

November 19, 2021

Item No. 1

Board of Directors of the
Monterey Regional Waste Management District

Board Regular Meeting
of November 19, 2021

BOARD OF DIRECTORS CONSIDER ADOPTING A RESOLUTION REGARDING THE RALPH M. BROWN ACT AND ASSEMBLY BILL 361, MAKING CERTAIN FINDINGS, RE-RATIFYING THE PROCLAMATION OF A STATE OF EMERGENCY BY GOVERNOR NEWSOM ON MARCH 4, 2020, AND RE-AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF THE CITY COUNCIL OF THE DISTRICT BOARD AND ITS STANDING COMMITTEES (CONSTITUENT BODIES) FOR THE PERIOD NOVEMBER 19, 2021 THROUGH DECEMBER 19, 2021, PURSUANT TO APPLICABLE BROWN ACT PROVISIONS.

REQUEST:

It is requested that the District Board consider: Adopting Resolution No. 2021-13 regarding the Ralph M. Brown Act (California Government Code §§54950-54963, hereinafter the “Brown Act”), making certain findings, and authorizing the City to continue to implement remote teleconferenced public meetings of the City Council and its constituent bodies for the period November 19, 2021 through December 19, 2021.

BACKGROUND:

Government Code §54953(e) allows local public agencies and districts to continue to meet remotely during states of emergency proclaimed by the Governor under modified Brown Act requirements that are similar to but not identical to the rules and procedures established by the prior Executive Orders of Governor Newsom relating to the relaxation of certain Brown Act requirements during the COVID-19 pandemic.

Government Code §54953(e) authorizes local agencies to use teleconferencing without complying with teleconferencing requirement imposed by the Brown Act during a declared state of emergency when state or local health officials have imposed or recommended measures to promote social distancing during the proclaimed state of emergency or when the legislative body had determined by majority vote that meeting in person would present imminent risks to the health or safety of attendees. In that regard, please note the Recommendation Regarding Social Distancing Including Remote Meetings of Legislative Bodies issued by the County of Monterey Health Department on September 22, 2021, and still in effect, which is Attachment 1 to the accompanying Resolution 2021-12.

At a special meeting held on October 6, 2021, the District Board adopted Resolution 2021-11 regarding the Brown Act, making certain findings, and authorizing the District to implement remote teleconferenced public meetings of the Board and its constituent bodies for the period October 6, 2021 through November 5, 2021.

ANALYSIS:

On June 11, 2021, Governor Newsom issued Executive Order N-08-21 which among other things rescinded his prior Executive Order N-29-20 and set the date of October 1, 2021, for public agencies to transition back to public meetings held in full compliance with the Brown Act.

As the Delta variant has surged in California, the legislature took action to extend the COVID-19 exemptions to the Brown Act's teleconference requirements, subject to some additional requirements. Assembly Bill 361 amended Government Code §54953 and allowed a local agency to use teleconferencing in any of the following circumstances without complying with certain Brown Act provisions:

1. 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.
2. 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.
3. The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote taken at a meeting held for the purpose described in 2 above, that as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

A local agency that holds a meeting under any of these circumstances would be required to follow certain requirements listed in the attached Resolution, in addition to giving notice of the meeting and posting agendas as required under the Brown Act. These additional requirements are intended to protect the public's right to participate in the meetings of local agency legislative bodies. The District currently adheres to the listed requirements.

Government Code §54953(e)(3) provides that if the state of emergency remains active for more than 30 days, a local agency must make the following findings by majority vote every 30 days to continue using the exemption to the Brown Act teleconferencing requirements:

- The legislative body has reconsidered the circumstances of the emergency; and
- Either of the following circumstances exist: the state of emergency continue to directly impact the ability of members to meet safely in person or State or local officials continue to impose or recommend social distancing measures.

The goal of Government Code §54953 as revised by AB 361 is to improve and enhance public access to local agency meetings during the COVID-19 pandemic and future applicable emergencies by allowing broader access through teleconferencing options. The current version of Government Code §54953 became effective on September 16, 2021, with a sunset of the present version on January 1, 2024.

FISCAL IMPACT:

None identified.

