease the chance of spread of COVID-19;

WHEREAS, it is appropriate for this body to make the findings specified in subsection (e)(1) of section 54953, to thereby authorize this body to meet remotely.

NOW, THEREFORE, IT IS RESOLVED by the [*name of legislative body*] of the City of \_\_\_\_\_ as follows:

1. This legislative body finds that as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

PASSED, APPROVED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2021 by the following roll call vote:

AYES:

NOES:

ABSENT:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT B – MODEL RESOLUTION FOR SUBSEQUENT MEETINGS**

**RESOLUTION NO. \_\_\_\_**

A RESOLUTION OF THE [*NAME OF LEGISLATIVE BODY*] OF THE CITY OF \_\_\_\_\_ MAKING THE LEGALLY REQUIRED FINDINGS TO CONTINUE TO AUTHORIZE THE CONDUCT OF REMOTE “TELEPHONIC” MEETINGS DURING THE STATE OF EMERGENCY

WHEREAS, on March 4, 2020, pursuant to California Gov. Code Section 8625, the Governor declared a state of emergency;

WHEREAS, on September 17, 2021, Governor Newsom signed AB 361, which bill went into immediate effect as urgency legislation;

WHEREAS, AB 361 added subsection (e) to Section 54953 to authorize legislative bodies to conduct remote meetings provided the legislative body makes specified findings;

WHEREAS, as of September 19, 2021, the COVID-19 pandemic has killed more than 67,612 Californians;

WHEREAS, social distancing measures decrease the chance of spread of COVID-19;

WHEREAS, this legislative body previously adopted a resolution to authorize this legislative body to conduct remote “telephonic” meetings;

WHEREAS, Government Code 54953(e)(3) authorizes this legislative body to continue to conduct remote “telephonic” meetings provided that it has timely made the findings specified therein.

NOW, THEREFORE, IT IS RESOLVED by the \_\_\_\_\_ of the City of \_\_\_\_\_ as follows:

1. This legislative body declares that it has reconsidered the circumstances of the state of emergency declared by the Governor and at least one of the following is true: (a) the state of emergency, continues to directly impact the ability of the members of this legislative body to meet safely in person; and/or (2) state or local officials continue to impose or recommend measures to promote social distancing.

PASSED, APPROVED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2021 by the following roll call vote:

AYES:

NOES:

ABSENT:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

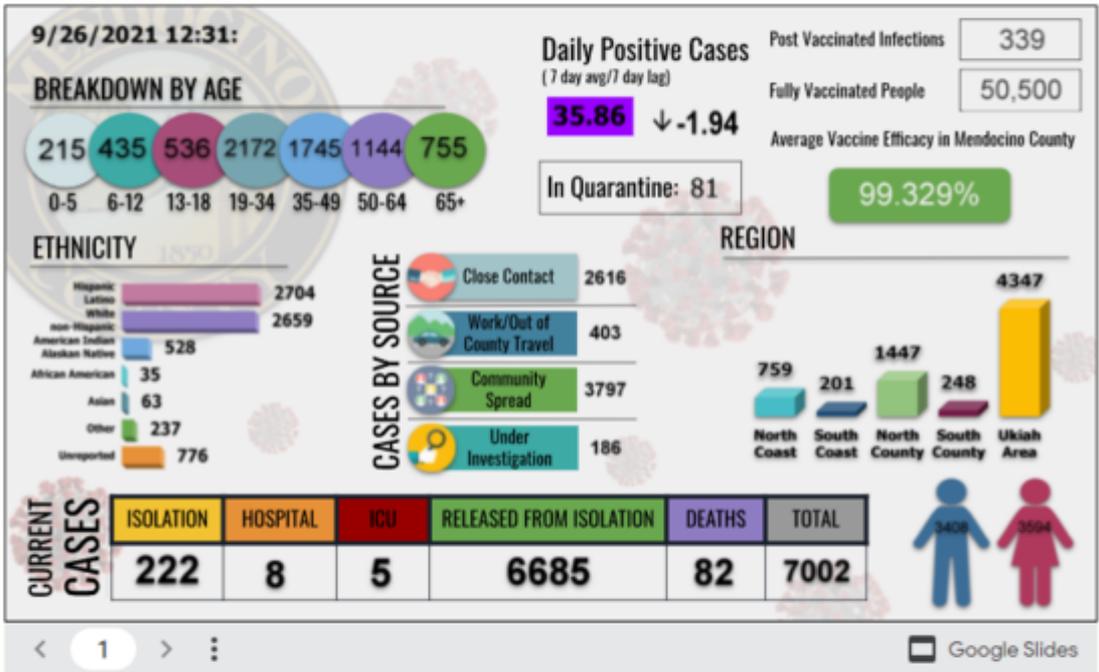
ATTEST:

APPROVED AS TO FORM:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

# Mendocino County COVID-19 Dashboard with Additional Demographic Information



**From:** [Annemarie](#)  
**To:** [Peters, Sarah](#); [CDD User](#)  
**Cc:** [Miller, Tabatha](#)  
**Subject:** public comment item 21-517 7A 9-29-2021  
**Date:** Tuesday, September 28, 2021 9:07:50 PM

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In regards to:

Receive Report and consider Adoption of Planning Commission Resolution Making the Legally Required Findings to Authorize the Conduct of Remote "Telephonic" Meetings During the State of Emergency

Dear Planning Commission members,

I sent an e-mail yesterday to the City Council with the following text:

Dear Council members,

Does it mean that it is not possible anymore to attend live meetings? Is that due to our governor? Do Councils have a chance to decide on that or not?

Thanks, Annemarie Weibel

Text:

This legislative body finds that as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

I understand that the City Council or the Planning Commission has the option to go back to in-person or hybrid meetings if they want to, but adopting the resolution allows the City to continue to hold online meetings without having to post the agendas at every location where City Council members are participating from and having them open to the public for public comments at those locations as well.

AB 361, which is the new law that allows these changes, eliminated the requirement to have an in-person public comment location or locations but the City Council needed to adopt this resolution and for that matter the Planning Commission needs to adopt this resolution in order to allow continued online meetings.

How come people who sign up with the City find out today on 9-28 at 3:04pm about tomorrow's 6pm Planning Commission meeting? Are the Brown Act guarantees of proper noticing on hold as well? I realize that the vote needs to happen before October 1. At least the City Council gave 4 days notice.

Meetings were only held at Town Hall until 7-7-2020 and then again from 5-10-2021 until 8-16-2021.

Personally I like the option of participating from home rather than having to go to Town Hall for meetings.

I am although concerned that we are eliminating people's input who do not have access to a TV, a computer, or a telephone that they can be

connected to until the City allows them to make public comments. Also some people do not have the ability to connect via fast speed internet, or do not have the skills necessary to deal with zoom.

It is my understanding that public comments used to be included in the City Council agendas if they were received by 3pm the day of the meeting. I believe that was changed and will now only be reflected the next day.

You might remember that some people in favor of the Grocery Outlet were very concerned that some City Council members only attended the meeting via zoom.

There are many important meetings where public participation is crucial for the outcome like public hearings, issues about land use, etc.

I am concerned that by having a State of Emergency until December 31, 2023 and potentially no onsite meetings until then we are potentially creating a situation where the public falls asleep while contractors are continuing to plan and build, new City Council members get elected, new Planning Commissioners chosen, etc.

I am concerned about the state of a democracy when the government keeps making decisions that affect all of us, and instructs everyone to stay at home.

Sincerely, Annemarie Weibel