

# Heber Public Utility District

## BOARD OF DIRECTORS

**MEETING DATE:** February 17, 2021

**FROM:** Laura Fischer, General Manager

**SUBJECT:** Ratify Resolution Number 2022-01

**ISSUE:**

Shall the Heber Public Utility Board of Directors ratify Resolution 2022-01 proclaiming a local emergency, ratifying the proclamation of a State of Emergency by Proclamation Dated March 4, 2021 and authorizing remote teleconference meetings of the Heber Public Utility District Board of Directors for the period of thirty days pursuant to Brown Act Provisions?

**GENERAL MANAGER RECOMMENDATION:**

Ratify Resolution 2022-01 proclaiming a local emergency, ratifying the proclamation of a State of Emergency by Proclamation Dated March 4, 2021 and authorizing remote teleconference meetings of the Heber Public Utility District Board of Directors for the period of thirty days pursuant to Brown Act Provisions.

**FISCAL IMPACT:**

NONE.

**DISCUSSION:**

On January 20, 2022 the Heber Public Utility District adopted Resolution 2022-01 proclaiming a local emergency, ratifying the proclamation of a State of Emergency and authorizing remote teleconference meetings of the Heber PUD Board of Directors for a period of 30 days pursuant to Brown Act Provisions.

**BACKGROUND:**

AB 361 was signed into law by the Governor on September 16, 2021, and went into effect immediately. It amends the Brown Act to allow local legislative bodies to continue using teleconferencing and virtual meeting technology after the September 30, 2021, expiration of the current Brown act exemptions as long as there is a “proclaimed state of emergency” by the Governor. This allowance also depends on state or local officials imposing or recommending measures that promote social distancing or a legislative body finding that meeting in person would present an imminent safety risk to attendees. Though adopted in the context of the pandemic, AB 361 will allow for virtual meetings during other proclaimed emergencies, such as earthquakes or wildfires, where physical attendance may present a risk.

AB 361 requires the following:

- public agencies to make findings by majority vote within 30 days of the first teleconferenced meeting under AB 361 and every 30 days thereafter that a state of emergency still exists and continues to directly impact the ability of the members to meet safely in person, or that officials continue to impose or recommend measures to promote social distancing;

- a public comment period where the public can address the legislative body directly;
- prohibits councils and boards from limiting public comments to only comments submitted in advance and specifies that the legislative body "must provide an opportunity for the public to ... offer comment in real time." (Government Code 54953(e)(2)(E);
- the legislative body must allow a reasonable time for public comment during the comment periods;
- The agenda must include information on the manner in which the public may access the meeting and provide comments remotely;
- if technical problems arise that result in the public's access being disrupted, the legislative body may not take any vote or other official action until the technical disruption is corrected and public access is restored.

AB 361 will sunset on January 1, 2024.

UPDATED FEBRUARY 10, 2022 COVID CAL OSHA GUIDELINES:

<https://www.dir.ca.gov/dosh/coronavirus/>

The COVID-19 Prevention Emergency Temporary Standards remain in effect. The workplace standards were updated in December 2021 to include minor revisions related to returning to work after close contact. The revisions became effective starting on January 14, 2022. In addition to these requirements, employers must follow public health orders on COVID-19. The [latest order from the California Department of Public Health](#) on February 7, 2022 requires the use of face coverings by all employees in certain circumstances. This order becomes effective on February 16, 2022. More information on the COVID-19 Prevention Emergency Temporary Standards is available in [Cal/OSHA's Frequently Asked Questions](#).

UPDATED COUNTY OF IMPERIAL COVID GUIDELINES:

<https://www.icphd.org/health-information-and-resources/healthy-facts/covid-19/>

### **CONCLUSION:**

In light of AB 361, the continuing COVID-19 State of Emergency declared by the Governor, the continuing recommendations by the County of Imperial Public Health Services of social distancing as a mechanism for preventing the spread of COVID-19, and the continued threats to health and safety posed by indoor public meetings with large attendance, staff recommends the Board adopt the proposed Resolution making the findings required to initially invoke AB 361.