CONCLUSION:

This request is submitted for the District Board's consideration and possible adoption of a resolution proclaiming a local emergency persists, re-ratifying the proclamation of a state of emergency by Governor Newsom on March 4, 2020, and re-authorizing remote teleconference meetings of the District Board and its constituent bodies for the period from November 19, 2021 through December 19, 2021, pursuant to applicable Brown Act provisions.

Respectfully submitted,

Rob Wellington

Robert Wellington
District Legal Counsel



COUNTY OF MONTEREY HEALTH DEPARTMENT

Elsa Mendoza Jimenez, Director of Health

Administration Animal Services Behavioral Health Clinic Services
Emergency Medical Services Environmental Health Public Administrator/Public Guardian Public Health

Recommendation Regarding Social Distancing Including Remote Meetings of Legislative Bodies

Issued: September 22, 2021

The Monterey County Health Department continues to recommend that physical and social distancing strategies be practiced in Monterey County, which includes remote meetings of legislative bodies of local agencies, to the extent possible.

Monterey County continues to experience transmission of COVID-19 locally. Physical and social distancing is still an effective measure to reduce the spread of COVID-19, especially when combined with use of face coverings, frequent hand washing, staying home when ill, testing, and vaccination with U.S. Food and Drug Administration approved or authorized COVID-19 vaccines.

Remote meetings of legislative bodies allow for the virtual participation of agency staff, presenters, and community members in safer environments, with less risk of exposure to SARS-CoV-2, the virus that causes COVID-19.

The Monterey County Health Officer will continue to monitor local metrics and the necessity of this recommendation.

RESOLUTION NO. 2021-13

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT REGARDING THE RALPH M. BROWN ACT AND ASSEMBLY BILL 361, MAKING CERTAIN FINDINGS, RE-RATIFYING THE PROCLAMATION OF A STATE OF EMERGENCY BY GOVERNOR NEWSOM ON MARCH 4, 2020, AND RE-AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF THE DISTRICT'S BOARD AND ITS STANDING COMMITTEES FOR THE PERIOD NOVEMBER 19, 2021 THROUGH DECEMBER 19, 2021, PURSUANT TO APPLICABLE BROWN ACT PROVISIONS.

WHEREAS, the MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT ("District") is committed to preserving and nurturing public access and participation in meetings of the District Board and its constituent bodies; and

WHEREAS, all meetings of the District's legislative bodies 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, participate, and watch the District's legislative bodies conduct their business; and

WHEREAS, the Brown Act, Government Code section 54953(e), makes provision for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

WHEREAS, a required condition is that a state of emergency is declared by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558; and

WHEREAS, a proclamation is made when there is an actual incident, threat of disaster, or extreme peril to the safety of persons and property within the jurisdictions that are within the City's boundaries, caused by natural, technological or human-caused disasters; and

WHEREAS, it is further required that state or local officials have imposed or recommended measures to promote social distancing, or, the legislative body meeting in person would present imminent risks to the health and safety of attendees; and

WHEREAS, the District Board previously adopted its Resolution No. 2021-11 on October 6, 2021, finding that the requisite conditions exist for the Board and its constituent bodies to conduct remote teleconference meetings without compliance with paragraph (3) of subdivision (b) of section 54953; and

WHEREAS, as a condition of extending the use of the provisions found in section 54953(e), the District Board must reconsider the circumstances of the state of emergency that exists in the District, and the District Board has done so; and

WHEREAS, emergency conditions persist in the District, specifically, the March 4, 2020, proclamation by the Governor of a state of emergency in the State of California due to COVID-19, and said proclamation of a state of emergency remains in effect; and

WHEREAS, on September 22, 2021, the County of Monterey Health Department issued a Recommendation Regarding Social Distancing Including Remote Meetings of Legislative Bodies, a copy of which is attached hereto as **Attachment 1**; and

