



2021 SUPERVISORIAL DISTRICT LINES ADVISORY COMMISSION PUBLIC HEARING AGENDA

Thursday, October 7, 2021 at 6:30 p.m.

Virtual Hearing

Zoom Webinar Link: <https://smcgov.zoom.us/j/93477254414>

Zoom Webinar ID: 934 7725 4414

Dial-in: 669-900-6833

1. Roll Call (Clerk)
2. Adopt a Resolution Finding that, as a Result of Continuing COVID-19 Pandemic State of Emergency, Meeting in Person Would Present Imminent Risks to the Health or Safety of Attendees (Chair)
3. Oral Communications and Public Comment (Clerk)
This is an opportunity for members of the public to address the Commission on any Commission-related topics that are not on the agenda. If your subject is not on the agenda, the Clerk will recognize you at this time. Speakers are customarily limited to two minutes.
4. Action: Set the Agenda
5. Action: Approval of Minutes
6. Public Hearing: Communities of Interest and Draft Map(s) of Supervisorial District Boundaries
 - a. Summary of Testimony/Information Received Regarding Communities of Interest (Justin W. Mates, Deputy County Manager)
A community of interest is a population that shares common social or economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest do not include relationships with political parties, incumbents, or political candidates.
 - b. Action: Presentation of Draft Map(s) and Discuss and Provide Direction to Staff Regarding Additional Draft Maps or Modifications to Existing Draft Map(s) of Supervisorial District Boundaries
(Kristen Parks, National Demographics Corporation)
 - c. Action: Open Public Hearing to Receive Public Testimony Regarding Communities of Interest and Draft Map(s) of Supervisorial District Boundaries
 - d. Action: Close Public Hearing
7. Commission Member Reports
8. Discuss Next Hearing Dates

9. Adjourn

2021 Supervisorial District Lines Advisory Commission agenda packet is available online at <https://smcdistrictlines.org/> under "Schedule" tab.

Live interpretation in Spanish, Chinese (Mandarin), and Tagalog will be provided at all Commission hearings and/or workshops. Live interpretation in any other applicable language of a public hearing or workshop shall be arranged if a request for interpretation is made at least 72 hours before the hearing or workshop, unless less than five days' notice are provided for the hearing or workshop, in which case the request shall be made at least 48 hours before the hearing or workshop. If you are requesting live interpretation, please contact Sukhmani Purewal, Assistant Clerk of the Board, at (650) 363-1802 and/or spurewal@smcgov.org and districtlines@smcgov.org.

All Commission hearings are accessible to persons with disabilities. Individuals who need special assistance or a disability-related modification or accommodation (including auxiliary aids or services) to participate in this hearing, or who have a disability and wish to request an alternative format for the agenda, notice, agenda packet or other writings that may be distributed at the hearing, should also contact Sukhmani Purewal, Assistant Clerk of the Board at (650) 363-1802 and/or spurewal@smcgov.org and districtlines@smcgov.org. All requests for special assistance or disability-related modification or accommodation must be made at least two working days before the hearing so reasonable arrangements can be made to ensure accessibility to this hearing and the related materials.

**2021 Supervisorial District Lines Advisory Commission
Agenda Report**

Date: October 7, 2021
To: 2021 Supervisorial District Lines Advisory Commission
From: Brian E. Kulich, Lead Deputy County Counsel
Subject: AB 361/Remote Meeting Requirements

Over the course of the COVID-19 pandemic Governor Newsom has issued a number of Executive Orders governing remote meetings under the Brown Act and related teleconferencing procedures. Those Executive Orders, however, expired September 30, 2021. On September 16, 2021, the Governor signed into law Assembly Bill 361 (AB 361), which formalizes and modifies remote meeting procedures for local legislative bodies, effective October 1, 2021.

I. BACKGROUND

A. AB 361 Provides the Legal Requirements for Holding Remote Meetings After September 30, 2021.

AB 361 allows a local legislative body to continue holding remote meetings until January 1, 2024 in any of the following circumstances:

1. Automatically whenever 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; or
2. When 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; or
3. When the legislative body holds 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.

AB 361 also requires that, if the state of emergency continues for more than 30 days, the legislative body, in order to continue holding remote meetings, must make findings every 30 days that the need for teleconferencing persists due to the nature of the ongoing public health emergency.

B. Traditional Teleconferencing Requirements Are Suspended During Remote Meetings Under AB 361.

If the local legislative body makes the findings required by AB 361, traditional Brown Act teleconferencing provisions will continue to be suspended—specifically, requirements that teleconference locations (1) each have posted notices or agendas, (2) be accessible to the public, and (3) be identified by address on the agenda. Also suspended for fully-teleconferenced meetings is the requirement that a physical location must be made available to observe the meeting or make public comment.

C. AB 361 Also Ensures Public Participation at Remote Meetings.

AB 361 also provides that the legislative body must comply with new rules to protect the public's right to participate at remote meetings:

1. AB 361 forbids agencies from requiring public comment to be submitted in advance, and requires an opportunity to address the public/Board in real time.
2. AB 361 regulates, for the first time, the rules and procedures for opening and closing a public comment period for agenda items; specifically, a reasonable time for indicating a desire to comment (i.e., to use the "raise hand" feature in Zoom) must be provided.
3. AB 361 prohibits agencies from taking action on agenda items when there is a disruption to the teleconference proceedings or technical failure on the agency's end which prevents members of the public from making comments, until public access is restored, and creates a cause of action to challenge agency actions taken during a disruption to public access.
4. Finally, notwithstanding Brown Act prohibitions on requiring attendees to register their names as a condition of meeting attendance, AB 361 expressly authorizes agencies to use third-party teleconference platforms that require registration (i.e., Zoom requiring an attendee to include their email).