Although the Imperial County adopted new guidelines for indoor masking for both vaccinated and unvaccinated persons, they still highly recommend that all persons wear mask indoors. The procedures currently set up for Heber Board meetings, which provide public attendance and comment through a call-in or internet-based service option, satisfy the requirements of AB 361. Continued reliance will require the Board to adopt a new resolution making required findings every 30 days.

**ALTERNATIVES:**

1. Do not Ratify Resolution 2022-01 which will require that all Board members attend the Heber Public Utility District Board meeting in person, and that the public will not have remote teleconference access. This would be in effect starting at the March 17, 2022 Board meeting.
2. Provide alternative direction to staff.

Respectfully Submitted,

Laura Fischer, General Manager

Attachment: Resolution 2022-01, Backup Materials for AB 361

**RESOLUTION NO. 2021-18**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE HEBER PUBLIC UTILITY DISTRICT RATIFYING A LOCAL EMERGENCY, AND THE PROCLAMATION OF A STATE OF EMERGENCY BY PROCLAMATION DATED MARCH 4, 2021, AND AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF THE LEGISLATIVE BODIES OF HEBER PUBLIC UTILITY DISTRICT FOR THE PERIOD THIRTY (30) DAYS PURSUANT TO BROWN ACT PROVISIONS.**

**WHEREAS**, the HEBER PUBLIC UTILITY DISTRICT is committed to preserving and nurturing public access and participation in meetings of the Board of Directors; and

**WHEREAS**, all meetings of HEBER PUBLIC UTILITY DISTRICT'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 District's legislative bodies conduct their business; and

**WHEREAS**, the Brown Act, Government Code section 54953(e), makes provisions for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

**WHEREAS**, a required condition is that a state of emergency is declared by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558; and

**WHEREAS**, a proclamation is made when there is an actual incident, threat of disaster, or extreme peril to the safety of persons and property within the jurisdictions that are within the District's boundaries, caused by natural, technological, or human-caused disasters; and

**WHEREAS**, it is further required that state or local officials have imposed or recommended measures to promote social distancing, or, the legislative body meeting in person would present imminent risks to the health and safety of attendees; and

**WHEREAS**, such conditions now exist in the District, specifically, a Proclamation of a State of Emergency signed by the Governor of California on March 4, 2020, in accordance with the section 8625 of the California Emergency Services Act, and the state of emergency remains in effect; and

**WHEREAS**, as a result of the COVID-19 pandemic, the California Department of Health and County of Imperial Public Health Services continue to recommend measures to promote social distancing; and

**WHEREAS**, the Board of Directors does hereby find that the COVID-19 pandemic has caused, and will continue to cause, conditions of peril to the safety of persons within the District that are likely to be beyond the control of services, personnel, equipment, and facilities of the District, and desires to ratify a local emergency and ratify the proclamation of state of emergency by the Governor of the State of California; and

**WHEREAS**, as a consequence of the local emergency, the Board of Directors does hereby find that the legislative bodies of HEBER PUBLIC UTILITY DISTRICT shall conduct their meetings without compliance with paragraph (3) of subdivision (b) of Government Code section 54953, as authorized by subdivision (e) of section 54953, and that such legislative bodies shall comply with the requirements to provide the public with access to the meetings as prescribed in paragraph (2) of subdivision (e) of section 54953; and

**WHEREAS**, the HEBER PUBLIC UTILITY DISTRICT shall continue to provide access to public meetings in accordance with Government Code section 54953(e); and

**NOW, THEREFORE, THE BOARD OF DIRECTORS OF HEBER 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. Previously Declared Local Emergency. The Board has reconsidered the circumstances of the previously declared and existing state of emergency arising from the COVID-19 pandemic.

Section 3. Ratification of Governor's Proclamation of a State of Emergency. The Board hereby ratifies the Governor of the State of California's Proclamation of State of Emergency, effective as of its issuance date of March 4, 2020.

Section 4. Remote Teleconference Meetings. The Board Secretary, General Manager and legislative bodies of HEBER PUBLIC UTILITY DISTRICT are hereby authorized and directed 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) and other applicable provisions of the Brown Act.

Section 5. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption and shall be effective until the earlier of (i) January 20, 2022, or such time 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 HEBER PUBLIC UTILITY DISTRICT may continue to teleconference without compliance with paragraph (3) of subdivision (b) of section 54953.

