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November 10, 2021

Contra Costa Local Agency Formation Commission
40 Muir Road, First Floor
Martinez, CA 94553

**November 10, 2021
Agenda Item 6**

**Authorizing Teleconference Meetings
Assembly Bill 361, Government Code Section 54953(e)**

Dear Members of the Commission:

When the COVID-19 pandemic began, Governor Newsom issued an executive order allowing local agencies to meet remotely without complying with the strict teleconferencing requirements of the Brown Act. Executive Order N-29-20 suspended the Brown Act’s non-emergency teleconferencing rules, including requirements that each teleconference location must be physically accessible to the public and that the public must be given an opportunity to comment at each teleconference location. Since March 2020, LAFCO has been meeting virtually, as authorized by Executive Order N-29-20 and subsequent orders. This authority expired September 30, 2021.

Assembly Bill (AB) 361 amended the teleconferencing provisions of the Brown Act, Government Code (GC) section 54953. Effective October 1, 2021, subsection (e) of GC section 54953 authorizes a local agency to use special teleconferencing rules when the legislative body of the local agency holds a meeting during a state of emergency declared by the state, and either (a) state or local officials have imposed or recommended measures to promote social distancing, or (b) the legislative body is meeting to determine, or has determined, that meeting in person would present imminent risks to the health or safety of meeting attendees.

The following rules apply to teleconferencing meetings held under GC section 54953(e):

- The agency must provide notice of the meeting and post an agenda as required by the Brown Act, but the agenda does not need to list each teleconference location or be physically posted at each teleconference location.
- The agenda must state how members of the public can access the meeting and provide public comment.
- The agenda must include an option for all persons to attend via a call-in or internet-based service option.

- The legislative body must conduct the meeting in a manner that protects the constitutional and statutory rights of the public.
- If there is a disruption in the public broadcast of the call-in or internet-based meeting service, the legislative body must stop and take no further action on agenda items until public access is restored.
- The agency may not require public comments to be submitted in advance of the meeting and must allow virtual comments to be submitted in real time.
- The legislative body must allow a reasonable amount of time per agenda item to permit members of the public to comment, including time to register or otherwise be recognized for the purposes of comment.
- If the legislative body provides a timed period for all public comment on an item, it may not close that period before the time has elapsed.
- The legislative body must reconsider the circumstances of the state of emergency and the findings in support of emergency teleconference meetings every 30 days or every time it meets.
- AB 361 sunsets on January 1, 2024.

A resolution authorizing teleconferencing under GC section 54953(e) is attached. It would determine that the state has declared a state of emergency related to COVID-19 and find that social distancing recommendations are in place and that there is an imminent risk of harm to the public, staff, and officials if live meetings are conducted. If adopted, the resolution would authorize LAFCO to hold teleconference meetings consistent with the above rules.

If LAFCO wishes to continue teleconferencing under GC section 54953(e), every 30 days after adopting the resolution or every time it meets, LAFCO must reconsider the circumstances of the state of emergency and that one of the following circumstances exists: the emergency continues to directly impact the ability of members to safely meet in person, or state or local officials continue to impose or recommend measures to promote social distancing. If the state-declared emergency no longer exists, or if LAFCO does not make these findings by majority vote, then LAFCO will no longer be exempt from the Brown Act's non-emergency teleconferencing rules.

RECOMMENDATION: Adopt the attached resolution allowing Contra Costa LAFCO to conduct teleconference meetings pursuant to GC section 54953(e) and make related findings.

