



CITY OF NEWARK CITY COUNCIL

City Administration Building, City Council Chambers

37101 Newark Boulevard, Newark, CA 94560 | (510) 578-4266 | E-mail: city.clerk@newark.org



AGENDA and NOTICE Special Meeting

Thursday, January 6, 2022
6:00 P.M

**THIS IS A MEETING BY VIRTUAL TELECONFERENCE ONLY.
THE CITY COUNCIL CHAMBERS WILL NOT BE OPEN.
REFER TO THE END OF THE AGENDA TO REVIEW OPTIONS FOR PARTICIPATING IN THE
MEETING REMOTELY OR TO SUBMIT PUBLIC COMMENTS VIA EMAIL.**

A. ROLL CALL

B. CITY MANAGER REPORTS

1. Adopt a Resolution Finding That There is a Proclaimed State of Emergency; Finding That Meeting in Person Would Present Imminent Risks to the Health or Safety of Attendees as a Result of the State of Emergency; and Authorizing Continued Remote Teleconferenced Meetings of the Legislative Bodies of the City of Newark for the 30 Day Period Beginning January 6 Pursuant to AB 361

C. ADJOURNMENT

IMPORTANT NOTICE REGARDING CITY COUNCIL MEETING

Due to the COVID-19 pandemic, the City of Newark made changes related to City Council meetings to protect the public's health and prevent the disease from spreading locally. As a result of the COVID-19 public health emergency, including the Alameda County Health Officer and Governor's directives for everyone to shelter in place, **the City Council Chambers will be closed to the public.** Members of the public should attempt to observe and address the Council using the below technological processes.

This meeting is being conducted utilizing teleconferencing and electronic means as allowed by California Government Code Section 54953(e). The public may only view the meeting via YouTube or Zoom.

Mayor Nagy, Vice Mayor Hannon, and Council Members Bucci, Collazo, and Freitas will be attending this meeting via teleconference. Teleconference locations are not open to the public. All votes conducted during the teleconferencing session will be conducted by roll call vote.

How to view the meeting remotely:

Livestream online at YouTube <https://www.youtube.com/channel/UC383NGSxaPwZP1kJbo2T8A>
Copy/paste the YouTube URL into your browser if the link does not automatically open.

How to participate in the meeting remotely, via Zoom Webinar:

From a PC, Mac, iPad, iPhone or Android device: Zoom Meeting <https://us06web.zoom.us/j/82340199075>

From a telephone dial 1 669 900 9128, Webinar ID Number 823 4019 9075

Provide live, remote public comments, when the Mayor calls for comments. Use the raise your hand feature in Zoom to be called upon by the City Clerk.

For frequently asked Zoom questions, please go to [Agendas and Minutes](#) and select the Frequently Asked Questions link.

Submission of Public Comments: Public comments received by 4:00 p.m. on the Council meeting date will be provided to the City Council and considered before Council action. Comments may be submitted by email to [City Clerk](mailto:CityClerk). Comments may also be submitted via e-mail to city.clerk@newark.org at any time prior to closure of the public comment portion of the item(s) under consideration.

Reading of Public Comments: The City Clerk will read aloud email comments received during the meeting that include the subject line "FOR THE RECORD" as well as the item number for comment, provided that the reading shall not exceed five (5) minutes, or such other time as the Council may provide, consistent with the time limit for speakers at a Council meeting and consistent with all applicable laws. Matters brought before the Council that require Council action may be either referred to staff or placed on a future Council agenda.

No question shall be asked of a council member, city staff, or an audience member except through the Mayor. No person shall use vulgar, profane, loud or boisterous language that interrupts a meeting. Any person who refuses to carry out instructions given by the Mayor for the purpose of maintaining order may be guilty of an infraction and may result in removal from the meeting.

Council Meeting Access/Materials:

The agenda packet is available for review at [Agendas and Minutes](#). The packet is typically posted to the City website the Friday before the meeting, but no later than 24 hours before a special meeting.

Pursuant to Government Code 54957.5, supplemental materials distributed less than 72 hours before this meeting, to a majority of the City Council, will be made available for public inspection at this meeting and will be posted, if time allows, at [Agendas and Minutes](#). Materials prepared by City staff and distributed during the meeting are available for public inspection at the meeting or after the meeting if prepared by some other person. Documents related to closed session items or are exempt from disclosure will not be made available for public inspection. For those persons who require special accommodations, please contact the City Clerk at least two days prior to the meeting at [City Clerk](#) or 510-578-4266.



STAFF REPORT

Item B. 1.

DATE 01/06/2022
TO Honorable Mayor and City Council Members
FROM Kristopher Kokotaylo, Interim City Attorney
SUBJECT Adopt a Resolution Finding That There is a Proclaimed State of Emergency; Finding That Meeting in Person Would Present Imminent Risks to the Health or Safety of Attendees as a Result of the State of Emergency; and Authorizing Continued Remote Teleconferenced Meetings of the Legislative Bodies of the City of Newark for the 30 Day Period Beginning January 6 Pursuant to AB 361

RECOMMENDATION

Staff recommends that the City Council adopt a resolution to continue conducting City Council and all other City Council appointed Board and Commission meetings remotely due to health and safety concerns for the public and making related findings in compliance with AB 361 (2021).

