



STAFF REPORT

Meeting Date: October 20, 2021
To: Board of Directors
From: Michael J. Aho, District Administrator
Subject: Adoption of Resolution No. 102021-01: Proclaiming a Local Emergency, Ratifying the Proclamation of a State Of Emergency by Governor Gavin Newsom, and Authorizing Remote Teleconference Meetings of the Legislative Bodies of Fair Oaks Recreation and Park District for the Period October 21, 2021 through November 21, 2021 Pursuant to Brown Act Provisions.
Prepared By: Jennifer Larkin, Administrative Services Manager

I. Recommendation

Approve Resolution No. 102021-01 Proclaiming a Local Emergency, Ratifying the Proclamation of a State Of Emergency by Governor Gavin Newsom, and Authorizing Remote Teleconference Meetings of the Legislative Bodies of Fair Oaks Recreation and Park District for the Period October 21, 2021 through November 21, 2021 Pursuant to Brown Act Provisions.

II. Background

Starting in March 2020, California Governor Gavin Newsom issued a series of Executive Orders aimed at containing the novel coronavirus. These Executive Orders (N-25-20, N-29-20, N-35-20) collectively modified certain requirements created by the Ralph M. Brown Act (“the Brown Act”), the state’s local agency public meetings law.

The orders waived several requirements, including requirements in the Brown Act requiring the physical presence of members of the legislative body, the clerk or other personnel of the body, or of the public as a condition of participation in or for the purpose of establishing a quorum for a public meeting. Furthermore, the orders:

- waived the requirement that local agencies provide notice of each teleconference location from which a member of the legislative body will be participating in a public meeting,
- waived the requirement that each teleconference location be accessible to the public,
- waived the requirement that members of the public be able to address the legislative body at each teleconference conference location,
- waived the requirement that local agencies post agendas at all teleconference locations, and,
- waived the requirement that at least a quorum of the members of the local body participate from locations within the boundaries of the territory over which the local body exercises jurisdiction.

Under the orders, agencies were still required to provide advanced notice of each public meeting according to the timeframe otherwise prescribed by the Brown Act, and using the means otherwise prescribed by the Brown Act. Agencies were – for a time – required to allow members of the public to observe and address the meeting telephonically or otherwise electronically. Agencies were eventually freed from the obligation of providing a physical location from which members of the public could observe the meeting and offer public comment.

Agencies were also required to give notice of how members of the public could observe the meeting and offer public comment. If there was a change in the manner of public observation and comment, or any instance prior to the issuance of the executive orders in which the time of the meeting had been noticed or the agenda for the meeting had been posted without also including notice of the manner of public observation and comment, agencies would be able to satisfy this requirement by advertising the means of public observation and comment using "the most rapid means of communication available at the time" within the meaning of California Government Code, section 54954(e); this includes, but is not limited to, posting the manner in which the public could participate on the agency's website.

The orders also provided flexibility for a legislative body to receive a "serial" or simultaneous communication outside of an open meeting, allowing all members of the legislative body to receive updates (including, but not limited to, simultaneous updates) relevant to the emergency (including, but not limited to, updates concerning the impacts of COVID-19, the government response to COVID-19, and other aspects relevant to the declared emergency) from federal, state, and local officials, and would be allowed to ask questions of those federal, state, and local officials, in order for members of the legislative body to stay apprised of emergency operations and the impact of the emergency on their constituents. Members of a local legislative body were explicitly not permitted to take action on, or to discuss amongst themselves, any item of business that was within the subject matter jurisdiction of the legislative body without complying with requirements of the Brown Act.

On June 11, 2021, the Governor issued Executive Order N-08-21 which rescinds those modifications made to the Brown Act, effective September 30, 2021. After that date, agencies are required to observe all the usual Brown Act requirements as they existed prior to the issuance of the orders. Agencies must ensure that the public is provided with access to a physical location from which they may observe a public meeting and offer public comment. Agencies must also resume publication of the location of teleconferencing board members, post meeting notices and agendas in those locations, and make those locations available to the public in order to observe a meeting and provide public comment.

Assembly Bill 361 (Attachment B), introduced in February 2021, provides agencies with the ability to meet remotely during proclaimed state emergencies under modified Brown Act requirements, similar in many ways to the rules and procedures established by the Governor's Executive Orders.

AB 361's provisions can only be used in the event that a gubernatorial state of emergency 1) has been issued AND 2) remains active. It is not sufficient that county and/or city officials have issued a local emergency declaration – the emergency declaration must be one that is made pursuant to the California Emergency Services Act (CA GOVT § 8625).

Specifically, AB 361 suspends the requirements located in California Government Code, section 54953, subdivision (b), paragraph (3). Thus, during a state of emergency, under specified circumstances, agencies can meet pursuant to modified Brown Act requirements.

The provisions enacted by AB 361 providing flexibility to meet remotely during a proclaimed emergency will sunset on January 1, 2024. This is subject to change if a future Legislature and Governor elect to extend the sunset or make the provisions permanent.

Agencies must still provide advance notice of public meetings and must still post meeting agendas consistent with the provisions of the Brown Act. AB 361 does nothing to change the fact that meetings must still be noticed and agendized in advance.

