

Heber Public Utility District

BOARD OF DIRECTORS

MEETING DATE: December 15, 2022

FROM: Laura Fischer, General Manager

PREPARED BY: Moises Cardenas, Office Manager

SUBJECT: Ratify Resolution Number 2022-17

ISSUE:

Shall the Heber Public Utility Board of Directors ratify Resolution 2022-17 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 2022-17 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: Important information regarding teleconferencing meetings:

Governor Gavin Newsom recently announced that the COVID-19 state of emergency enacted back in March 2020 would be coming to an end in February 2023. With the state of emergency ending, this means that HPUD will no longer be able to use COVID-19 as the emergency dedicated to AB 361.

However, Governor Newsom signed AB 2449 into law which provides complex and restrictive alternative teleconference procedures.

- A quorum of the members of the legislative body must participate in person from a singular physical location identified on the agenda, which location will be open to the public and within the boundaries of the local agency.
- A member may only teleconference for public disclosed “just cause” or in “emergency situations” approved by the legislative body; and
- A member may only teleconference for no more than 3 consecutive months or 20% of the regular meetings within a calendar year

January 2023 will be the last time that the Resolution for Teleconferencing meetings will be available.

BACKGROUND:

On October 20, 2022 the Heber Public Utility District adopted Resolution 2022-17 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.

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.

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 strongly 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 2022-17 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 January 19, 2023 Board meeting.
2. Provide alternative direction to staff.

Respectfully Submitted,

Laura Fischer, General Manager

Attachment: Resolution 2022-17

RESOLUTION NO. 2022-17

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) October 16, 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 October, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Kaine Garcia, Board President

ATTEST:

Moises Cardenas, Clerk of the Board

APPROVE AS TO FORM:

Steven M. Walker, General Counsel

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

I, Moises Cardenas, 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 20th day of October 2022.

By: _____
Moises Cardenas, Clerk of the Board