

BOARD OF DIRECTORS

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MONTEREY REGIONAL
WASTE MANAGEMENT DISTRICT
Home of the Last Chance Mercantile

**SPECIAL BOARD MEETING
NOTICE & AGENDA**

Wednesday, October 6, 2021

9:30 a.m.

Please Note: The meeting will be held virtually via Zoom and is compliant with Governor Newsom's executive Order N-15-21 which allows local legislative bodies to hold public meetings electronically or via teleconference and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and address the local legislative body to avoid public gatherings, and which suspended all contrary provisions of the Brown Act. To join the zoom webinar, click on this link: <https://us02web.zoom.us/j/82241845813> copy/paste the link into your browser, or type the link into your browser. If your computer does not have audio, you will also need to join the meeting via phone. To participate via phone, please call: 1-669-900-9128; Meeting ID: **822 418 45813**

Public Comments: if you are unable to participate virtually or via telephone, you may also submit your comments by e-mailing them to igonzales@mrmwd.org with one of the following subject lines "Public Comment Item #" (insert the item number relevant to your comment) or "Public Comment - Non Agenda Item". Comments must be received by 4:00 p.m. on Tuesday, October 5, 2021. All submitted comments will be provided to the Board and may be read into the record or compiled as part of the record.

CALL TO ORDER AT APPROXIMATELY 9:30 AM (OR IMMEDIATELY FOLLOWING THE PERSONNEL COMMITTEE MEETING)

ROLL CALL AND ESTABLISHMENT OF QUORUM

OTHER ITEMS FOR BOARD CONSIDERATION, DISCUSSION AND ACTION

- 1) Approve Resolution No. 2021-11, regarding the Ralph M. Brown Act (California Government Code §§54950-54963, hereinafter the "Brown Act") and Assembly Bill 361, making certain findings, and authorizing the District to implement remote teleconferenced public meetings of the Board and the District's standing committees (i.e., Finance and Personnel) for the period October 6, 2021 through November 5, 2021.

CLOSED SESSION

As permitted by Government Code Section 54956 et seq., the Board may adjourn to a Closed Session to consider specific matters dealing with litigation, certain personnel matters, property negotiations or to confer with the District's Meyers-Milias-Brown Act representative.

1. Public Employment Appointment (Govt. Code sec. 54957)
Position to be filled: General Manager

RETURN TO OPEN SESSION WITH ANY REQUIRED ANNOUNCEMENTS FROM CLOSED SESSION

ADJOURNMENT

NEXT MEETING DATE: October 22, 2021

This agenda was posted at the District offices at 14201 Del Monte Blvd, Monterey County, CA. Staff reports and additional information regarding these agenda items are available on the District website (www.mrwmd.org) and at the District offices during regular business hours (additional fee for copying). All meetings are open to the public. The District does not discriminate against persons with disabilities and the Boardroom is wheelchair accessible. Recordings of meetings can be provided upon request. To request assistive listening devices, sign language interpreters, readers, large print agendas or other accommodations, please call Ida Gonzales at (831) 384-5313 or e-mail: igonzaless@mrwmd.org. Requests must be made at least 48 hours in advance of the meeting.

October 6, 2021

Agenda Item No. 1

Board of Directors of the
Monterey Regional Waste Management District

Board Special Meeting
of October 6, 2021

BOARD OF DIRECTORS CONSIDER ADOPTING A RESOLUTION REGARDING THE RALPH M. BROWN ACT AND ASSEMBLY BILL 361, MAKING CERTAIN FINDINGS, AND AUTHORIZING THE DISTRICT TO IMPLEMENT REMOTE TELECONFERENCED PUBLIC MEETINGS OF THE LEGISLATIVE BODIES OF THE DISTRICT FOR THE PERIOD COMMENCING OCTOBER 6, 2021 THROUGH NOVEMBER 5, 2021.