EXECUTIVE SUMMARY

Since near the start of the COVID-19 pandemic the City has been able to conduct meetings of its legislative bodies remotely pursuant to Executive Order N-29-20, which suspended certain provisions of the Brown Act allowing the City to conduct its meetings virtually. On June 11, 2021, Governor Newsom issued an Executive Order that ends the clauses of Executive Order N-29-20 which suspended those provisions of the Brown Act on September 30, 2021. Governor Newsom signed AB 361 into law on September 16, 2021. AB 361 allows the City to continue conducting virtual meetings where the Governor has proclaimed a State of Emergency and state or local health officials have imposed or recommended social distancing or where the City Council has declared the need to meet remotely due to imminent risks to the health or safety of attendees.

On September 23, 2021, the City Council made the necessary findings pursuant to AB 361 to continue to conduct virtual meetings. AB 361 requires that the City Council revisit the need to continue conducting virtual meetings every 30 days. The City Council last made the necessary findings on December 9, 2021.

Staff and the City Attorney recommend that the City Council adopt a resolution making the necessary findings pursuant to AB 361 to continue conducting virtual meetings. Absent further action of the City Council, the City's legislative bodies would need to continue in-person meetings 30 days after December 9, 2021.

BACKGROUND

On March 4, 2020, Governor Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the State address the broader spread of COVID-19.

On March 17, 2020, the City Council adopted a Resolution ratifying the proclamation of a local state of emergency by the Director of Emergency Services due to COVID-19.

On March 17, 2020, in response to the COVID-19 pandemic, Governor Newsom issued Executive Order N-29-20, which suspended certain provisions of the Brown Act in order to allow local legislative bodies to conduct meetings telephonically or by other means. Additionally, the State implemented a shelter-in-place order, requiring all non-essential personnel to work from home.

The City has established virtual meetings for all City Council and City Council appointed Board and Commission meetings. The virtual meetings have allowed the Council and advisory bodies to continue to conduct City business from remote locations while ensuring the public's continued access to government meetings in a safe manner.

On June 11, 2021, Governor Newsom issued Executive Order N-08-21, which among other things, rescinded certain clauses of Executive Order N-29-20 after September 30, 2021, including clauses that suspended certain provisions of the Brown Act. Thus, effective October 1, 2021, agencies would have had to transition back to public meetings held in full compliance with the Brown Act.

Since the Governor issued Executive Order N-08-21, the highly contagious Delta variant has emerged, causing a spike in cases throughout the state and within the Alameda County. As a result, the Alameda County Health Officer issued a Health Order requiring masks indoors in public places, regardless of vaccination status, starting August 3, 2021. Additionally, since then, the Omicron variant has emerged and been designated as a variant of concern by the United States and much is still unknown regarding this variant.

On September 16, 2021, the Governor signed AB 361 (2021) which allows for local legislative and advisory bodies to continue to conduct meetings via teleconferencing under specified conditions and includes a requirement that the Council make specified findings. AB 361 took effect immediately.

The City Council adopted a resolution pursuant to AB 361 on September 23, 2021 in order to allow the City's legislative bodies to continue conducting virtual meetings after September 30, 2021. The resolution included all of the necessary findings required pursuant to AB 361. The City Council has adopted continued resolutions since that time.

DISCUSSION/ANALYSIS

The California Legislature approved AB 361 and the Governor signed the bill into law on September 16, 2021. AB 361 allows local legislative bodies to continue to meet remotely after the expiration of the clauses of Executive Order N-29-20 which suspended certain Brown Act provisions. Under AB 361, the City and its legislative bodies will be allowed to continue to meet remotely when:

- The local agency holds a meeting during a declared state of emergency;
- State or local health officials have imposed or recommended measures to promote social distancing;
- Legislative bodies declare the need to meet remotely due to present imminent risks to the health or safety of attendees.

The City meets the requirements to continue holding meetings remotely in order to ensure the health and safety of the public:

- The Governor has declared a State of Emergency, and the City Council has ratified the proclamation of a local emergency by the Director of Emergency Services;
- County Health orders require that individuals in indoor public spaces wear masks and the CDC recommends social distancing of at least six feet due to COVID-19;
- The Delta variant of COVID-19 has resulted in a significant increase of COVID-19 cases within the state and throughout Alameda County;
- Meeting in person would present imminent risks to the health or safety of attendees, the legislative bodies, and staff.

Now that AB 361 was signed into law, the City Council will need to declare every 30 days that the City's legislative bodies must continue to meet remotely in order to ensure the health and safety of the public.

The proposed resolution includes the necessary findings pursuant to AB 361 to allow the City Council and the City's legislative bodies to continue meeting remotely.

FISCAL IMPACT

There is no direct fiscal impact of adopting this Resolution.

