
Santa Barbara Local Agency Formation Commission

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Date October 7, 2021 (Agenda)

Title**Assembly Bill 361 - Urgency Legislation re Brown Act
Teleconferencing at Meetings of Legislative Bodies Of Local Agencies****RECOMMENDATION**

That the Commission:

- a) Receive a briefing on Assembly Bill 361 (Rivas), signed by the Governor on September 16, 2021, as urgency legislation, concerning amendments to the Brown Act for use of teleconferencing at meetings of legislative bodies of local agencies during a proclaimed state of emergency; and
- b) Determine whether as a result of a proclaimed state of emergency, future Commission meetings should be conducted pursuant to requirements of Government Code section 54953(e)(2) for teleconferencing.

DISCUSSION

On September 16, 2021, Governor Newsom signed Assembly Bill 361 amending the Brown Act. The amendments of concern to LAFCO are to Government Code section 54953 which allow more liberal use of teleconferencing at local agency public meetings during a proclaimed state of emergency. As urgency legislation, this bill took effect immediately.

In March 2020, Governor Newsom issued Executive Order N-29-20 that suspended portions of the Brown Act in order to allow for more liberal teleconferencing requirements, e.g., not every teleconferencing location needed a posted agenda or provide public access. Unless extended, which is not expected, Executive Order N-29-20 expires September 30, 2021. Therefore, as of October 1, 2021, the provisions of AB 361 will govern use of teleconferencing at meetings of legislative bodies of local agencies during a declared state of emergency. Similar to the Executive Order, the provisions of AB 361 are more liberal than the regular teleconferencing provisions of the Brown Act found in Government Code section 54953(a) through (d). The provisions of AB 361 are in Section 54953(e).

Circumstances Where "More Liberal" Teleconferencing is Allowed. Newly added Government Code section 54953(e)(1) provides a local legislative body may use teleconferencing without complying with the traditional teleconferencing requirements of the Brown Act 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), that, *as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.* (Gov. Code sec. 54953(e)(1).) (emphasis added.)

The two issues for the Commission to consider are (A) and (C), above. First, is whether a state or local official is imposing or recommending measures for social distancing. Second, whether meeting in-person at a Commission public meeting would present imminent risk to the health or safety of attendees. A finding on either ground is sufficient for the Commission to authorize teleconferencing under AB 361.

“Social Distancing.” The grounds for subsection (A) regarding social distancing appears to have been met. Although the State dropped its physical distancing requirement on June 15,¹ the County Health Department webpage states:

“Limiting face-to-face contact with others is the best way to reduce the spread of coronavirus disease 2019 (COVID-19).

“Physical distancing, also called “social distancing” means keeping space between yourself and other people outside of your home.

“In addition to everyday steps to prevent COVID-19, keeping space between you and others is one of the best tools we have to avoid being exposed to this virus and slowing its spread locally and across the country and world.”

(<https://publichealthsb.org/social-distancing/>)

If social distancing is being imposed or recommended by a local official, then the Commission may elect to employ the AB 361 teleconferencing requirements. However, as discussed below, the Commission must revisit this determination every 30 days.

“Imminent Risks to the Health and Safety of Attendees.” Under subsection B, if the Commission determines, as a result of the declared emergency, that conducting its meeting in person would present imminent risks to the health or safety of attendees, then Commission meetings may be held pursuant to the more liberal teleconferencing requirements of AB 361.

¹ The State Covid19 website states that as of August 31, 2021, “[t]here are no county tiers, capacity limits, or physical distancing requirements.” (<https://covid19.ca.gov/safely-reopening.>)

This is allowed as long as the state of emergency continues, subject to the 30-day review discussed below.

Any determination by the Commission that an imminent risk to health or safety exists should be based on substantial evidence. The most recent County directive on Covid19 is County Health Officer Order No. 2021-10.4, dated September 5, 2021. (See Attachment.) The Order is primarily directed at requiring Face Covering of all individuals while at "Indoor Public Settings;" however, it does include recommendations for physical distancing in certain circumstances. (See Section 4 – "Exemptions.") Further, the evidence cited in the Order can be found relevant to any Commission determination of whether there is an imminent risk to the health or safety of attendees if in-person attendance is required to participate in Commission public meetings. (See Order, p.6, re total covid19 numbers, transmission rates, property loss, and likelihood of exposures due to indoor activities.).