REQUEST:

It is requested that the Board of Directors consider: Adopting Resolution No. 2021-11, regarding the Ralph M. Brown Act (California Government Code §§54950-54963, hereinafter the “Brown Act”) and Assembly Bill 361, making certain findings, and authorizing the District to implement remote teleconferenced public meetings of the Board and the District’s standing committees (i.e., Finance and Personnel) for the period October 6, 2021 through November 5, 2021.

BACKGROUND:

On September 20, 2021, Governor Newsom signed Executive Order N-15-21, clarifying that local public agencies may continue to meet remotely in accordance with the procedures established by prior Executive Orders. Assembly Bill 361 (AB 361) allows 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 previous Executive Orders relating to the relaxation of the Brown Act requirements during the COVID-19 pandemic.

AB 361 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 agency legislative body had determined by majority vote that meeting in person would present imminent risks to the health or safety of attendees.

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 has taken action to extend the COVID-19 exemptions to the Brown Act’s teleconference requirements, subject to some additional requirements. AB 361 allows a local public agency to use teleconferencing in any of the following circumstances without complying with the 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 could 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 by AB 361 to follow the steps listed below, 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.

Pursuant to AB 361 local agencies are required to do all of the following in addition to meeting notice requirements under the Brown Act:

- 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 when appropriate 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.

This District currently adheres to the above-listed requirements.

AB 361 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 bill's 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 continues 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 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. AB 361 contained an urgency clause and became effective on September 16, 2021, with a sunset of January 1, 2024.

FISCAL IMPACT:

None identified.

CONCLUSION:

This request is submitted for the Board of Directors consideration and possible adoption of a resolution regarding the Ralph M. Brown Act (California Government Code §§54950-54963) and Assembly Bill 361, making certain findings, and authorizing the District to implement remote teleconferenced public meetings of the District's legislative bodies for the period October 6, 2021 through November 5, 2021.

Respectfully submitted,

/s/

Rob Wellington
MRWMD Legal Counsel

RESOLUTION NO. 2021-11

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT REGARDING THE RALPH M. BROWN ACT (CALIF. GOVT. CODE §§54950-54963) AND ASSEMBLY BILL 361, MAKING CERTAIN FINDINGS, AND AUTHORIZING THE DISTRICT TO IMPLEMENT REMOTE TELECONFERENCED PUBLIC MEETINGS OF THE LEGISLATIVE BODIES OF THE DISTRICT FOR THE PERIOD OF OCTOBER 6, 2021 THROUGH NOVEMBER 5, 2021.

WHEREAS, the MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT is committed to preserving and nurturing public access and participation in meetings of the Board of Directors and the District's standing committees; and

WHEREAS, under authority provided by Government Code section 8625 on March 4, 2020, Governor Newsom issued a Proclamation of State of Emergency in response to the COVID-19 pandemic; and

WHEREAS, the Governor's proclaimed state of emergency remains in effect; and

WHEREAS, all meetings of the District's Board of Directors and its standing committees (i.e., Finance and Personnel) 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 those legislative bodies conduct their business; and

WHEREAS, the Brown Act, Government Code section 54953, makes provisions for remote teleconferencing participation in meetings by members of a legislative body and the public; and

WHEREAS, on March 17, 2020, Governor Newsom issued Executive Order N-29-20 that suspended the teleconference rules set forth in Government Code section 54953(b)(3) provided certain requirements were met and followed and subject to the existence of certain conditions; and

WHEREAS, on June 11, 2021, Governor Newsom issued Executive Order N-08-21 that clarified the suspension of the teleconferencing rules set forth in Government Code section 54953(b)(3) would continue to be suspended through September 30, 2021; and

WHEREAS, On September 16, 2021, Governor Newsom signed Assembly Bill 361 that provides that, during a state of emergency declared by the Governor pursuant to Government Code section 8625, a legislative body subject to the Brown Act may continue to meet without fully complying with the teleconference rules set forth in Government Code section 54953(b)(3) provided state or local officials have imposed or recommended measures to promote social distancing or the legislative body determines that meeting in person and/or with the public would present imminent risks to the health and safety of attendees, and further requires that certain findings be made by the legislative body every thirty (30) days; and

