



Council Agenda Report

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

Prepared by: Steve McClary, City Manager
Kelsey Pettijohn, City Clerk
Trevor Rusin, Interim City Attorney

Date prepared: May 9, 2023 Meeting date: May 22, 2023

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

RECOMMENDED ACTION: Consider a motion to reaffirm Resolution No. 23-14, re-authorizing remote teleconferencing/virtual 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, in the face of the COVID-19 pandemic, 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, including allowing councilmembers to not have to post an agenda at their teleconference location, not have to identify their location on the meeting agenda, not have to ensure public accessibility at the teleconference location, and the legislative body did not need a quorum in the jurisdiction. 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 meetings until September 30, 2021.

On September 16, 2021, the Governor signed AB 361, which allows legislative bodies to meet virtually provided there is a state of emergency declared by the Governor, 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. Although the states COVID-19 state of emergency ended on February 28, 2023, AB 361 will remain in

effect until January 1, 2024. As noted above, AB 361 authorizes public meetings to be held virtually if specified conditions are met. These conditions include when state or local officials have imposed or recommended measures to promote social distancing.

Research by staff indicates that officials continue to recommend social distancing. Specifically, California Division of Occupational Safety and Health (“Cal/OSHA”) regulations—at Title 8 Section 3205—recommend physical distancing in the workplace as precautions against the spread of COVID-19 and impose certain restrictions and requirements due to a “close contact” which occurs when individuals are within six feet of another in certain circumstances. Relatedly, the Centers for Disease Control and Prevention continue to recommend avoiding contact and keeping a safe distance from a person who has a suspected or confirmed case of COVID-19.

In order to continue to qualify for the waiver of in-person meeting requirements under AB 361, the Council must, every 30 days, make the required findings. Thus, this item will continue to appear on the agenda to satisfy this requirement during the duration the City Council can make the required findings.

ATTACHMENTS:
Resolution No. 23-14

RESOLUTION NO. 23-14

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’s COVID-19 state of emergency ended on February 28, 2023;

D. AB 361 remains in effect until January 1, 2024;

E. AB 361 authorizes legislative bodies to continue meeting virtually if specified conditions are met. These conditions include when state or local officials have imposed or recommended measures to promote social distancing;

F. Among other measures to promote physical distancing, the California Division of Occupational Safety and Health (“Cal/OSHA”) regulations—at Title 8 Section 3205—recommend physical distancing in the workplace as precautions against the spread of COVID-19 and impose certain restrictions and requirements due to a “close contact” which occurs when individuals are within six feet of another in certain circumstances;

G. The Centers for Disease Control and Prevention continue to recommend avoiding contact and keeping a safe distance from a person who has a suspected or confirmed case of COVID-19;

H. To allow for physical distancing and remote meeting attendance in accordance with these recommended measures, the City Council does hereby find that the City Council and all other City bodies shall conduct its meetings without compliance with paragraph (3) of subdivision (b) of Government Code section 54953, as authorized by subdivision (e) of section 54953, and that the City Council and all other City bodies shall comply with the requirements to provide the public with access to the meetings electronically as prescribed in paragraph (2) of subdivision (e) of section 54953

SECTION 2. All of the above recitals are true and correct and incorporated herein by reference.

SECTION 3. The City Council has considered the above circumstances and hereby recognizes that state and local officials continue to recommend social distancing measures, which can impact the ability of the City and the public to meet safely in person.

SECTION 4. The City Council and all other City bodies shall conduct public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act for remote only meetings.

SECTION 5. This Resolution shall take effect immediately upon its adoption and remain in effect for 30 days or until such time as the City Council reaffirms this 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 6. 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 7. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED, and ADOPTED this 27th day of March 2023.

BRUCE SILVERSTEIN, Mayor

ATTEST:

KELSEY PETTIJOHN, City Clerk
(seal)

APPROVED AS TO FORM:

TREVOR RUSIN, Interim City Attorney

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 23-14 was passed and adopted by the City Council of the City of Malibu at the Regular meeting thereof held on the 27th day of March 2023 by the following vote:

AYES: 5 Councilmembers: Grisanti, Riggins, Stewart, Uhring, Silverstein
NOES: 0
ABSTAIN: 0
ABSENT: 0

KELSEY PETTIJOHN, City Clerk
(seal)