AFFORDABLE HOUSING BERKELEY, INC

Office of the Executive Director

Item 4A
CONSENT CALENDAR
July 14, 2022

To: Honorable Chair and Members of the Affordable Housing Berkeley, Inc. Board

From: Rachel Gonzales-Levine, Acting Executive Director

Subject: Adoption of Resolution of the Board of Affordable Housing Berkeley, Inc. Making Findings Authorizing Continued Remote Teleconference Meetings of the Board Pursuant to Brown Act Provisions, as Amended by Assembly Bill No. 361

Background:
On March 17, 2020, Governor Newsom issued Executive Order N-29-20 which allowed for relaxed provisions of the Ralph M. Brown Act (Brown Act) that allowed legislative bodies to conduct meetings through teleconferencing without having to meet the strict compliance of the Brown Act. All provisions of Executive Order N-29-20 concerning the conduct of public meetings via teleconferencing expired on September 30, 2021.

Discussion:
Assembly Bill 361(Chapter 165,Statutes of 2021) (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 will sunset on January 1, 2024.

AB 361 requires the following to continue to conduct teleconferenced meetings:

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 remotely.
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." Affordable Housing Berkeley Inc. 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, even if this means stopping the meeting at that point and continuing all remaining items.

5. The Board 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 Board 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 Board must approve a resolution making findings by majority vote within 30 days of the first teleconferenced meeting under AB 361 and every 30 days thereafter 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.

In light of AB 361, the continuing COVID-19 State of Emergency declared by the Governor, the continuing Local Emergency declared by the City of Berkeley, the continuing recommendations by the Public Health Officer of the City of Berkeley regarding 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, staff recommends the Board adopt the proposed Resolution making the findings required to initially invoke AB 361.

The procedures currently set up for Board meetings, which provide public attendance and comment through a call-in or internet-based service option, satisfy the requirements of AB 361. The Executive Director, or designee, will work with the Board to ensure that meeting procedures for all teleconferenced meetings comply with AB 361. Continued reliance will require the Board to adopt a new resolution making required findings every 30 days.

Fiscal Impact: None.

Recommendations:
Adopt Resolution of the Board of Affordable Housing Berkeley, Inc. Making Findings Authorizing Continued Remote Teleconference Meetings of the Board Pursuant to Brown Act Provisions, as Amended by Assembly Bill No. 361

Attachments:

1. Resolution

AFFORDABLE HOUSING BERKELEY, INC.
RESOLUTION NO. 2022-__

A RESOLUTION OF THE BOARD OF AFFORDABLE HOUSING BERKELEY, INC. MAKING FINDINGS AUTHORIZING CONTINUED REMOTE TELECONFERENCE MEETINGS OF THE BOARD OF DIRECTORS PURSUANT TO BROWN ACT PROVISIONS,AS AMENDED BY ASSEMBLY BILL NO. 361

WHEREAS, Affordable Housing Berkeley, Inc. ("AHB") is committed to preserving and nurturing public access and participation in meetings of the Board of Directors; and

WHEREAS, all meetings of AHB's Board of Directors 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 AHB Board 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, 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 continue to exist within the City of Berkeley, specifically, on March 17, 2020 the Governor of the State of California proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS, as a result of the COVID-19 pandemic the California Department of Health and the Health Officer of the City of Berkeley continue to recommend measures to promote social distancing; and

WHEREAS, the Board does hereby find that the COVID-19 pandemic has caused, and will continue to cause, imminent risk to the health and safety of attendees meeting in person for a Board meeting, and the COVID-19 pandemic, including the new variants, and state of emergency continues to directly impact the ability of the members to meet safely in person; and

WHEREAS, as a consequence of the local emergency and state of emergency the Board of Directors does hereby find that the Board of AHB 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 the Board of Directors shall comply with

the requirements to provide the public with access to the meetings as prescribed in paragraph (2) of subdivision (e) of Government Code section 54953; and

WHEREAS, when holding teleconferenced meetings under abbreviated teleconferencing procedures permitted under the Brown Act, AHB will ensure access for the public by complying with all requirements set forth in Government Code section 54953(e), including, but not limited to, giving notice of the meeting and posting agendas, to allow members of the public to access the meeting and address the legislative body, giving notice of the means by which members of the public may access the meeting and offer public comment, including an opportunity for all persons to attend via a call-in option or an internet-based service option, and conducting the meeting in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF AFFORDABLE HOUSING BERKELEY, INC. 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. Reconsideration. The Board hereby reconsiders the circumstances of the state of emergency.

Section 3. State of Emergency Continues to Directly Impact Ability to Meet in Person. 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, and hereby finds that the state of emergency continues to directly impact the ability of the Board of Directors and members of the public to meet safely in person.

Section 4. Recommended Measures to Promote Social Distancing Still Exist. The Board hereby finds that state and local officials continue to recommend measures to promote social distancing. The Board further hereby ratifies the California Department of Health and the Health Officer of the City of Berkeley's recommended measures to promote social distancing and finds that, as a result of the state of emergency, meeting in person would present imminent risk to the health or safety of attendees.

Section 5. Remote Teleconference Meetings. AHB's Executive Director, and designee, and the Board of Directors are hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution including, continued teleconferencing and conducting open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.

Section 6. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption and shall be effective until the earlier of (i) 30 days from the adoption of this Resolution, or, (ii) 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 Board of Affordable Housing Berkeley, Inc. may continue to teleconference without compliance with Government Code section 54953(b)(3).

PASSED AND ADOPTED by the Board of Directors of the Affordable Housing Berkeley, Inc. this 14th day of July, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: _____
Rachel Gonzales-Levine, Secretary