II. DISCUSSION

Currently, the COVID-19-related state of emergency remains in place, but the local health officer has not "imposed or recommended measures to promote social distancing" and the state's website indicates that social distancing "requirements" are no longer in effect, except for rules on "mega-events" over 1,000. Therefore, under AB 361, the Commission's ability to hold remote meetings is not automatically extended and, in order to continue holding remote meetings for the next 30 days, the Commission must determine, by majority vote that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

The California Department of Public Health and the United States Centers for Disease Control and Prevention 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. Thus, reducing the circumstances under which individuals come into close contact with each other indoors remains a vital component of the County's COVID-19 response strategy.

Indoor public meetings of the Commission pose particularly high risks for transmission of COVID-19, as such meetings would bring together residents from across the County and the open nature of public meetings makes it difficult to enforce compliance with vaccination, physical distancing, masking, and other safety measures.

For these very reasons, on September 28, 2021, the San Mateo County Board of Supervisors found that meeting in person would present imminent risks to the health or safety of its attendees, and, therefore, invoked the provisions of AB 361 and strongly encouraged other

County legislative bodies to make similar finding and continue meeting remotely through teleconferencing.

It is recommended that the Commission follow the Board's strong encouragement and adopt the attached Resolution Finding that, as a Result of the Continuing COVID-19 Pandemic State of Emergency, Meeting in Person Would Present Imminent Risks to the Health and Safety of Attendees.

RESOLUTION NO. .

2021 SUPERVISORIAL DISTRICT LINES ADVISORY COMMISSION

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RESOLUTION FINDING THAT, AS A RESULT OF THE CONTINUING COVID-19 PANDEMIC STATE OF EMERGENCY, MEETING IN PERSON WOULD PRESENT IMMINENT RISKS TO THE HEALTH OR SAFETY OF ATTENDEES

RESOLVED, by the 2021 Supervisorial District Lines Advisory Commission (“Commission”) that:

WHEREAS, on March 4, 2020, pursuant to Government Code Section 8550, *et seq.*, Governor Newsom proclaimed a state of emergency related to the COVID-19 novel coronavirus (“COVID-19”) and, subsequently, the San Mateo County Board of Supervisors declared a local emergency related to COVID-19, and the proclamation by the Governor and declaration by the Board of Supervisors remain in effect; and

WHEREAS, on March 17, 2020, Governor Newsom issued Executive Order N-29-20, which suspended certain provisions in the California Open Meeting Law, codified at Government Code Section 54950, *et seq.* (the “Brown Act”), related to teleconferencing by local agency legislative bodies, provided that certain requirements were met and followed; and

WHEREAS, on June 11, 2021, the Governor issued Executive Order N-08-21, which extended certain provisions of Executive Order N-29-20 that waive otherwise applicable Brown Act requirements related to remote/teleconference meetings by local agency legislative bodies through September 30, 2021; and

WHEREAS, on September 16, 2021, Governor Newsom signed Assembly Bill 361 (“AB 361), which provides that a local agency legislative body may continue to meet remotely without complying with otherwise applicable requirements in the Brown Act related to remote/teleconference meetings by local agency legislative bodies, provided that a state of emergency has been declared and the legislative body determines that meeting in person would present imminent risks to the health or safety of attendees, and provided that the legislative body makes such finding at least every 30 days during the term of the declared state of emergency; and

WHEREAS, the California Department of Public Health and the United States Centers for Disease Control and Prevention 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, that it 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; and

WHEREAS, the Commission has an important interest in protecting the health and safety of those who participate in its meetings; and

WHEREAS, the COVID-19 pandemic has informed legislative bodies about the unique advantages of remote public meetings, which are substantial, as well as the unique challenges, which are frequently surmountable; and

WHEREAS, on September 28, 2021, in the interest of public health and safety as affected by the state of emergency caused by the spread of COVID-19, the San Mateo County Board of Supervisors found that meeting in person would present imminent risks to the health or safety of its attendees, and, therefore, invoked the provisions of AB 361 related to teleconferencing for meetings of the Board of Supervisors, and strongly encouraged other County legislative bodies to make similar finding and continue meeting remotely through teleconferencing; and

WHEREAS, this Commission concludes that there is a continuing threat of COVID-19 to the community, and that Commission meetings have characteristics that give rise to risks to the health and safety of meeting participants such as the increased person-to-person contact associated with bringing together people from across the community, the need to enable those who are immunocompromised or unvaccinated to be able to safely continue to participate fully in public governmental meetings, and the challenges with fully ascertaining and ensuring compliance with vaccination and other safety recommendations at such meetings.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that:

1. The above recitals are true and correct.
2. The Commission finds that meeting in person would present imminent risks to the health or safety of meeting attendees and directs staff to continue to agendize public meetings of the Commission only as online teleconference/remove meetings.
3. To the extent applicable, staff is directed to return to this Commission in a public meeting no later than 30 days after the date of adoption of this resolution with an item for the Commission to consider regarding whether to make the findings required by AB 361 in order to continue meeting remotely under its provisions.

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