When considering this issue, the Commission may also consider whether any individual Commissioners are concerned about his or her health or existing condition due to the declared emergency such that the Commissioner may not attend Commission meetings. In such a case, teleconferencing may offer the only safe method for a Commissioner to participate in a Commission public meeting.

30-Day Revisit. If the Commission does invoke the teleconferencing provisions of AB 361, then the bill requires that every 30 days thereafter the Commission reconsider the circumstances and determine if any of the following exist.

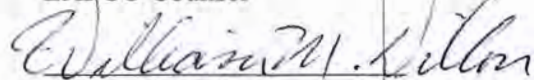
- (i) The state of emergency continues to directly impact the ability of the members to meet safely in person.
- (ii) State or local officials continue to impose or recommend measures to promote social distancing. (Section 54953(e)(3)(B).).

Therefore, if the teleconferencing provisions of AB 361 are invoked, Staff will docket each month a 30-day report on the status of this matter. Absent any new significant information, this report may be placed on the consent agenda.

Please contact me if you have any questions.

Sincerely,

LAFCO Counsel



William M Dillon

Law Office of William Dillon

ATTACHMENT

**HEALTH OFFICER ORDER NO. 2021-10.4
COUNTY OF SANTA BARBARA**

**FOR THE CONTROL OF COVID-19
FACE COVERINGS
WITHIN SANTA BARBARA COUNTY**

Health Officer Order No. 2021-10.4 Supersedes and Replaces Health Officer Order No. 2021-10.3

Effective Date: September 5, 2021, 5:00pm PT

(Changes are underlined.)

Please read this Order carefully. Violation of or failure to comply with this Order may constitute a misdemeanor punishable by fine of up to \$1,000, imprisonment, or both, or result in administrative fines. (Health and Safety Code §§ 101029, 120295 et seq.; County Ord. No. 5120.) Violators are also subject to civil enforcement actions including fines or civil penalties per violation per day, injunctive relief, and attorneys' fees and costs.

This Health Officer Order No. 2021-10.4 supersedes and replaces Health Officer Order No. 2021-10.3 that was effective August 6, 2021. Nothing in this Health Officer Order supersedes State Executive Orders or State Health Officer Orders or guidance provided by the California Department of Public Health available at:
<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Guidance.aspx#>

Summary: Since June 15, 2021 when most restrictions from the State of California's Blueprint for a Safer Economy were lifted, the average daily incident case rate of COVID-19 in Santa Barbara County has increased to reach the "High Transmission" level based on the US Centers for Disease Control and Prevention's (CDC) Indicators for Levels of Community Transmission. The significantly more transmissible SARS-CoV-2 B.1.617.2 (Delta) variant of COVID-19 has become the predominant strain in the US and in Santa Barbara County. To control the spread of COVID-19, this Health Officer Order orders all individuals in the County of Santa Barbara – whether vaccinated or unvaccinated -- to wear a Face Covering at all times in all Indoor Public Settings and Businesses, with limited exemptions, and recommends that Businesses make face coverings available to individuals entering the Business.

WHEREAS, on March 4, 2020, Governor Newsom declared a state of emergency for conditions caused by a novel coronavirus, COVID-19, and on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic, and on March 12, 2020, the County of Santa Barbara declared a local emergency and a local health emergency in relation COVID-19 in the community; and

WHEREAS, in the County of Santa Barbara ("County") as well as throughout California and the nation, there are insufficient quantities of critical healthcare infrastructure, including hospital beds, ventilators and workers, capable of adequately treating mass numbers of patients at a single time – should the virus spread unchecked; and

WHEREAS, in direct response to the lack of healthcare infrastructure, governments across the nation are taking actions to slow the spread of COVID-19 in order to “flatten the curve” of infection and reduce the numbers of individuals infected at any one time by minimizing situations where the virus can spread; and

WHEREAS, the CDC categorizes COVID-19 community transmission in four categories: Low, Moderate, Substantial, and High; and

WHEREAS, the CDC has found that “preliminary evidence suggests that fully vaccinated people who do become infected with the Delta variant can be infections and can spread the virus to others”; and

WHEREAS, since April 2021, the Delta variant has been circulating in the County. This variant is highly transmissible in indoor settings and requires multicomponent prevention strategies to reduce spread. Despite high vaccination rates, the County is experiencing substantial levels of community transmission due to the Delta variant. While the risk for COVID-19 infection is highest among unvaccinated persons, the incidence of infection among fully vaccinated persons is increasing. Hospitalizations have also increased, primarily among unvaccinated persons. The County of Santa Barbara is also seeing a concerning increase in cases among staff and residents in long-term care facilities and in other congregate living settings; and

