



**Contra
Costa
County**

To: Board of Supervisors
From: Monica Nino, County Administrator
Date: June 22, 2021

Subject: Options for Re-Opening County Board Meetings and Board Standing Committee Meetings

RECOMMENDATION(S):

1. ACKNOWLEDGE that pursuant to the declaration of an emergency related to COVID-19, Governor Newsom issued Executive Order Nos. N-29-20 and N-33-20 related to public meetings.
2. ACKNOWLEDGE that in accordance with these Executive Orders, the Contra Costa County Board of Supervisors conducted Board meetings and standing committee meetings virtually during the COVID-19 pandemic.
3. ACKNOWLEDGE that public comment and testimony was received and considered at all of these virtual meetings.
4. ACKNOWLEDGE that the County has incurred more than \$132,446 in expenses during this time to provide public comment and language translation services at Board meetings.
5. DIRECT the County Administrator to take necessary and appropriate actions to effectuate the return to in-person Board and standing committee meetings by September 14, 2021, or sooner if Executive Order N-29-20 is rescinded.

FISCAL IMPACT:

The fiscal impact will vary according to the direction of the Board of Supervisors.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **06/22/2021** ☐ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: June 22, 2021

Contact: L. DeLaney,
925-655-2057

Monica Nino, County Administrator and Clerk of the Board of
Supervisors

By: , Deputy

cc:

FISCAL IMPACT: (CONT'D)

BACKGROUND:

California's two open meeting laws — the [Brown Act](#) and the [Bagley-Keene Open Meeting Act](#) — require that meetings of local governmental bodies generally be open to the public. To satisfy this requirement, in sum, meetings must be publicly noticed, an agenda must be posted in advance, and the public must be allowed to observe and participate. Since the beginning of the COVID-19 pandemic and the Governor's issuance of Executive Orders regarding [Stay-at-Home](#) and [public meetings](#), local agencies have taken different approaches to conducting public meetings under the new orders. Some local agencies or bodies suspended public meetings entirely and others continued to hold public meetings through remote/virtual technology means, in conformance to the Governor's Orders.

In advance of the June 15 statewide reopening, the Governor's Office released information on June 11, 2021 regarding changes to Executive Orders, the Stay-at-Home Order, and the Blueprint for a Safer Economy. The Governor terminated the Stay-at-Home Order that was implemented early in March 2020 and concluded the Blueprint for a Safer Economy. Effective June 15, restrictions such as physical distancing, capacity limits, mask requirements for vaccinated individuals, and the county tier system end. *(A copy of the order terminating the Stay-at-Home Order and the Blueprint for a Safer Economy can be found [here](#).)*

Unvaccinated individuals must still wear masks in indoor public settings. Masks are also still required in high-risk settings such as hospitals, homeless shelters, cooling shelters, and public transit hubs. A business or county may continue to impose stricter mask requirements. Additionally, proof of vaccination or testing is required for indoor events with 5,000 or more attendees and the same safeguards are recommended for "mega events" of more than 10,000. The state is also still working on mask guidance for schools and childcare settings, which may differ from guidance for the general public. Finally, Cal/OSHA will consider new standards for employees and workplaces on June 17 that more closely align to the Centers for Disease Control and Prevention (CDC) and the California Department of Public Health (CDPH) masking and social distancing guidelines. For instance, the new Board of Supervisors chambers has a capacity of 251 occupancy including staff. Currently with the required rules for masking and social distancing of employees, the occupancy would have to be reduced in the chambers.

In addition to these actions, the Newsom Administration established a timeline and process to continue winding down the various provisions of the state's COVID-related Executive Orders. To ensure that impacted individuals and entities have time to prepare for the changes, the provisions will sunset in phases, beginning June 30, in July and in September. By the end of September, nearly 90 percent of the executive actions taken since March 2020 will have been lifted. *(A copy of the order rolling back additional pandemic order provisions can be found [here](#).)*

Public Meeting Participation

At the state and local levels, most agencies in California transitioned to remote meetings and hearings over the course of the pandemic and developed processes for public participation. While agencies have adopted different policies governing the methods and timeline for comments and secured different resources for implementation, practices for public participation in these meetings usually include the following elements--or a combination thereof:

- community members listening/participating by teleconference;
- community members watching a live meeting broadcast by televised media channel;
- community members viewing/participating through a livestream platform (such as Zoom);
- community members submitting written comments through an e-comment service or email;
- community members participating with the assistance of language translation or interpretation services.

As the Stay-at-Home Order has been lifted and public gathering rules are relaxed, the question before the Board of Supervisors, at this time, is: "How and when do Contra Costa County bodies open for in-person public meetings and keep the public and the staff safe?"

