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**Scott Smith**  
General Counsel

October 13, 2021

**8c** | Commission  
Discussion

**TO:** Local Agency Formation Commission  
of Orange County

**FROM:** General Counsel

**SUBJECT:** Assembly Bill 361 – Open Meetings and Teleconferences for  
State and Local Agencies

### BACKGROUND

The Governor has issued a series of executive orders in connection with the COVID-19 pandemic, which included a waiver of all physical-presence requirements under the Brown Act. The most recent of these orders was set to expire on September 30, 2021. AB 361, which took effect as an urgency measure on September 16, leaves this determination to local agencies, subject to certain findings they must make then renew periodically to allow virtual or telephonic meetings during the pendency of the COVID-19 pandemic.

Staff requested a summary of AB 361 and its application to LAFCO, which is discussed in the next section of this report.

### DISCUSSION

AB 361 permits many of the meeting adaptations allowed under the earlier Executive Order (which acted as a temporary waiver of the Brown Act's in-person attendance requirements), while also adding new requirements to the management of remote and teleconference public meetings. It permits the Commission to hold virtual meetings without making each Commissioner's location a meeting site for others in any of the following circumstances:

1. The Commission holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.
2. The Commission 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. (This meeting has been noticed under this section.)

3. The Commission holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to the preceding subparagraph, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

AB 361 also imposes three new requirements for virtual public meetings:

1. Local 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 to allow actual public participation.
2. Legislative bodies may allow public comments to be submitted prior to a meeting, but must also allow the public to participate in real time through call-in or internet-based service.
3. 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.

In order to continue to qualify for AB 361's waiver of in-person meeting requirements, the Commission would need to make findings at this meeting 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 attached resolution accomplishes this and is attached for Commission consideration.

If approved by the Commission, these findings would then need to be renewed every 30 days for remote meetings to continue. Because the Commission meets regularly on the second Wednesday of a given month, it is possible that more than 30 days may elapse between consecutive meetings. AB 361 is silent as to whether special meetings are required on a more frequent basis to keep up with the thirty-day renewal of findings requirement, although scheduling such meetings would ensure strict compliance. Alternatively, if the Commission does not meet within thirty days after its prior meeting, the Commission should make its renewed findings at the beginning of its next meeting prior to any other action or discussion.

To implement AB 361 the Commission would also need to modify its platform for public participation. To date, only Commissioners, staff, and invited panelists have been permitted to comment on Commission meetings in real time. To continue with virtual meetings, the Commission would have to institute some means for others to participate through video or voice transmission.

**RECOMMENDED ACTION:**

1. Adopt LAFCO Resolution No. CP 21-08 authorizing virtual Commission regular meetings pursuant to AB 361.
2. Within 30 days after your first AB 361 meeting on October 13, 2021, the Commission must make formal 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.

Respectfully submitted,



SCOTT SMITH  
General Counsel

Attachment 1: LAFCO Resolution No. CP 21-08

CP 21-08

RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION OF ORANGE COUNTY  
AUTHORIZING VIRTUAL COMMISSION MEETINGS PURSUANT TO AB 361

October 13, 2021

On the motion of Commissioner \_\_\_\_\_, duly seconded and carried, the following resolution was adopted:

WHEREAS, the Orange County Local Agency Formation Commission (“Commission”) is committed to preserving and nurturing public access and participation in meetings of the Commission; and

WHEREAS, all meetings of the Commission are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963), so that any member of the public may attend and participate in the Commission’s meetings; and

WHEREAS, starting in March 2020, in response to the spread of COVID-19 in the State of California, the Governor issued a number of executive orders aimed at containing the COVID-19 virus; and

WHEREAS, among other things, these orders waived certain requirements of the Brown Act to allow legislative bodies to meet virtually; and

WHEREAS, pursuant to the Governor’s executive orders, the Commission has been holding virtual meetings during the pandemic in the interest of protecting the health and safety of the public, Commission staff and Commissioners; and

WHEREAS, the Governor’s executive order related to the suspension of certain provisions of the Brown Act expires on September 30, 2021; and

WHEREAS, 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; and

WHEREAS, such conditions now exist in Orange County, specifically, a state of emergency has been proclaimed related to COVID-19, state and local officials are

recommending 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;

NOW, THEREFORE, BE IT RESOLVED BY THE ORANGE COUNTY LOCAL AGENCY FORMATION COMMISSION AS FOLLOWS:

Section 1. Recitals.

The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. Remote Teleconference Meetings.

Consistent with the provisions of Government Code Section 54953(e), the Commission finds and determines that (1) a state of emergency related to COVID-19 is currently in effect; (2) state and local officials have recommended measures to promote social distancing in connection with COVID-19; and (3) due to the COVID-19 emergency, meeting in person would present imminent risks to the health and safety of attendees. Based on such facts, findings and determinations, the Commission authorizes staff to conduct remote teleconference meetings of the Commission under the provisions of Government Code Section 54953(e).

Section 3. Effective Date of Resolution.

This Resolution shall take effect upon adoption and shall be effective for 30 days unless earlier extended by a majority vote of the Commission in accordance with Section 4 of this Resolution.

Section 4. Extension by Motion.

The Commission may extend the application of this Resolution by motion and majority vote by up to 30 days at a time, provided that it makes all necessary findings consistent with and pursuant to the requirements of Section 54953(e)(3).

PASSED AND ADOPTED by the Orange County Local Agency Formation Commission this 13<sup>th</sup> day of October 2021, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

STATE OF CALIFORNIA)

) SS.

COUNTY OF ORANGE )

I, Douglass Davert, Chair of the Local Agency Formation Commission of Orange County, California, hereby certify that the above and foregoing resolution was duly and regularly adopted by said Commission at a regular meeting thereof, held on the 13<sup>th</sup> day of October 2021.

IN WITNESS WHEREOF, I have hereunto set my hand this 13<sup>th</sup> day of October 2021.

DOUGLASS DAVERT

Chair of the Local Agency Formation Commission of  
Orange County

By: \_\_\_\_\_  
DOUGLASS DAVERT