WHEREAS, the COVID-19 vaccines authorized in the United States are highly safe and effective. These vaccines provide protection to individuals and communities, particularly against severe COVID-19 disease, hospitalization, and death, and are recommended by the CDC for all populations authorized to receive them by the U.S. Food and Drug Administration. The Health Officer strongly recommends that all eligible persons in the County be vaccinated. Vaccines are available for all persons over 12 years of age. Information on obtaining a COVID19 vaccine in the County of Santa Barbara is available here: <https://publichealthsbc.org/vaccine>; and

WHEREAS, as of June 29, 2021, the CDC recommends those not fully vaccinated and aged 2 or older should (1) wear a face covering in indoor public places; and (2) in areas with high numbers of COVID-19 cases, consider wearing a mask in crowded outdoor settings and for activities with close contact with others who are not fully vaccinated (<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html>); and

WHEREAS, on July 19, 2021, the Health Officer recommended that fully vaccinated persons wear masks in public indoor settings, considering the apparent increased transmissibility of the Delta variant; and

WHEREAS, on July 27, 2021, the CDC issued new guidance recommending fully vaccinated individuals wear a face covering in public indoor settings in areas with Substantial or High community transmission rates (<https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>); and

WHEREAS, on July 28, 2021, the California Department of Public Health (CDPH) updated its

mandate requiring face coverings in specific indoor public settings regardless of vaccination status, and for those that are not fully vaccinated. The CDPH also recommends universal masking indoors statewide, as “an extra precautionary measure for all to reduce the transmission of COVID-19, especially in communities currently seeing the highest transmission rates” (<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/guidance-for-face-coverings.aspx>); and

WHEREAS, as of August 2, 2021, according to the CDC, COVID-19 community transmission is Significant in California and High in Santa Barbara County. The County has a current case rate of 19.3 per 100,000 and a test positivity of 6.1%; and

WHEREAS, the CDC and the CDPH find the use of face coverings may reduce asymptomatic transmission of COVID-19 and reinforce physical distancing, and that wearing a face covering combined with physical distancing of at least six feet, and frequent hand washing, will lessen the risk of COVID-19 transmission by limiting the spread of respiratory droplets; and

WHEREAS, universal indoor use of face coverings, also known as masking, is the least disruptive and most immediately impactful additional measure to take to limit the spread of the COVID-19 Delta variant. This Order is part of a strategy to support the continued operations of Businesses, activities, and schools; and

WHEREAS, the County Health Officer finds (1) a significant portion of individuals with COVID-19 are asymptomatic and can transmit the virus to others; (2) those who may develop symptoms can transmit the virus to others before showing symptoms; (3) the incidence of infection among fully vaccinated persons is increasing; (4) scientific evidence shows COVID-19 is easily spread and public activities can result in transmission of the virus; (5) face coverings are necessary because COVID-19 is highly contagious and is spread through respiratory droplets that are produced when an infected person coughs, sneezes, or talks. These droplets may land on other people or be inhaled into their lungs, may land on and attach to surfaces where they remain for days, and may remain viable in the air for up to three hours, even after the infected person is no longer present; (6) when worn properly, face coverings have the potential to slow the spread of the virus by limiting the spread of respiratory droplets; and (7) distinctions made in this Order are to minimize the spread of COVID-19 that could occur through proximity and duration of contact between individuals; and

WHEREAS, the intent of this Order is to temporarily require the use of Face Coverings to slow the spread of COVID-19 in Santa Barbara County to the maximum extent possible. All provisions of this Order should be interpreted to effectuate this intent.

ACCORDINGLY, UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, AND 120175, TITLE 17 CALIFORNIA CODE OF REGULATIONS SECTION 2501, THE HEALTH OFFICER OF THE COUNTY OF SANTA BARBARA ORDERS:

1. This Order 2021-10.4 is effective 5:00 p.m. (PT) September 5, 2021 and continuing until 5:00 p.m. (PT), on October 5, 2021 or until it is extended, rescinded, superseded, or amended in writing by the County of Santa Barbara Health Officer (“Health Officer”). This Order applies in the incorporated and unincorporated areas of Santa Barbara County (“County”).

