

# Olivehurst Public Utility District



## Agenda Item Staff Report

**Meeting Date: September 28, 2021**

### Item description/summary:

#### **Consider adoption of Resolution Proclaiming the Continuing Need To Meet By Teleconference Pursuant To Government Code Section 54953 (e).**

##### **Background:**

All meetings of the Board Of Directors Of Olivehurst Public Utility District are open and public as required by the Ralph M. Brown Act (Cal. Gov. Code sections 54950 – 54963).

Before COVID-19, Section 54953(b) of the Brown Act allowed for teleconferencing if the public agency complied with the following requirements: AB 361 waives the “normal” (pre-COVID) teleconferencing requirements per Government Code section 54953 that:

1. At least a quorum of the members of the legislative body must participate from locations within the boundaries of the city within the jurisdiction of the local agency.
2. An agenda shall be posted at all teleconference locations.
3. Each teleconference location shall be identified in the notice and agenda of the meeting.
4. Each teleconference location shall be accessible to the public.

(Discussion continued on attached page.)

### **Fiscal Analysis:**

None.

### **Employee Feedback**

None.

### **Sample Motion:**

Move to approve the Resolution timeline and process for adoption of a Resolution Proclaiming the Continuing Need To Meet By Teleconference Pursuant To Government Code Section 54953 (e).

Prepared by:

Deirdre Joan Cox, OPUD Legal Counsel

Due to COVID-19, Governor Newsom temporarily suspended compliance with these requirements and as a result, city officials were allowed to teleconference from locations such as their homes without needing to open up those homes or other locations for entry by members of the public. However, Governor Newsom's temporary suspension of such rules expire as of September 30, 2021. AB 361 was recently signed by the Governor to continue to allow the modified teleconferencing rules, and adds Government Code section 54953(e) making provisions for remote teleconferencing participation in meetings by members of a legislative body during a State of Emergency, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain requirements which are listed below in this Staff Report.

Government Code section 54953(e)(1), which was adopted by AB 361, lists the circumstances under which a local agency may use such modified teleconferencing procedures, provides as follows: (1) A local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:

(A) 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.

(B) 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.

(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), which, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

On March 4, 2020, Governor Newsom declared a State of Emergency as a result of the COVID-19 pandemic.

The State of Emergency remains in effect and COVID-19 continues to threaten the health and lives of the public and the Delta variant is highly transmissible in indoor settings. In addition, breakthrough cases are becoming more common.

The County of Yuba (as a local agency under Government Code Section 54951) officials "strongly recommend" "that Yuba-Sutter residents continue to follow CDC and CDPH's COVID-19 guidance." Such guidance includes recommendations that people physically distance from each other; generally, at least 6 feet of distance (2 arm lengths) is recommended, although this is not a guarantee of safety, especially in enclosed or poorly ventilated spaces..." (See <https://www.yuba.org/coronavirus/HealthOrders.php>.)

Thus, meetings of the Board may be held pursuant to the terms of Government Code section 54953(e)(1)(A) so long as a proclaimed state of emergency continues and state or local officials continues to impose or recommend measures to promote social distancing.

If, for some reason, state or local officials discontinue imposing or recommending measures to promote social distancing, the proposed Resolution would also authorize teleconferencing under the rules of 54953(e) so long as a proclaimed state of emergency continues.

During any time when there is not a proclaimed state of emergency, the Board meetings must comply with the "normal" teleconferencing rules of 54953(e) which are described below.

For these reasons, the recommended action is for the Board to adopt the attached Resolution 2021-XXX of The Board Of Directors of the Olivehurst Public Utility District Proclaiming the Continuing Need To Meet By Teleconference Pursuant To Government Code Section 54953 (e).

This Resolution will authorize the Board to hold teleconference meetings within the requirements of AB 361, but does not prohibit the Board from holding in person meetings in the future.

Here are the requirements of AB 361 If the Resolution is adopted, then OPUD must follow the for meetings which are held by teleconference during a State of Emergency procedures set forth by AB 361, which include the following:

1. Notice of the meeting must still be given in compliance with the Brown Act, and the notice must include the means by which the public may access the meeting and provide public comment.
2. The public must be provided access to the meeting via a call-in option or internet-based service option and allowed to “address the legislative body directly.” The agency does not have to provide an in-person option for the public to attend the meeting.
3. The meeting must be conducted “in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body.”
4. If there is a disruption to the meeting broadcast or in the ability to take call-in or internet-based public comment, no further action can be taken on agenda items until the issue is resolved.
5. The body cannot require comments to be submitted before the start of the meeting. The public must be allowed to make “real time” public comment.
6. Reasonable time for public comment must be provided. If the agency provides a timed public comment period, the public comment period must be left open until the time expires.
7. All votes must be taken by roll call.
8. The legislative body must approve a resolution making findings every 30 days to continue to conduct teleconference meetings under AB 361. The body must find it has reconsidered the circumstances of the state of emergency and either 1) the emergency continues to impact the ability to meet safely in person, or 2) State or local officials continue to impose or recommend social distancing.

During any time when there is not a proclaimed state of emergency, the state of emergency ends or if social distancing is no longer recommended, then Board meetings must comply with the “normal” teleconferencing rules of 54953(e), which are described below.