On June 2, 2021, representatives from Governor Newsom's office assured the California State Association of Counties (CSAC) and other local government representatives that Executive Order [N-29-20](#) would not terminate on June 15, providing flexibility to state and local agencies and boards to continue conducting their business through virtual public meetings. This assurance came in response to a coalition letter urging the Administration to allow enough time for local agencies to adjust operations and safely transition back to in-person public meetings. According to CSAC, "while Governor Newsom intends to terminate COVID-19 executive orders at the earliest possible date at which conditions warrant, his office stated that he recognizes the importance of an orderly return to the ordinary conduct of public meetings of state and local agencies and boards. To this end, the Governor's office will work to provide notice to affected stakeholders in advance of rescission of this provision. Until a further order is issued, all entities may continue to rely on N-29-20."

Re-Opening Meeting Options

While we await further direction from the State on public meetings, Board of Supervisors' direction on the following options is requested for staff preparation purposes.

1. **Fully In-Person Meetings**: The first option is to have fully in-person meetings with no virtual participation.

This would require the County to have the correct room capacity if the Board room were to open at reduced capacity, to ensure social distancing, as needed, including sanitizing stations and masks. Should the board room reach capacity, the meeting is broadcast to the lobby outside the chambers. The costs for this option are minimal as the major new costs associated with Board meetings have been the costs for virtual and language services. With this option, the Board, staff, and the public would be participating in-person. The meetings would continue to be broadcast on television channels and live-streamed. Public comments could be submitted in writing to the Clerk of the Board and read for the respective agenda item or public comment period. This is the least costly option and easiest to implement after the June 15 reopening.

2. **Hybrid Meetings**: The second option is to have a hybrid meeting with both in-person and virtual and/or telephonic public comments.

Telephonic Public Comments: Board meetings could have both in-person participation and call-in public participation. The Board room would have a public comment timer displayed which would appear both in the Board room and on the screen viewed by the public virtually. In-person public comment could be received before the call-in public comment to ensure the callers have adequate time to call-in with the slight delay. The costs associated with this option averages \$12,042/month or \$144,504/annually. The monthly cost can vary significantly depending on the length of the meeting.

Virtual Public Comments: The Board meetings could have both in-person public participation and virtual participation through a platform such as Zoom. The Board room would have a public comment timer, displaying both in the Board room and on the screen viewed by the public. In-person public comment could be called before the virtual public comment to ensure that the public commenter has adequate time to raise their virtual hand. The Board would need to establish policies and procedures for public participation; for example, whether the public is muted/video blocked automatically, if a staff person un-mutes one person at a time, etc.

In addition to the public participation options, other considerations for hybrid meetings include the following:

1. *Location of Board Members*: During the time when virtual participation is allowed under state law, or if state law changes to allow greater flexibility for teleconferencing/virtual participation, would Supervisors want the option of participating either in-person or remotely?

2. *Presentation Items*: Allow presentations be pre-taped and played in the Board room during the meeting, as is the current practice, along with presentation items in-person.

3. *Location of Staff*: Allow County staff to present items in-person in the Board room and present virtually.

4. *Board Committee Meetings*: Board Standing Committee meetings will continue to occur virtually until such time as Executive Order N-29-20 is rescinded or Board Committee members choose to change sooner.

Below are examples of meeting re-opening plans of nearby counties and several cities in Contra Costa County:

County/City	Re-Opening Date	Public Participation
Alameda	Tentatively September, currently fully virtual	Virtual only until re-opening
Marin	Tentatively July	Hybrid (Board/staff in person; public call-in optional)
San Francisco	June 15	Hybrid (Board/staff in person; public remote)
San Mateo	Unknown, currently fully virtual	Unknown, preparing for Hybrid model
Solano	Unknown, currently fully virtual	Unknown, have done Hybrid model
Brentwood	Not set	Upgrading chamber/equipment
Clayton	Not set	

Concord	First in-person (or hybrid) tentatively scheduled for 8/10	
Danville	Possible return in fall	
El Cerrito	First in-person (or hybrid) planned for 8/17	Testing Hybrid 6/7
Hercules	Discussions now; in-person by first meeting in Sept.	Phone-in public comment period
Lafayette	Not set	
Oakley	Not set	Hybrid currently
Orinda	Not set	
Pinole	Looking at end July/August	Hybrid in development
Pittsburg	Not set	
Pleasant Hill	Not set	Hybrid possibly in July or August
Richmond	Not set	
San Pablo	October 1 open to all	
Walnut Creek	June 15 Hybrid	Council/staff in chamber; public remote

Legislative Context

At this time, fully virtual meetings are not part of open meeting laws. Additionally, the Brown Act, as presently written, requires that any teleconference location be listed on the agenda and open to the public. (This requirement was suspended by Executive Order N-29-20.) There are two bills advancing in the California Legislature, however, that could make permanent changes to public meeting requirements. The Board of Supervisors' adopted 2021-22 State Legislative Platform contains a policy to support legislation providing greater flexibility in public meetings, which was also recognized by the County's Interdepartmental Climate Action Task Force as beneficial to the County's climate action goals with respect to fewer trips and lower greenhouse gas emissions.