PASSED AND ADOPTED by the Board of Directors of HEBER PUBLIC UTILITY DISTRICT, this 20th day of January, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Kaine Garcia, Board President

ATTEST:

\_\_\_\_\_  
Raquel Carrillo, Clerk of the Board

APPROVE AS TO FORM:

\_\_\_\_\_  
Steven M. Walker, General Counsel

STATE OF CALIFORNIA )  
COUNTY OF IMPERIAL )  
HEBER PUBLIC UTILITY )  
DISTRICT )

I, Raquel Carrillo, Clerk of the Board of the Heber Public Utility District, County of Imperial, State of California, DO HEREBY CERTIFY that the foregoing resolution was dully passed, approved and adopted by the Board of Directors of the Heber Public Utility District at its regularly scheduled meeting held on the 20<sup>th</sup> day of January 2022.

By \_\_\_\_\_  
Raquel Carrillo, Clerk of the Board

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## 09.20.21

Greta A. Proctor

**NEWSLETTER SIGNUP**

## AB 361 EXTENDS VIRTUAL BOARD MEETINGS, WITH CONDITIONS

By Procopio Partner Greta A. Proctor

California's Ralph M. Brown Act has been amended to allow fully virtual board meetings during a state of emergency after the Governor signed Assembly Bill 361 into law on September 16, 2021. The new law comes as local public agencies were preparing for the expiration of Executive Orders that currently allow virtual board meetings. AB 361 goes into effect immediately, and it amends Section 54953 of the Brown Act to allow virtual board meetings through January 1, 2024 in any of the following circumstances:

1.

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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 or safety of attendees.
3. 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.

These circumstances allow agencies to hold entirely virtual board meetings during the current pandemic, while California is in a proclaimed state of emergency. The previous teleconference rules under the Brown Act also remain in place, but are not as flexible.

If a board meeting is held virtually under the new provisions of AB 361, the agenda must still be posted under the appropriate timelines: 72 hours in advance for a regular board meeting, and 24 hours in advance for a special board meeting. The agenda must include the meeting link or dial-in, so that members of the public may access the meeting. Members of the public must be allowed to address the board in real-time during the meeting. Boards can no longer require public comments to be submitted in advance. When boards use agenda items with timed public comment periods, they must allow those time limits to expire before closing public comment. When boards take public comment separately on each agenda item, they must allow a reasonable amount of time per agenda item.

AB 361 also has special provisions for technical glitches. In the event the meeting broadcast is disrupted, or if a technical issue on the agency's end disrupts public comment, the board cannot take any further action on the agenda until the technical issue is resolved.

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personalizing content and advertising. **More significantly,** in order to continue to hold virtual meetings when a state of emergency remains active, the  
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board must make findings every 30 days that 1) the board has reconsidered the circumstances of the state of emergency and 2) the state of emergency continues to directly impact the ability of the members to meet safely in person or state or local officials continue to impose or recommend measures to promote social distancing.

We anticipate these findings may be considered and made at the beginning of each regular board meeting, prior to conducting the agency's business virtually. Boards that meet less frequently than every 30 days may choose to hold virtual special board meetings to make these findings in between their regularly scheduled meetings.

As of now, the current Executive Orders that allow fully virtual board meetings are slated to remain in effect until September 30, 2021. This gives public agencies about two weeks to prepare for virtual meetings under AB 361.

In addition to the Brown Act, AB 361 also adds virtual meeting flexibilities to the Bagley-Keene Open Meeting Act for state agencies, and the Open Meetings Act for student body organizations on California State University college campuses.

If you have any questions about AB 361 or your agency's ability to hold virtual meetings, please do not hesitate to reach out to us.



Greta A. Proctor is a Partner at Procopio and co-leader of its Education practice group. Based in Los Angeles, Greta represents charter schools and those in the education space, as well as numerous other types of nonprofits with nearly all aspects of their operations. For charter schools, Greta advises on a variety of operational, funding and ever-changing regulatory issues. These include governance, school policies, contracts, authorizer relations, ethical issues, funding restrictions, facility issues, student privacy, admissions and more. Greta provides frequent trainings on topics such as the Brown Act, Public Records Act, avoiding conflicts of interest under the Political Reform Act and Government Code section 1090, and new legislation impacting her clients.

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