III. Problem /Situation/ Request

Agencies wishing to rely on the provisions of AB 361 must meet one of the following criteria:

- (A) The local agency is holding a meeting during a proclaimed state of emergency, and
- (B) state or local officials have imposed or recommended measures to promote social distancing; or
- (C) The local agency is holding 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; or

- (D) The local agency is holding a meeting during a proclaimed state of emergency and has determined, by majority vote, that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

These criteria permit agencies to schedule a remote meeting to determine whether meeting in-person during the state of emergency would pose imminent risk to the health or safety of attendees. At that remote meeting, agencies may determine by majority vote that sufficient risks exist to the health or safety of attendees as a result of the emergency and pass a resolution to that effect. These criteria also permit agencies to meet remotely in the event that there is a state of emergency declaration while state or local officials have recommended or required measures to promote social distancing.

If an agency passes a resolution by majority vote that meeting in-person during the state of emergency would present imminent risks to the health or safety of attendees, the resolution would permit meeting under the provisions of AB 361 for a maximum period of 30 days. After 30 days, the agency would need to renew its resolution, consistent with the requirements of AB 361, if the agency desires to continue meeting under the modified Brown Act requirements, or allow the resolution to lapse.

After 30 days, agencies are required to renew the resolution effecting the transition to the modified Brown Act requirements if they desire to continue meeting under those modified requirements. Importantly, the ability to renew the resolution is subject to certain requirements and conditions.

In order to renew the resolution, an agency must:

- Reconsider the circumstances of the state of emergency.
- Having reconsidered the state of emergency, determine that either:
 - The state of emergency continues to directly impact the ability of the members to meet safely in person, or
 - State or local officials continue to impose or recommend measures to promote social distancing.

AB 361 requires that the renewal of the resolution effecting the transition to the modified Brown Act requirements must be based on findings that the state of emergency declaration remains active, the agency has thoughtfully reconsidered the circumstances of the state of emergency, and the local agency has either identified A) ongoing, direct impacts to the ability to meet safely in-person or B) active social distancing measures as directed by relevant state or local officials.

The District is currently holding in-person meetings with a virtual option for the public through Zoom. However, staff is recommending the Board adopt the attached resolution in the event that there is a return to more stringent public health recommendations due to a resurgence in Covid cases or fire-related emergency.

IV. Financial Analysis

Adoption of this Resolution will not impact the District's finances.

Respectfully Submitted,

Michael J. Aho
District Administrator

Attachment A: Resolution No. 102021-01

RESOLUTION NO. 102021-01

**BEFORE THE GOVERNING BOARD OF THE FAIR OAKS RECREATION
AND PARK DISTRICT**

County of Sacramento, State of California

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE FAIR OAKS
RECREATION AND PARK DISTRICT PROCLAIMING A LOCAL
EMERGENCY, RATIFYING THE PROCLAMATION OF A STATE OF
EMERGENCY BY GAVIN NEWSOM ON MARCH 4, 2020 AND
AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF THE
LEGISLATIVE BODIES OF FAIR OAKS RECREATION AND PARK
DISTRICT FOR THE PERIOD OCTOBER 21 THROUGH NOVEMBER 21
PURSUANT TO BROWN ACT PROVISIONS.**

WHEREAS, the FAIR OAKS RECREATION AND PARK DISTRICT is committed to preserving and nurturing public access and participation in meetings of the Board of Directors; and

WHEREAS, all meetings of FAIR OAKS RECREATION AND PARK 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 provisions 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 District'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, such conditions now exist in the District, specifically, a statewide State of Emergency due to COVID-19 declared by Governor Gavin Newsom on March 4, 2020 and

WHEREAS, meeting in person would present imminent risk to health and safety of attendees; and

WHEREAS, the Board of Directors does hereby find exposure to COVID-19 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, and desires to proclaim a local emergency and ratify the proclamation of state of emergency by the Governor of the State of California; and

WHEREAS, as a consequence of the local emergency, the Board of Directors does hereby find that the legislative bodies of Fair Oaks Recreation and Park District shall 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 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, all Board and Committee meetings will be available online through Zoom indefinitely;

NOW, THEREFORE, THE BOARD OF DIRECTORS OF FAIR OAKS RECREATION AND PARK 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. Proclamation of Local Emergency. The Board hereby proclaims that a local emergency now exists throughout the District, and meeting in person during a pandemic would present imminent risks to the health and safety of attendees.

Section 3. Ratification of Governor's Proclamation of a State of Emergency. The Board hereby 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 Administrator and legislative bodies of Fair Oaks Recreation and Park District are 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.

Section 5. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption and shall be effective until the earlier of (i) November 21, 2021, or such time the Board of Directors adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the legislative bodies of Fair Oaks Recreation and Park District may continue to teleconference without compliance with paragraph (3) of subdivision (b) of section 54953.

PASSED AND ADOPTED by the Board of Directors of Fair Oaks Recreation and Park District, this _____ day of _____, 20____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:.

John O' Farrell
Board Chair

Michael J. Aho
District Administrator

Date: October 20, 2021