



CITY OF *Los Angeles*  
DEFERRED COMPENSATION PLAN

## Board Report 21-51

Date: October 19, 2021

To: Board of Deferred Compensation Administration

From: Staff

Subject: Determination Regarding Teleconferencing Option for Board Meetings Pursuant to Assembly Bill 361

### Board of Deferred Compensation Administration

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### Recommendation:

That the Board: (a) adopt the attached Resolution and determine, pursuant to Section 54953(e)(1)(B)-(C) of the California Government Code, as amended by Assembly Bill (AB) 361, that due to the ongoing COVID-19 State of Emergency (COVID Emergency) proclaimed by the Governor on March 4, 2020, conducting Board meetings in person without continuing to provide a teleconference and/or videoconference option for the Board members and the public, would present imminent risks to the health or safety of attendees; and, (b) request that staff report back on November 16, 2021, and every thirty (30) days or fewer through the end of calendar year 2021, for the Board to reconsider the circumstances of the COVID Emergency (or any other applicable County of Los Angeles Department of Public Health (LA County DPH) order) and determine, as required by AB 361, whether the COVID Emergency (or any other applicable LA County DPH order) continues to directly impact the ability of the members to meet safely in person and/or state or local officials continue to impose or recommend measures to promote social distancing.

### Discussion:

#### A. Background

On March 4, 2020, Governor Gavin Newsom proclaimed a COVID Emergency due to the public health threat posed by COVID-19. Following this declaration, Governor Newsom issued various “Safer at Home” orders to mitigate the public health threat of COVID-19. Mayor Eric Garcetti separately issued a “Safer at Home” public order directing Los Angeles residents to stay home and limit all non-essential activities. Additionally, on March 21, 2020, the LA County DPH issued the “Safer at Home Order for Control of COVID-19” further restricting and limiting the gathering

of persons and requiring the closure of non-essential activities and businesses in an effort to slow the spread of COVID-19 in LA County.

With the Safer at Home type orders in place, Governor Newsom, in a series of Executive Orders,<sup>1</sup> suspended certain public meeting requirements under the Brown Act. For example, the Executive Orders permitted fully virtual/teleconference public meetings and waived certain requirements when conducting a virtual/teleconference meeting, including posting the location of remote meeting locations on the agenda, posting an agenda at each remote location, and requiring that the remote location be accessible to the public and compliant with the Americans with Disabilities Act.

Effective June 15, 2021, Governor Newsom terminated the Stay at Home Order, thereby ending restrictions related to physical distancing, capacity limits, and the County COVID-19 color coded tier system. LA County DPH subsequently updated its protocols to be consistent with the State. Mayor Garcetti updated the Safer LA order on July 17, 2021 in alignment with LA County and the State.

However, the COVID Emergency which gives Governor Newsom the power to issue COVID-19 related executive orders has not been terminated. Consistent with these changes, the Governor issued Executive Order N-08-21 which extended the Brown Act waivers to September 30, 2021.

On September 16, 2021, Governor Newsom signed AB 361, which allows a legislative body to continue to meet via teleconference, which has been the case since March 2020 (the advent of the pandemic), but with certain qualifications and conditions related to (a) the conduct of public comments and (b) what the body must do if technical issues arise during the course of the meeting.

At its August 17, 2021 meeting, staff provided a report to the Board regarding the status of resuming in-person meetings. This report provides clarifying and supplemental information on the Board's options in making a finding regarding social distancing pursuant to recently enacted State legislation.

## **B. AB 361 Provisions**

City Attorney counsel for the Board provided staff with guidance from the City Attorney's office with respect to the provisions of AB 361. Following are key findings regarding conditions applying to the conduct of meetings under AB 361:

- Application of AB 361 - AB 361 applies to legislative bodies covered under the Brown Act. This Board is such a legislative body.
- Timing Requirements of Certain Actions for Teleconferencing Under AB 361 – AB 361 requires that a legislative body make certain findings to continue teleconferencing, and

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<sup>1</sup> Executive Orders N-25-20, N-29-20, and N-35-20

further establishes that if those findings are made, actions be taken within a prescribed time-frame, as follows: a legislative body must (a) initially teleconference during the Governor's proclaimed state of emergency; (b) subsequently make certain findings no later than 30 days thereafter; and (c) make ongoing findings every 30 days after making its findings.