AB 361 waives the “normal” (pre-COVID) teleconferencing requirements per Government Code section 54953 that:

1. At least a quorum of the members of the legislative body must participate from locations within the boundaries of the city.
  - 2.1. An agenda shall be posted at all teleconference locations.
  - 3.1. Each teleconference location shall be identified in the notice and agenda of the meeting.

4.1. Each teleconference location shall be accessible to the public.

ATTACHMENT

RESOLUTION OF THE BOARD OF DIRECTORS OF OLIVEHURST PUBLIC UTILITY DISTRICT PROCLAIMING THE CONTINUING NEED TO MEET BY TELECONFERENCE PURSUANT TO GOVERNMENT CODE SECTION 54953(e)

**RESOLUTION NO. 2379**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
OLIVEHURST PUBLIC UTILITY DISTRICT  
PURSUANT TO GOVERNMENT CODE SECTION 54952(b)  
AUTHORIZING TELECONFERENCE MEETINGS IN COMPLIANCE WITH  
AB 361 (GOVERNMENT CODE SECTION 54953(e))  
TO CONTINUE TO ALLOW MEMBERS OF THE PUBLIC  
TO SAFELY PARTICIPATE IN LOCAL GOVERNMENT MEETINGS**

**WHEREAS**, the Olivehurst Public Utility District is committed to preserving and nurturing public access to observe and participate in local government meetings; and

**WHEREAS**, all meetings of Olivehurst Public Utility District's legislative bodies are open and public, as required by the Ralph M. Brown Act, so that any member of the public may observe and participate in local government meetings; and

**WHEREAS**, the recently adopted AB 361, codified at Government Code section 54953(e), makes provisions for remote teleconferencing participation in local government meetings, without compliance with the requirements of 54953(b)(3), during a Governor-proclaimed state of emergency and if the local 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, and

**WHEREAS**, on March 4, 2020, Governor Newsom proclaimed a State of Emergency due to the outbreak of respiratory illness due to a novel coronavirus (now known as COVID 19) and that State of Emergency is still in effect in the State of California; and

**WHEREAS**, COVID-19 continues to threaten the health and lives of City residents; and

**WHEREAS**, the SARS-CoV-2 Delta Variant (Delta Variant) is highly transmissible in indoor settings; and

**WHEREAS**, on July 28, 2021, the California Department of Public Health issued guidance calling for the use of face coverings and stating that the Delta Variant is two times as contagious as early COVID-19 variants, leading to increasing infections, the Delta Variant accounts for over 80% of cases sequenced, and cases and hospitalizations of COVID-19 are rising throughout the state; and

**WHEREAS**, the Delta Variant has caused, and will continue to cause, conditions of imminent peril to the health safety of persons within the City; and

**WHEREAS**, the Board of Directors, acting as a legislative body pursuant to Government Code section 54952(a) and for the benefit of the commissions, committees and other bodies that were created by the Board of Directors pursuant to Government Code section 54952(b) (collectively referred to as "Legislative Bodies"), finds that the current conditions meet the circumstances set forth in Government Code section 54953(e)(3) to allow Legislative Bodies to continue to use teleconferencing to hold open and public meetings if the Legislative Bodies comply with the requirements set forth in Government Code section 54953(e)(2) to ensure the public can safely participate in and observe local government meetings.

**NOW, THEREFORE, THE BOARD OF DIRECTORS OF OLIVEHURST PUBLIC UTILITY 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. Find that Current Conditions Authorize Teleconference Public Meetings of Legislative Bodies. Based on the California Governor’s continued declaration of a State of Emergency and current conditions, the City Council finds that meeting in person would present imminent risks to the health or safety of attendees, such that the conditions continue to exist pursuant to Government Code section 54953(e)(3) to allow Legislative Bodies to use teleconferencing to hold public meetings in accordance with Government Code section 54953(e)(2) to ensure members of the public have continued access to safely observe and participate in local government meetings.

Section 3. Authorize Legislative Bodies to Conduct Teleconference Meetings. The Legislative Bodies are hereby authorized 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)(2) and other applicable provisions of the Brown Act, and continuing its existing procedures to ensure members of the public have continued access to safely observe and participate in local government meetings.

Section 4. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption and shall be effective until the earlier of (i) October 30, 2022, or such time as 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 Olivehurst Public Utility District may continue to teleconference in accordance with Government Code section 54953(e)(2) and other applicable provisions of the Brown Act.

PASSED AND ADOPTED by the Board of Directors of Olivehurst Public Utility District, this 29<sup>th</sup> day of September, 2021, by the following vote:

SO ORDERED.

OLIVEHURST PUBLIC UTILITY DISTRICT

\_\_\_\_\_  
President, Board of Directors

ATTEST:

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
District Clerk and Ex-Officio Secretary

\_\_\_\_\_  
Deirdre Joan Cox, Legal Counsel

\* \* \* \* \*

I hereby certify that the foregoing is a full, true, and correct copy of a Resolution duly adopted and passed by the Board of Directors of the Olivehurst Public Utility District, Yuba County, California, at a meeting thereof held on the 29<sup>th</sup> day of September, 2021, by the following vote:

AYES, AND IN FAVOR THEREOF:

NOES:

ABSTAIN:

ABSENT:

---

District Clerk and ex-officio Secretary