

March 9, 2022

13 | Adjournment

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Special District Member

Peggy Huang

City Member

Lou Penrose

Public Member

STAFF

Carolyn Emery

Executive Officer

Scott Smith

General Counsel

TO: Local Agency Formation Commission
of Orange County

FROM: General Counsel

SUBJECT: Adjournment and Potential Further Extension of Virtual Meetings Pursuant to AB 361; in the Alternative, a Return to Fully In-Person Meetings

BACKGROUND

The Governor's Executive Order N-29-20 suspended some of the Brown Act's in-person attendance requirements but has since expired. Assembly Bill (AB) 361 extends the waiver of in-person attendance requirements, under some additional rules.

On October 13, 2021, the Commission adopted Resolution CP 21-08 authorizing virtual public meetings in accordance with AB 361 in order to contain the spread of the COVID-19 virus and keep Commission staff, constituents, and the community safe and operational.

DISCUSSION

As authorized by Government Code 54953(e)(3), Resolution CP 21-08 authorizes the Commission to continue to hold virtual, hybrid, or remote meetings for periods of 30 days if the Commission makes the following findings:

1. The Commission has considered the circumstances of the state of emergency; and

2a. State or local officials continue to impose or recommend measures to promote social distancing; ***or***

2b. The state of emergency continues to directly impact the ability of members to meet safely in person.

In order to continue to make use of virtual or telephonic meetings and relax in-person attendance requirements for Commission meetings and in accordance with Resolution CP 21-08, the Commission may extend the

application of this Resolution by motion and majority vote, provided that the earlier findings be renewed by the Commission every 30 days, as practicable.

Because the Commission meets regularly on the second Wednesday of a given month, it is possible more than 30 days may elapse between consecutive meetings. As AB 361 is silent as to whether special meetings are required on a more frequent basis to keep up with the 30-day renewal of findings requirement, it is recommended the Commission make its renewed findings in connection with each meeting at which it desires to keep open the opportunity for virtual meetings.

This item would extend the application of Resolution CP 21-08 until April 13, 2022 given the continued need to meet remotely in response to the COVID-19 pandemic. As set forth in the resolution, State and/or local officials continue to recommend social distancing and meeting in person can present imminent risks to the health and safety of attendees, especially those with particular health challenges or vulnerabilities.

Alternatively, the Commission may decide not to extend the application of Resolution CP 21-08, and thereby permanently return to fully in-person meetings unless and until a new state of emergency is declared pursuant to Government Code section 54953. Once the Commission allows its reauthorization of Resolution CP 21-08 to lapse, it cannot be revived under the previous state of emergency.

RECOMMENDED ACTION:

1. Extend Resolution CP 21-08 making renewed findings under Government Code section 54953(e)(3) that (1) the Commission has considered the *present* state of emergency and (2) (a) a state of emergency remains in effect *or* (b) state and local officials continue to recommend measures that promote social distancing.
2. In the alternative, do not make any such findings. The remote meeting authorization afforded by Resolution CP 21-08 will lapse and in-person meetings will be required in the same manner and subject to the same requirements as they were pre-pandemic.

Respectfully submitted,



SCOTT SMITH

Attachment 1: CP21-08 Resolution Authorizing Virtual Commission Meetings Pursuant to AB 361

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 Bucknum, 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 13th day of October 2021, by the following vote:

AYES: Wendy Bucknum, Mike Posey, Donald Wagner, Lisa Bartlett, James Fisler,
Derek J. McGregor, Douglass Davert
NOES: None
ABSENT: None
ABSTAIN: None

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 13th day of October 2021.

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

DOUGLASS DAVERT

Chair of the Local Agency Formation Commission of
Orange County

By: _____


DOUGLASS DAVERT