- Initial teleconference meeting under AB 361 - If the governing body's first teleconference meeting under AB 361 takes place when State or local officials have imposed or recommended measures to promote social distancing (as the LA County DPH and the California Department of Public Health currently recommend), then a legislative body is not required to (but may) have an item on its agenda concerning teleconferencing.
- 30-Day Requirement for Findings – To continue teleconferencing after the initial teleconference meeting under AB 361, the legislative body must make certain findings for itself and its own advisory committees within 30 days, and then every 30 days thereafter. The 30-day window is determined on a calendar day basis and must be strictly observed (even if that may require holding a special meeting in the event a subsequent meeting falls outside the 30-day window). If the legislative body fails to make the findings within any 30-day window, the body loses its ability to teleconference under AB 361's special teleconferencing rules.
- Requirements for Reaching Findings – The legislative body must make the following findings: that in consideration of the Governor's COVID Emergency or state/local official social distancing requirements remaining in effect, the legislative body finds that the state of emergency continues to directly impact the ability of the legislative body's members to meet safely in person and/or that State/local officials continue to recommend social distancing measures.
- Public Comments – AB 361 also makes certain procedural changes to the current public comment practice for teleconference meetings: (1) if a legislative body provides a timed public comment period (e.g. not to exceed ten minutes of public comment on a particular item), then the comment period must be open until the ten minutes has elapsed; (2) if the legislative body takes public comments on each agenda item but does not provide a specific amount of total time, then the body must allow for a "reasonable" amount of time per item (reasonable is not defined); and (3) if a legislative body provides a time-limited general comment period on all items, then the body must allow the public to comment until that period has elapsed. What's not enumerated are situations when the legislative body takes public comment for multiple items but does not provide a specific amount of time for doing so. Following the guidance for situations described in item 2 above, the legislative body must allow a "reasonable" amount of time for public comment.
- Broadcast Disruptions – AB 361 provides that if a teleconferenced meeting ceases to broadcast (via call-in or the web), then the legislative body must take no further action until the broadcast is restored. Although it is not clear what "no further action" was intended to mean, the most prudent course of action for the body is to recess until the broadcast is restored.

### C. Applicability of AB 361 Provisions to Board and Committee Meetings and Recommendation

The Board has both its regular meetings and intermittent meetings of its committees, two of which are active over the near term (the Investments Committee and the Plan Governance & Administrative Issues Committee). In light of these meetings and relative to the requirements of AB 361, staff has prepared the following considerations for the Board itself and its advisory committees:

- (1) Initial Meeting Under AB 361 – The first meeting of the Board under AB 361 is October 19, 2021. As of October 19, 2021, Governor Newsom’s state of emergency is in effect and the LA County DPH and the California Department of Public Health continue to recommend practicing social distancing measures.
- (2) Timing of Subsequent Board and Committee Meetings – The next scheduled meeting of the full Board following the October 19, 2021 meeting is November 16th (28 days following the prior meeting). Investments Committee meetings are scheduled for October 20th, October 28th, and December 1st. A Plan Governance & Administrative Issues Committee meeting will be scheduled during the month of November. Given this schedule, the October 19th meeting of the full Board is optimal for making findings permitted under AB 361 for itself and its advisory committees in order to continue to meet via teleconference.
- (3) Resolution for Reaching Findings - AB 361 provides legislative bodies with the option for continued teleconferencing if certain findings are reached. These findings can be reached by means of a resolution, which staff has drafted (**Attachment A**) and which can be adopted by the Board.
- (4) Public Comments – The Board does not presently limit the total time that either general or agendized-topic public comments may be made at Board meetings. As the meeting already provides a reasonable period time for public comments, should any exist, no modification to the Board’s current practices is required.
- (5) Broadcast Disruptions – The Board should suspend any meetings upon being advised of a technical issue which has interrupted the broadcast. Staff will promptly advise the Board of such issues as they arise in the course of meetings.

Given that the COVID Emergency continues, staff recommends that the Board adopt recommendations as detailed on page one of this report.

Submitted by:   
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Steven Montagna, Chief Personnel Analyst

**RESOLUTION TO CONTINUE HOLDING MEETINGS OF THE BOARD OF DEFERRED  
COMPENSATION ADMINISTRATION AND ITS COMMITTEES VIA TELECONFERENCE AND/OR  
VIDEOCONFERENCE, UNDER GOVERNMENT CODE SECTION 54953(E)(1)(B)-(C).**

WHEREAS, the Board of Deferred Compensation Administration (Board) is committed to preserving public access and participation in its regular meetings and the meetings of its Committees; and

WHEREAS, all Board and standing Committee meetings 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 and participate as the Board and Committee members conduct their business; and

WHEREAS, the Brown Act, at Section 54953(e), makes provisions for remote teleconferencing participation in meetings by members of a legislative body, subject to the existence of certain conditions; and

WHEREAS, the COVID-19 State of Emergency (COVID Emergency) proclaimed by the Governor on March 4, 2020 remains active; and

WHEREAS, COVID-19 remains a public health concern in the City of Los Angeles; and

WHEREAS, the Board has reconsidered the circumstances of the COVID Emergency and finds that such COVID Emergency continues to directly impact the ability of the members to meet safely in person and state local officials continue to impose or recommend measures to promote social distancing.

NOW THEREFORE, BE IT RESOLVED that pursuant to Government Code Section 54953(e)(1)(B)-(C), the Board finds the ongoing COVID Emergency proclaimed by the Governor on March 4, 2020 continues to impact the ability of the Board members to meet safely in person and/or state or local officials continue to impose or recommend measures promoting social distancing.