WHEREAS, on September 20, 2021, Governor Newsom signed Executive Order N-15-21, clarifying that local public agencies may continue to meet remotely in accordance with the procedures established by prior Executive Orders; and

WHEREAS, the Board of Directors is empowered to take actions necessary to protect public health, welfare and safety of persons meeting within the District; and

WHEREAS, the Board of Directors has an important governmental interest in protecting the health, safety and welfare of those who participate in its meetings subject to the Brown Act; and

WHEREAS, the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15378(b)(5) in that adopting a resolution authorizing the Board to conduct teleconference public meetings does not meet CEQA's definition of a "project" because the action does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, and because the action constitutes organizational or administrative activities of government that will not result in direct or indirect physical changes in the environment and is exempt pursuant to Section 15269(c) of the CEQA Guidelines, as specific actions necessary to prevent or mitigate an emergency; and

WHEREAS, the Board of Directors has considered all information related to this matter, as presented at the public meeting of the Board identified herein, including any supporting reports by District staff and any information presented during the public meeting

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT DOES HEREBY RESOLVE AS FOLLOWS:

1. The Recitals set forth above are true and correct and are incorporated into this Resolution as findings of the Board of Directors by this reference.
2. The Board finds and determines such conditions as described in the Recitals above and other conditions described herein now exist in the District, specifically:
 - i. The Monterey County Health Officer has issued a health advisory and guidance for businesses that recommends continuance of COVID-19 prevention practices which include maximizing social distancing and maintaining a distance of six feet from another person whenever possible.
 - ii. The California Department of Public Health ("CDPH") and the federal Centers for Disease Control and Prevention ("CDC") caution that the Delta variant of COVID-19 is currently the dominant strain of COVID-19 in the country, is more transmissible than prior variants of the virus, may cause more severe illness, and that even fully vaccinated individuals can spread the virus to others resulting in rapid and alarming rates of COVID-19 cases and hospitalizations.
 - iii. Other variants of COVID-19 exist and it is unknown at this time whether other variants may result in a new surge in COVID-19 cases.
 - iv. As of September 29, 2021, the Monterey County COVID-19 risk level was rated as "high" with 13.4 new daily cases reported per 100,000 persons.

v. Due to the seriousness of the current COVID-19 pandemic situation, the CDPH has required that all unvaccinated people wear facial coverings indoors, and the CDC and CDPH recommend that all persons regardless of vaccination status wear facial coverings indoors.

3. The Board of Directors does hereby: (i) affirm that State and local health officials have made the recommendations concerning social distancing described in the Recitals and in Section 2 herein; and (ii) find and determine that the conditions described in the Recitals and in Section 2 herein have caused, and will continue to cause, conditions of peril to the safety of persons within the District and present imminent risks to the health or safety of meeting attendees and thus intends to invoke the provisions of AB 361 related to teleconferencing of its public meeting as provided in subdivision (e) of Government Code section 54953.

4 As a consequence of the state emergency, the Board of Directors does hereby find and determine that District meetings subject to the Brown Act shall be conducted without compliance with paragraph (3) of subdivision (b) of Government Code section 54953, as authorized by subdivision (e) of section 54953, and that all its teleconferenced meetings shall comply with the requirements to provide the public with access to the meetings as prescribed in paragraph (2) of subdivision (e) of section 54953.

5, The General Manager is hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution, including conducting open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.

6. This Resolution shall take effect immediately upon its adoption and shall be effective until the earlier of (i) November 5, 2021, or (ii) such time as the Board adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the Board of Directors and the District's standing committees may continue to teleconference its public meetings without compliance with paragraph (3) of subdivision (b) of section 54953 of the California Government Code.

PASSED AND ADOPTED by the Board of Directors of the Monterey Regional Waste Management District at a special meeting held this 6th day of October 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