AB 339

Author: Alex Lee (D-025)
Coauthor: Cooley (D), Arambula (D), Rivas R (D), Garcia (D)
Title: Local Government: Open and Public Meetings
Fiscal Committee: yes
Urgency Clause: no
Introduced: 01/28/2021
Last Amend: 05/04/2021
Disposition: Pending
Location: SENATE
Summary: Requires all open and public meetings of a city council or a county board of supervisors that governs a jurisdiction containing least 250,000 people to include an opportunity for members of the public to attend via a telephonic option or an internet-based service option.
Status: 06/02/2021 In ASSEMBLY. Read third time. Passed ASSEMBLY. *****To SENATE. (53-9)

- Requires, until December 31, 2023, all open and public meetings of a city council or a county board of supervisors that governs a jurisdiction containing at least 250,000 people to include an opportunity for members of the public to attend via a telephonic option or an internet-based service option.
- Requires all open and public meetings to include an in-person public comment opportunity, except in specified circumstances during a declared state or local emergency.
- Requires all open and public meetings to provide the public with an opportunity to comment on proposed legislation in person and remotely via a telephonic or an internet-based service option, as specified.

AB 361

Author: Robert Rivas (D-030)
Title: Open Meetings: Local Agencies: Teleconferences

Fiscal Committee: no
Urgency Clause: no
Introduced: 02/01/2021
Last Amend: 05/10/2021
Disposition: Pending
Location: SENATE
Summary: Authorizes a local agency to use teleconferencing without complying with the teleconferencing requirements imposed by the Ralph M. Brown Act when a legislative body of a local agency holds a meeting for the purpose of declaring or ratifying a local emergency, during a declared state of emergency or local emergency, when state or local health officials have imposed or recommended measures to promote social distancing, and during a declared local emergency, provided certain requirements are met.
Status: 05/17/2021 In ASSEMBLY. Read third time. Passed ASSEMBLY. *****To SENATE. (62-4)

- Allows a local agency to use teleconferencing without complying with the Brown Act's physical access and quorum requirements for teleconferenced meetings when the legislative body holds a meeting under any of these circumstances: for the purpose of proclaiming or ratifying a local emergency; during a proclaimed state of emergency or declared local emergency, and state or local officials have imposed or recommended measures to promote social distancing; or, during a declared local emergency and the legislative body determines by majority vote that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

If a legislative body holds a meeting under these circumstances, it must do all of the following:

- 1) Give notice of the meeting and post agendas as otherwise required by the Brown Act;
 - 2) Allow members of the public to access the meeting, and provide in the agenda an opportunity for members of the public to address the legislative body directly, pursuant to provisions of the Brown Act governing public comment;
 - 3) Give notice of the means by which members of the public may access the meeting and offer public comment whenever notice of the time of the teleconferenced meeting is given or the agenda is posted;
 - 4) Identify and include in the agenda an opportunity for all persons to attend via a call-in option or an internet-based service option;
 - 5) Conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body of a local agency;
 - 6) Cease action on agenda items if a disruption prevents the public agency from broadcasting the meeting to members of the public using the call-in or internet-based service option, or if a disruption within the local agency's control prevents members of the public from submitting public comments using the call-in or internet-based service option, until public access to the meeting via the call-in or internet-based service option is restored. The bill clarifies that actions taken on agenda items during a disruption may be challenged, pursuant to provisions of the Brown Act governing the ability of a district attorney or interested person to seek a judicial determination that an action violates specified provisions of the Brown Act and is null and void; and,
 - 7) Refrain from requiring public comments to be submitted in advance of the meeting, and provide an opportunity for the public to address the legislative body and offer comment in real time.
- If a state of emergency or local emergency remains active or state or local officials have imposed or recommended measures to promote social distancing, the bill requires a legislative body to make specified findings by majority vote within 30 days after teleconferencing for the first time and every 30 days thereafter in order to continue teleconferencing without complying with the Brown Act's physical access and quorum requirements.

CONSEQUENCE OF NEGATIVE ACTION:

With no direction from the Board of Supervisors on the return to in-person Board meetings, staff will not be adequately prepared to accommodate the Board's preferences.

CLERK'S ADDENDUM

Speakers: Marianna Moore, Chair, Measure X Advisory Board; Catherine Wally, Walnut Creek; Edith, Richmond; Pittsburg resident; Ali.

The Board expressed its appreciation that virtual technology has improved public participation in meetings across the county. Today's meeting included the option to comment via Zoom in addition to the phone-in system for public commentary. The County Administrator noted that the County Administrator's Office (CAO) has already assembled a team to assess technology needs and location considerations for the standing committees and Municipal Advisory Commissions. Language interpretation needs are also being reviewed to enhance the user experience.

ADOPTED the recommendations and requested a status report back to the Board before September on steps taken by committees and commissions on facilitating remote access to meetings.