REVIEW AND APPROVAL

Prepared by – Kristopher J. Kokotaylo, Interim City Attorney

Approved by – David J. Benoun, City Manager

Attachments

Resolution

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK FINDING THAT THERE IS A PROCLAIMED STATE OF EMERGENCY; FINDING THAT MEETING IN PERSON WOULD PRESENT IMMINENT RISKS TO THE HEALTH OR SAFETY OF ATTENDEES AS A RESULT OF THE STATE OF EMERGENCY; AND AUTHORIZING CONTINUED REMOTE TELECONFERENCED MEETINGS OF THE LEGISLATIVE BODIES OF THE CITY OF NEWARK FOR THE 30 DAY PERIOD BEGINNING JANUARY 6 PURSUANT TO AB 361

WHEREAS, all meetings of the City of Newark’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 City’s legislative bodies conduct their business; and

WHEREAS, on March 4, 2020, Governor Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the State prepare for a broader spread of the novel coronavirus disease 2019 (“COVID-19”); and

WHEREAS, on March 17, 2020, the City Council adopted a Resolution ratifying the proclamation of a local emergency by the Director of Emergency Services due to COVID-19; and

WHEREAS, on March 17, 2020, in response to the COVID-19 pandemic, Governor Newsom issued Executive Order N-29-20 suspending certain provisions of the Ralph M. Brown Act in order to allow local legislative bodies to conduct meetings telephonically or by other means; and

WHEREAS, as a result of Executive Order N-29-20, staff set up virtual meetings for all City Council meetings and meetings of all legislative bodies within the City; and

WHEREAS, on June 11, 2021, Governor Newsom issued Executive Order N-08-21, which, effective September 30, 2021, ends the provisions of Executive Order N-29-20 that allows local legislative bodies to conduct meetings telephonically or by other means; and

WHEREAS, on September 16, 2021, Governor Newsom signed AB 361 (2021) which allows for local legislative bodies and advisory bodies to continue to conduct meetings via teleconferencing under specified conditions and includes a requirement that the City Council make specified findings. AB 361 (2021) took effect immediately; and

WHEREAS, AB 361 (2021) requires that the Governor declare a State of Emergency pursuant to Government Code section 8625; and

WHEREAS, AB 361 (2021) further requires that state or local officials have imposed or

recommended measures to promote social distancing, or, requires that the legislative body determines that meeting in person would present imminent risks to the health and safety of attendees; and

WHEREAS, such conditions now exist in the City, specifically, Governor Newsom has declared a State of Emergency due to COVID-19; and

WHEREAS, since issuing Executive Order N-08-21, the highly contagious Delta variant of COVID-19 has emerged, causing an increase in COVID-19 cases throughout the State and Alameda County; and

WHEREAS, on August 3, 2021, in response to the Delta variant of COVID-19, the Alameda County Health Officer issued an order for nearly all individuals to wear masks when inside public spaces; and

WHEREAS, on November 30, 2021, the Omicron variant was designated as a variant of concern by the United States and much is still unknown regarding this variant; and

WHEREAS, the Centers for Disease Control and Prevention (“CDC”) continues to recommend physical distancing of at least 6 feet from others outside of the household; and

WHEREAS, because of the rise in cases due to the Delta variant of COVID-19 and the unknown impact of the Omicron variant of COVID-19, the City is concerned about the health and safety of all individuals who intend to attend City Council and meetings of the City’s other legislative bodies; and

WHEREAS, on September 23, 2021, the City Council found that the presence of COVID-19 and the increase of cases due to the Delta variant would present imminent risks to the health or safety of attendees, including the legislative bodies and staff, should the City’s legislative bodies hold in person meetings; and

WHEREAS, the City Council has subsequently found that the presence of COVID-19 and the increase of cases due to the Delta variant would present imminent risks to the health or safety of attendees, including the legislative bodies and staff, should the City’s legislative bodies hold in person meetings; and

WHEREAS, the City Council finds that the imminent risks of the City’s legislative bodies holding in person meetings to the health or safety of attendees continues to exist due to the Delta and Omicron variants of COVID-19; and

WHEREAS, the City shall ensure that its meetings comply with the provisions required by AB 361 (2021) for holding teleconferenced meetings.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newark as follows:

1. The above recitals are true and correct, and incorporated into this Resolution.

2. In compliance with AB 361 (2021), and in order to continue to conduct teleconference meetings without complying with the usual teleconference meeting requirements of the Brown Act, the City Council makes the following continued findings:

- a) The City Council has reconsidered the circumstances of the state of emergency; and
- b) The state of emergency, as declared by the Governor and City Council, continues to directly impact the ability of the City Council and the City's legislative bodies, as well as staff and members of the public, from meeting safely in person; and
- c) The CDC continues to recommend physical distancing of at least six feet due to COVID-19 and as a result of the presence of COVID-19 and the increase of cases due to the Delta variant, meeting in person would present imminent risks to the health or safety of attendees, the legislative bodies and staff.

3. City Council and City's legislative bodies may continue to meet remotely in compliance with AB 361, in order to better ensure the health and safety of the public.

4. The City Council will revisit the need to conduct meetings remotely within 30 days of the adoption of this resolution.