2. This Order orders that in the County Face Coverings must be worn over the mouth and nose – regardless of vaccination status – in all Indoor Public Settings and Businesses, as defined below, including but not limited to: offices, retail stores, restaurants and bars, theaters, family entertainment centers, conference and event centers, and State and local government offices serving the public.
3. Individuals, Businesses, venue operators, hosts, and others responsible for the operation of Indoor Public Settings or Businesses must:
 - a. Require all individuals to wear Face Coverings regardless of vaccination status; and
 - b. Post clearly visible and easy-to-read signage at all entry points to communicate the Face Covering requirements.
4. Exemptions. Individuals are not required to wear Face Coverings in the following circumstances:
 - a. While working alone in a closed office or room;
 - b. While actively eating and/or drinking;
 - c. While swimming or showering;
 - d. While obtaining a medical or cosmetic service involving the head or face for which temporary removal of the Face Covering is necessary to perform the service;
 - e. Performers at indoor live events such as theater, opera, symphony, religious choirs, and professional sports may remove Face Coverings while actively performing or practicing, though such individuals should maximize physical distancing as much as practicable;
 - f. Individuals in indoor religious gatherings may remove Face Coverings when necessary to participate in religious rituals;
 - g. Individuals actively engaged in water-based sports (e.g., swimming, swim lessons, diving, water polo) and other sports where masks create imminent risk to health (e.g., wrestling, judo). All other indoor recreational sports, gyms, and yoga studios shall comply with this Order;
 - h. Persons younger than two years old must not wear a Face Covering because of the risk of suffocation;
 - i. Persons with a medical condition, mental health condition, or disability that prevents wearing a Face Covering. This includes persons with a medical condition for whom wearing a Face Covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a Face Covering without assistance;
 - j. Persons who are hearing impaired, or communicating with a person who is hearing impaired, when the ability to see the mouth is essential for communication;

- k. Persons for whom wearing a Face Covering would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines.
5. Persons exempted from wearing a Face Covering due to a medical condition, mental health condition, or disability must wear a non-restrictive alternative, such as a face shield with a drape on the bottom edge, as long as their condition permits it.
6. Workplaces subject to the Cal/OSHA COVID-19 Emergency Temporary Standards (ETS) and/or the Cal/OSHA Aerosol Transmissible Diseases Standards should consult the applicable regulations for additional requirements. The ETS allows local health jurisdictions to mandate more protective measures. (8 CCR § 3205(a)(2).) This Order, which requires Face Coverings for all individuals in Indoor Public Settings and Businesses, regardless of vaccination status, takes precedence over the more permissive ETS regarding employee face coverings.
7. "Business" or "Businesses" for the purpose of this Health Officer Order is defined to mean any institution, establishment, public or private agency, for-profit, non-profit, or educational entity, whether an organization, corporate entity, partnership, or sole proprietorship.
8. "Face Covering" means a covering made of a variety of materials such as cloth, fabric, cotton, silk, linen, or other permeable materials, that fully covers the tip of a person's nose and mouth, without holes, including cloth face masks, surgical masks, towels, scarves, and/or bandanas. This Order does not require the public to wear medical-grade masks, including masks rated N95, KN95, and their equivalent or better.

A face covering with a one-way valve (typically a raised plastic cylinder about the size of a quarter on the front or side of the mask) that provides a preferential path of escape for exhaled breath shall not be used as a face covering under this Order because the valve permits respiratory droplets to easily escape which places others at risk.
9. "Indoor Public Setting" or "Indoor Public Settings" for the purpose of this Health Officer Order is defined to mean an enclosed area whether privately or publicly owned, to which the public have access by right or by invitation, expressed or implied, whether by payment of money or not, but not a place when used exclusively by one or more individuals for a private gathering or other personal purpose.
10. Except as otherwise set forth herein, the June 28, 2021 Guidance for the Use of Face Coverings issued by the CDPH (<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/guidance-for-face-coverings.aspx>) as may be amended from time to time, continues to apply throughout the County of Santa Barbara
11. The Health Officer strongly encourages that individuals, Businesses, venue operators, hosts, and others responsible for the operation of Indoor Public Settings or Businesses provide Face Coverings at no cost to individuals required to wear them.
12. If you cannot afford a face covering one will be provided to you free-of-charge at the

following locations:

- a. Santa Barbara County Administration building lobby, 105 E Anapamu St, Santa Barbara
- b. Santa Barbara Health Care Center, 345 Camino del Remedio, Santa Barbara
- c. Santa Maria Health Care Center, 2115 Centerpointe Parkway, Santa Maria
- d. The Health Officer requests cities within the County of Santa Barbara provide face coverings free-of-charge to those cannot afford them.