WHEREAS, the Board does hereby find that as of October 26, 2021, the federal Centers for Disease Control and Prevention rated the risk level for community transmission of COVID-19 in Monterey County as moderate with a case rate of 32.02 individual per 100,000 persons and the California Department of Public Health reports 24.9% of the staffed adult ICU beds are available with 14 such beds available in Monterey County and this has caused, and will continue to cause, conditions of peril to the safety of persons within the County, and thus the District, that are likely to be beyond the control of services, personnel, equipment, and facilities of the County, and hereby desires to recognize and affirm a local emergency exists and re-ratify the proclamation of state of emergency by the Governor of the State of California and to recognize the County of Monterey Health Department's recommendation regarding social distancing; and

WHEREAS, as a consequence of the local emergency persisting, the District Board does hereby find that the District Board and its constituent bodies shall be permitted to continue to conduct their meetings without compliance with paragraph (3) of subdivision (b) of Government Code section 54953, as authorized by subdivision (e) of section 54953, and that such legislative bodies shall continue to comply with the requirements to provide the public with access to the meetings as prescribed in paragraph (2) of subdivision (e) of section 54953; and

WHEREAS, the District will continue to implement the following measures for meetings of its District Board and its constituent bodies:

- Allow the public to access the meeting and require that the agenda provide an opportunity for the public to directly address the legislative body pursuant to the Brown Act's other teleconferencing provisions.
- In each instance when the local agency provides notice of the teleconferenced meeting or posts its agenda, give notice for how the public can access the meeting and provide public comment.
- Identify and include in the agenda an opportunity for all persons to attend via a call-in or an internet-based service option; the legislative body need not provide a physical location for the public to attend or provide comments.
- Conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the public.

- Stop the meeting until public access is restored in the event of a service disruption that either prevents the local agency from broadcasting the meeting to the public using the call-in or internet-based service option or is within the local agency's control and prevents the public from submitting public comments (any action taken during such a service disruption could be challenged under the Brown Act's existing challenger provisions).
- Not require comments be submitted in advance (though the legislative body may provide that as an option) and provide the opportunity to comment in real time.
- Provide adequate time for public comment, either by establishing a timed public comment period or by allowing a reasonable amount of time to comment.
- If the legislative body uses a third-party website or platform to host the teleconference, and the third-party service requires users to register to participate, the legislative body must provide adequate time during the comment period for users to register and may not close the registration comment period until the comment period has elapsed.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT DOES HEREBY RESOLVE 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. Affirmation that Local Emergency Persists. The Board hereby reconsiders the conditions of the state of emergency in the District and proclaims that a local emergency persists throughout the District, and:

(a) On September 22, 2021, the County of Monterey Health Department issued a Recommendation Regarding Social Distancing Including Remote Meetings of Legislative Bodies; and

(b) As of October 26, 2021, the Centers for Disease Control and Prevention rated the risk level for community transmission of COVID-19 in Monterey County as moderate with a case rate of 32.02 individual per 100,000 persons and the California Department of Public Health reports 24.9% of the staffed adult ICU beds are available with 14 such beds available in Monterey County and this has caused, and will continue to cause, conditions of peril to the safety of persons within the District that are likely to be beyond the control of services, personnel, equipment, and facilities of the District.

Section 3. Re-ratification of Governor's Proclamation of a State of Emergency. The District Board hereby reconsiders and re-ratifies the Governor of the State of California's Proclamation of State of Emergency, effective as of its issuance date of March 4, 2020.

Section 4. Remote Teleconference Meetings. The District Board and its constituent bodies, are hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution, including continuing to conduct open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.

Section 5. Effective Date of Resolution. This Resolution shall take effect on immediately upon its adoption on November 19, 2021, and shall be effective until the earlier of (i) December 19, 2021, or such time the Board adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the District Board and its constituent bodies may continue to hold teleconference meetings without compliance with paragraph (3) of subdivision (b) of section 54953.

PASSED AND ADOPTED by the Board of Directors of the Monterey Regional Waste Management District at a regular meeting held this 19th day of November, 2021, by the following vote:

AYES: BOARD MEMBERS:
NOES: BOARD MEMBERS:
ABSENT: BOARD MEMBERS:
ABSTAIN: BOARD MEMBERS:

Jason Campbell, Chair

ATTEST:

Timothy S. Flanagan, General Manager/Board Secretary