



Santa Clara Valley Water District

File No.: 21-1032

Agenda Date: 9/28/2021
Item No.: 2.1.

BOARD AGENDA MEMORANDUM

SUBJECT:

Consider Adopting a Resolution Proclaiming a Local Emergency, Acknowledging the Proclamation of a State of Emergency by Governor's Order No. N-23-20 Dated March 4, 2020, and Authorizing Remote Teleconference Meetings of the Legislative Bodies of the Santa Clara Valley Water District for 30 Days Pursuant to Brown Act Provisions.

RECOMMENDATION:

Consider adopting a RESOLUTION PROCLAIMING A LOCAL EMERGENCY, ACKNOWLEDGING THE PROCLAMATION OF A STATE OF EMERGENCY BY GOVERNOR'S ORDER NO. N-23-20 DATED MARCH 4, 2020, AND AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF THE LEGISLATIVE BODIES OF THE SANTA CLARA VALLEY WATER DISTRICT FOR 30 DAYS, PURSUANT TO BROWN ACT PROVISIONS.

SUMMARY:

On September 16, 2021, the Governor signed into law Assembly Bill 361 (Rivas) (AB 361), which incorporates into California state law some features of the teleconferencing rules applied by Executive Orders (N-25-20, N-29-20, N-35-20) to local public agencies during the COVID-19 pandemic. These provisions of the executive orders are scheduled to sunset on September 30, 2021. Among other things, AB 361 allows legislative bodies to continue to hold remote meetings during the pandemic. More explicitly, this legislation allows local agencies to use teleconferencing without having to comply with the standard requirements of the Brown Act, provided that there is a "proclaimed state of emergency," as there is currently in the Governor's State of Emergency Declaration, issued on March 4, 2020, the state of emergency has not been lifted, and the legislative body meets "other requirements" (as described in greater detail below) in any of the following circumstances:

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 and safety of attendees.
3. The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the

emergency, meeting in person would present imminent risks to the health and safety of attendees.

In addition, if a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without having to comply with the standard provisions of the Brown Act, the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to (1), (2) or (3) above, and every thirty (30) days thereafter, make the following findings by majority vote:

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

Such conditions now exist within Valley Water’s boundaries. Specifically:

- A state of emergency has been proclaimed under Governor Gavin Newsom’s Executive Order N-23-20 dated March 4, 2020 related to the COVID-19 pandemic;
- On August 25, 2020, Valley Water’s Board of Directors adopted Resolution 20-20 continuing an existing emergency declaration as a result of the COVID-19 pandemic;
- The Santa Clara County Public Health Officer issued an order dated August 2, 2021 “made in light of the recent significant increase in COVID-19 cases and hospitalizations in Santa Clara County, due primarily to the Delta variant of SARS-CoV-2, the virus that causes COVID-19” that, among other things, mandates the use of face coverings indoors in public and non-public settings and outdoors in crowded settings, and recommends that businesses and governmental entities move operations and activities outdoors where possible “where there is significantly less risk of COVID-19 transmission”; and
- The Center for Disease Control reports that for the period September 13 - September 19, 2021, Santa Clara County had a “substantial” level of community transmission of COVID-19.

Other Requirements

Should a legislative body meet under any of the preceding circumstances, it shall do all the following:

- Meet all posting requirements as required by the Brown Act.
- Provide an opportunity for members of the public to address the legislative body directly and give notice of the ways members of the public may access the meeting and offer public comment via a call-in option or an internet-based service option.
- The legislative body shall conduct teleconferenced meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body.
- In the event of a disruption which prevents the public agency from broadcasting the meeting to the public using the call-in option or the internet-based service option, or in the event of a

disruption within the local agency's control which prevents members of the public from offering public comments using the call-in option or the internet-based service option, the body shall take no further action on items appearing on the meeting agenda until public access to the meeting has been restored.

- The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body in real time.
- An individual desiring to provide public comment through the use of a third-party internet website or online platform not under the control of the local agency may be required to register as required by the third-party internet website or online platform to participate.
- Other provisions related to timed public comment or public comment related to specific agenda items that is consistent with current practices.

AB 361 will remain in effect until January 1, 2024, at which time the Brown Act will revert to its original language.

Features

Several of the features of operating Board and Committee meetings under AB 361 during the COVID-19 pandemic, as opposed to under the current Brown Act law, include the following:

- Agendas need not be posted at all teleconference locations;
- Each teleconference location need not be identified in the notice and agenda of the meeting, therefore not inviting the general public into the homes of Board and/or Committee members and possibly spreading COVID-19.
- A quorum of the members of the legislative body do not need to participate in the meeting from locations within the boundaries of the territory over which the public agency exercises jurisdiction, allowing each to participate from a location where they are not susceptible to the exposure or spread of COVID-19.
- The Board and its committees can continue to conduct meetings in a safe meeting environment while allowing greater public participation in the legislative process and access to meetings.

Staff is recommending that the Board consider adopting the resolution authorizing the Board and Board Committees to continue to meet remotely for 30 days in accordance with requirements outlined in the resolution (Attachment 1).

FINANCIAL IMPACT:

There is no financial impact associated with this item.

CEQA:

The recommended action does not constitute a project under CEQA because it does not have the potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

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ATTACHMENTS:

Attachment 1: Resolution

UNCLASSIFIED MANAGER:

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