



Legislation Text

File #: 2021-0458, Version: 1

DATE: January 11, 2022

SUBJECT:

RESOLUTION REGARDING DISTRICT VIRTUAL MEETINGS IN ACCORDANCE WITH THE RALPH M. BROWN ACT AND ASSEMBLY BILL 361

EXECUTIVE SUMMARY:

California Assembly Bill 361 enacted certain exceptions to the Ralph M. Brown Act (Brown Act) to allow virtual and hybrid meetings of the public agencies when there is a proclaimed state of emergency and state or local officials are recommending measures to promote social distancing. On March 4, 2020, the Governor declared a state of emergency related to COVID-19, and the District similarly declared a state of emergency on March 18, 2020. Both state of emergencies remain in force. In addition to other social distancing recommendations by state, federal, and local agencies, on September 23, 2021, Wilma J. Wooten, the Public Health Officer for the County of San Diego, issued a Health Officer Teleconference Recommendation which recommends continued virtual Brown Act meetings to help prevent the spread of COVID-19.

Most recently, at the December 2021 Board Meeting, the Board adopted a resolution making findings which allowed District's Brown Act meetings to use the exceptions to Brown Act rules set forth in AB 361. AB 361 requires such findings be readopted each month in order to remain effective. Therefore, Staff recommends the Board adopt a resolution making the finding that, based on continued state, federal, and local recommendations for social distancing, the Brown Act meetings of the District, including meetings of the Board of Port Commissioners and other District meetings held in accordance with the Brown Act are permitted to use the exceptions to Brown Act rules set forth in AB 361. And further, that this authorization expires if not renewed at the February 2022 regular meeting of the Board of Port Commissioners.

RECOMMENDATION:

Adopt a resolution that District virtual meetings may be held in accordance with the Ralph M. Brown Act and Assembly Bill 361.

FISCAL IMPACT:

This action has no fiscal impact.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A Port that is a safe place to visit, work and play.

DISCUSSION:

California Assembly Bill 361 enacted certain exceptions to the Ralph M. Brown Act (Brown Act) to allow virtual and hybrid meetings of the public agencies when there is a proclaimed state of emergency and state or local officials are recommending measures to promote social distancing. On March 4, 2020, the Governor declared a state of emergency related to COVID-19, and the District similarly declared a state of emergency on March 18, 2020. Both state of emergencies remain in force.

Several state, federal, and local agencies continue to recommend social distancing to prevent the spread of COVID-19. For example:

- On September 23, 2021, Wilma J. Wooten, the Public Health Officer for the County of San Diego, issued a Health Officer Teleconference Recommendation which recommends continued virtual Brown Act meetings to help prevent the spread of COVID-19.
- Cal-OSHA adopted temporary emergency standards for workplaces that do not require social distancing but do require employers to provide effective training and instruction to employees that includes “The fact that particles containing the virus can travel more than six feet, especially indoors, so physical distancing, face coverings, increased ventilation indoors, and respiratory protection decrease the spread of COVID-19, but are most effective when used in combination.”
[Available at: <https://www.dir.ca.gov/dosh/coronavirus/ETS.html>
<<https://nam11.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.dir.ca.gov/dosh/coronavirus/ETS.html>
].]
- The California Department of Healthcare Services, which administers the state’s Medi-Cal program provides the following in its Frequently Asked Questions for Medi-Cal beneficiaries: “Even after being vaccinated, people will still need to practice other precautions, like wearing a mask, social distancing, handwashing, and other hygiene measures, until public health officials say otherwise.”
[Available at <https://www.dhcs.ca.gov/Pages/COVID-19-Vaccines.aspx>
<<https://nam11.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.dhcs.ca.gov/Pages/COVID-19-Vaccines.aspx>
].]
- The California Department of Public Health has issued guidance about additional vaccine doses for persons who are immunocompromised. The guidance contains the following: “As a person with a weak immune system, once I get an additional dose, can I reduce the use of other precautions such as masking, distancing, and avoiding groups and crowds.” A: “No, because even with an extra dose of mRNA vaccine, not everyone with a compromised immune system appears to mount a normal immune response. We are still learning about this, but at this time, we consider it prudent to continue taking extra precautions.”
[Available at:
<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Immunocompromised.aspx>
].]

Most recently, at the December 2021 Board Meeting, the Board adopted a resolution making findings which allowed District's Brown Act meetings to use the exceptions to Brown Act rules set forth in AB 361. AB 361 requires such findings be readopted each month to remain effective. Therefore, staff recommends the Board adopt a resolution making the finding that, based on continued state, federal, and local recommendations for social distancing, the Brown Act meetings of the District, including meetings of the Board of Port Commissioners and other District meetings held in accordance with the Brown Act are permitted to use the exceptions to Brown Act rules set forth in AB 361. And further, that this authorization expires if not renewed at the February 2022 regular meeting of the Board of Port Commissioners.

General Counsel's Comments:

The Office of the General Counsel has reviewed and approved this agenda and proposed resolution as to form and legality.

Environmental Review:

The proposed Board action, including without limitation, a resolution regarding district virtual meetings in accordance with the Ralph M. Brown Act and Assembly Bill 361, does not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Sections 15352 and 15378 because no direct or indirect changes to the physical environment would occur. CEQA requires that the District adequately assess the environmental impacts of projects and reasonably foreseeable activities that may result from projects prior to the approval of the same. Any project developed as a result of the proposed Board action that requires the District or the Board's discretionary approval resulting in a physical change to the environment will be analyzed in accordance with CEQA prior to such approval. CEQA review may result in the District, in its sole and absolute discretion, requiring implementation of mitigation measures, adopting an alternative, including without limitation, a "no project alternative" or adopting a Statement of Overriding Consideration, if required. The proposed Board action in no way limits the exercise of this discretion. Therefore, no further CEQA review is required.

The proposed Board action allows for the District to implement its obligations under Section 35 of the Port Act, which authorizes the Board to do acts necessary and convenient for the exercise of its power. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board action does not allow for "development," as defined in Section 30106 of the California Coastal Act, or "new development," pursuant to Section 1.a. of the District's Coastal Development Permit (CDP) Regulations because it will not result in, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a Coastal Development Permit or exclusion is not required. However, development within the District requires processing under the District's CDP Regulations. Future development, as defined in Section 30106 of the Coastal Act, will remain subject to its own independent review pursuant to the District's certified CDP Regulations, PMP, and Chapters 3 and 8 of the Coastal Act. The proposed Board action in no

way limits the exercise of the District's discretion under the District's CDP Regulations. Therefore, issuance of a CDP or exclusion is not required at this time

Diversity, Equity, and Inclusion Program:

This agenda sheet has no direct DEI impact on District contracting or workforce reporting at this time.

PREPARED BY:

Simon M. Kann
Senior Deputy General Counsel