Sincerely,

LOU ANN TEXEIRA
EXECUTIVE OFFICER

Attachment 1 – Resolution No. 2021-01

RESOLUTION NO. 2021-01**A RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION
COMMISSION AUTHORIZING TELECONFERENCE MEETINGS UNDER
GOVERNMENT CODE SECTION 54953(e) (ASSEMBLY BILL 361)****Recitals**

- A. On March 4, 2020, Governor Gavin Newsom proclaimed the existence of a state of emergency in California under the California Emergency Services Act, Gov. Code § 8550 et seq.
- B. On March 10, 2020, the Contra Costa County Board of Supervisors found that due to the introduction of COVID-19 in the County, conditions of disaster or extreme peril to the safety of persons and property had arisen, commencing on March 3, 2020. Based on these conditions, pursuant to Government Code section 8630, the Board of Supervisors adopted Resolution No. 2020/92, proclaiming the existence of a local emergency throughout Contra Costa County.
- C. On March 17, 2020, Governor Newsom issued Executive Order N-29-20, which suspended the teleconferencing rules set forth in the California Open Meeting law, Government Code section 54950 et seq. (the Brown Act), provided certain requirements were met and followed.
- D. On June 11, 2021, Governor Newsom issued Executive Order N-08-21, which clarified the suspension of the teleconferencing rules set forth in the Brown Act and further provided that those provisions would remain suspended through September 30, 2021.
- E. On September 16, 2021, Governor Newsom signed Assembly Bill 361, which provides that under Government Code section 54953(e), a legislative body subject to the Brown Act may continue to meet using teleconferencing without complying with the non-emergency teleconferencing rules in Government Code section 54953(b)(3) if a proclaimed state of emergency exists and state or local officials have imposed or recommended measures to promote social distancing.
- F. On September 20, 2021, the Contra Costa County Health Officer issued recommendations for safely holding public meetings that include recommended measures to promote social distancing.
- G. Among the Health Officer's recommendations: (1) on-line meetings (teleconferencing meetings) are strongly recommended as those meetings present the lowest risk of transmission of SARS-CoV-2, the virus that causes COVID-19; (2) if a local agency determines to hold in-person meetings, offering the public the opportunity to attend via a call-in option or an internet-based service option is recommended when possible to give those at higher risk of an/or higher concern about COVID-19 an alternative to participating in person; (3) a written safety protocol should be developed and followed, and it is recommended that the protocol require social distancing – i.e., six feet of separation between attendees – and face masking of all attendees; (4) seating arrangements should allow for staff and members of the public to easily maintain at least six-foot distance from one another at all practicable times.
- H. 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, 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 even fully vaccinated individuals can spread the

- virus to others resulting in rapid and alarming rates of COVID-19 cases and hospitalizations.
- I. As of October 6, 2021, the COVID-19 case rate in Contra Costa County was in the “substantial” community transmission tier, the second-highest tier of the CDC’s four community transmission tiers.
 - J. In the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, the Contra Costa Local Agency Formation Commission (LAFCO) intends to invoke the provisions of Assembly Bill 361 related to teleconferencing.

NOW, THEREFORE, the Contra Costa Local Agency Formation Commission resolves as follows:

1. LAFCO finds that: the state of emergency proclaimed by Governor Newsom on March 4, 2020, is currently in effect; the Contra Costa County Health Officer has strongly recommended that public meetings be held by teleconferencing as those meetings present the lowest risk of transmission of SARS-CoV-2, the virus that causes COVID-19; and meeting in person would present imminent risks to the health or safety of attendees because the case rate of COVID-19 infections in the County is in the “substantial” community transmission tier, the second-highest of the CDC’s four community transmission tiers.
2. As authorized by Assembly Bill 361, LAFCO will use teleconferencing for its meetings in accordance with the provisions of Government Code section 54953(e).
3. The Executive Officer is authorized and directed to take all actions necessary to implement the intent and purpose of this resolution, including conducting open and public meetings in accordance with Government Code section 54953(e) and all other applicable provisions of the Brown Act.

PASSED AND ADOPTED on November 10, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

IGOR SKAREDOFF, CHAIR, CONTRA COSTA LAFCO

I hereby certify that this is a correct copy of a resolution passed and adopted by this Commission on the date stated above.

Dated: November 10, 2021

Lou Ann Texeira, Executive Officer