This Order is issued as a result of the worldwide pandemic of COVID-19 which has infected at least 219,773,339 individuals worldwide, in 221 countries and territories, including 39,389 cases, and 480 deaths in the County, and is implicated in over 4,552,102 worldwide deaths.

This Order is issued based on evidence of increasing transmission of COVID-19 both within the County and worldwide, scientific evidence regarding the most effective approach to slow transmission of communicable diseases generally and COVID-19 specifically, as well as best practices as currently known and available to protect the public from the risk of spread of or exposure to COVID-19.

This Order is issued because of the propensity of the virus to spread person to person and also because the virus physically is causing property loss or damage due to its proclivity to attach to surfaces for prolonged periods of time.

This Order is intended to reduce the likelihood of exposure to COVID-19, thereby slowing the spread of COVID-19 in communities worldwide. As the presence of individuals increases, the difficulty and magnitude of tracing individuals who may have been exposed to a case rises exponentially.

This Order is issued in accordance with, and incorporates by reference: the March 4, 2020 Proclamation of a State Emergency issued by Governor Gavin Newsom; the March 12, 2020 Declaration of Local Health Emergency and Proclamation of Emergency based on an imminent and proximate threat to public health from the introduction of novel COVID-19 in the County; the March 17, 2020 Resolution of the Board of Supervisors ratifying the County Declaration of Local Health Emergency and Proclamation of Emergency regarding COVID-19; the March 13, 2020 Presidential Declaration of a National Emergency due to the national impacts of COVID-19; the March 22, 2020, Presidential Declaration of a Major Disaster in California beginning on January 20, 2020 under Federal Emergency Management Agency (FEMA) Incident DR-4482-CA; the June 29, 2021 guidance issued by the Centers for Disease Control and Prevention titled Your Guide to Masks; the July 28, 2021 guidance issued by the Centers for Disease Control and Prevention titled Interim Public Health Recommendations for Fully Vaccinated People; CDPH / Cal-OSHA Interim guidance for Ventilation, Filtration, and Air Quality in Indoor Environments issued February 26, 2021; the State Public Health Order issued June 11, 2021; Governor Gavin Newsom's Executive Order N-07-21 of June 11, 2021; Governor Gavin Newsom's Executive Order N-08-21 of June 11, 2021; the State Public Health Order issued July 26, 2021; and the July 28, 2021 California Department of Public Health Guidance for the Use of Face Coverings.

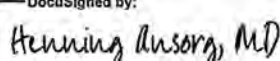
This Order is made in accordance with all applicable State and Federal laws, including but not limited to: Health and Safety Code sections 101040 and 120175; Health and Safety Code sections 101030 et seq., 120100 et seq.; and Title 17 of the California Code of Regulations section 2501.

If any provision of this Order or the application thereof to any person or circumstance is held to be invalid by a court of competent jurisdiction, the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

The violation of any provision of this Order constitutes a threat to public health. Pursuant to Government Code sections 26602 and 41601 and Health and Safety Code sections 101029 and 120295, the Health Officer requests that the Sheriff and all chiefs of police in the County ensure compliance with and enforce this Order. Per Health and Safety Code section 101029, "the sheriff of each county, or city and county, may enforce within the county, or the city and county, all orders of the local health officer issued for the purpose of preventing the spread of any contagious, infectious, or communicable disease. Every peace officer of every political subdivision of the county, or city and county, may enforce within the area subject to his or her jurisdiction all orders of the local health officer issued for the purpose of preventing the spread of any contagious, infectious, or communicable disease. This section is not a limitation on the authority of peace officers or public officers to enforce orders of the local health officer. When deciding whether to request this assistance in enforcement of its orders, the local health officer may consider whether it would be necessary to advise the enforcement agency of any measures that should be taken to prevent infection of the enforcement officers."

Copies of this Order shall promptly be: (1) made available at the County Public Health Department; (2) posted on the County Public Health Department's website (publichealthsb.org); and (3) provided to any member of the public requesting a copy of this Order.

IT IS SO ORDERED:

DocuSigned by:


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Henning Ansorg, M.D.
Health Officer
Santa Barbara County Public Health Department