



CITY OF CARMEL-BY-THE-SEA CITY COUNCIL AGENDA

Mayor Dave Potter, Council Members Jeff Baron,
Karen Ferlito, Bobby Richards, and Carrie Theis
Contact: 831.620.2000 www.ci.carmel.ca.us

All meetings are held in the City Council Chambers
East Side of Monte Verde Street
Between Ocean and 7th Avenues

CITY COUNCIL SPECIAL MEETING Monday, October 3, 2022 4:00 PM

THIS MEETING IS VIA TELECONFERENCE ONLY

Governor Newsom's Executive Order N-29-20 has allowed local legislative bodies to hold public meetings via teleconference and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body. Also, see the Order by the Monterey County Public Health Officer issued March 17, 2020. The health and well-being of our community is the top priority for the City of Carmel-by-the-Sea.

To that end, this meeting will be held via teleconference and web-streamed on the City's website **ONLY**. Click the following link to attend via Zoom (or copy and paste link in your browser): <https://ci-carmel-ca-us.zoom.us/j/88131678486> Meeting ID: 881 3167 8486
Passcode: 994650 Dial in: (253) 215-8782

The public can also email comments to cityclerk@ci.carmel.ca.us. Comments must be received 2 hours before the meeting in order to be provided to the legislative body. Comments received after that time and up to the beginning of the meeting will be added to the agenda and made part of the record.

CALL TO ORDER AND ROLL CALL

OPEN SESSION

PUBLIC APPEARANCES

Members of the Public are invited to speak on any item that does not appear on the Agenda and that is within the subject matter jurisdiction of the City Council. The exception is a Closed Session agenda, where speakers may address the Council on those items before the Closed Session begins. Speakers are usually given three (3) minutes to speak on any item; the time limit is in the discretion of the Chair of the meeting and may be limited when appropriate. Applicants and appellants in land use matters are usually given more time to speak. If an individual wishes to submit written information, he or she may give it to the City Clerk. Speakers and any other members of the public will not approach the dais at any time without prior consent from the Chair of the meeting.

CONSENT AGENDA

Items on the consent agenda are routine in nature and do not require discussion or independent action. Members

of the Council, Board or Commission or the public may ask that any items be considered individually for purposes of Council, Board or Commission discussion and/ or for public comment. Unless that is done, one motion may be used to adopt all recommended actions.

1. Resolution 2022-087 of the City Council of the City Of Carmel-by-the-Sea Proclaiming the Continuing Need To Meet By Teleconference Pursuant To Government Code Section 54953 (e)

CLOSED SESSION

- A. CONFERENCE WITH LEGAL COUNSEL PURSUANT TO GOVERNMENT CODE SECTION 54956.9 (d)(1) --EXISTING LITIGATION
Name of case: GTE Mobilnet of California Limited Partnership, a California limited partnership d/b/a Verizon Wireless v. City of Carmel-by-the-Sea, et.al.
United States District Court (Northern District) Case No. 5:22-CV-00347-NC

ADJOURNMENT

This agenda was posted at City Hall, Monte Verde Street between Ocean Avenue and 7th Avenue, outside the Park Branch Library, NE corner of Mission Street and 6th Avenue, the Carmel-by-the-Sea Post Office, 5th Avenue between Dolores Street and San Carlos Street, and the City's webpage <http://www.ci.carmel.ca.us> in accordance with applicable legal requirements.

SUPPLEMENTAL MATERIAL RECEIVED AFTER THE POSTING OF THE AGENDA

Any supplemental writings or documents distributed to a majority of the City Council regarding any item on this agenda, received after the posting of the agenda will be available for public review at City Hall located on Monte Verde Street between Ocean and Seventh Avenues during regular business hours.

SPECIAL NOTICES TO PUBLIC

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at 831-620-2000 at least 48 hours prior to the meeting to ensure that reasonable arrangements can be made to provide accessibility to the meeting (28CFR 35.102-35.104 ADA Title II).



CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

**October 3, 2022
CONSENT AGENDA**

TO: Honorable Mayor and City Council Members

SUBMITTED BY: Brian Pierik, City Attorney

APPROVED BY: Chip Rerig, City Administrator

SUBJECT: Resolution 2022-087 of the City Council of the City Of Carmel-by-the-Sea Proclaiming the Continuing Need To Meet By Teleconference Pursuant To Government Code Section 54953 (e)

RECOMMENDATION:

Adopt Resolution 2022-087 of the City Council of the City of Carmel-by-the-Sea proclaiming the continuing need to meet by teleconference pursuant to Government Code Section 54953 (e).

BACKGROUND/SUMMARY:

All meetings of the City of Carmel-by-the-Sea legislative bodies are open and public as required by the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963).

Before COVID-19, Section 54953(b) of the Brown Act allowed for teleconferencing if the public agency complied with the following requirements:

1. At least a quorum of the members of the legislative body must participate from locations within the boundaries within the jurisdiction of the local agency.
2. An agenda shall be posted at all teleconference locations.
3. Each teleconference location shall be identified in the notice and agenda of the meeting.
4. Each teleconference location shall be accessible to the public.

AB 361 amended Government Code Section 54953 and authorizes a City to allow for modified teleconferencing rules, subject to the existence of certain requirements which are listed below in this Staff Report.

Government Code section 54953(e)(1) lists the circumstances under which a local agency may use such modified teleconferencing procedures, as follows:

(1) A local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision 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.

March 4, 2020, Governor Newsom declared a State of Emergency as a result of the COVID-19 pandemic.

The State of Emergency remains in effect and COVID-19 continues to threaten the health and lives of the public and the Delta variant is highly transmissible in indoor settings. In addition, breakthrough cases are becoming more common.

On September 22, 2021, the County of Monterey Health Department issued a Recommendation Regarding Social Distancing Including Remote Meetings of Legislative Bodies (see Attachment 1) which provides:

“The Monterey County Health Department continues to recommend that physical and social distancing strategies be practiced in Monterey County, which includes remote meetings of legislative bodies of local agencies, to the extent possible.

Monterey County continues to experience transmission of COVID-19 locally. Physical and social distancing is still an effective measure to reduce the spread of COVID-19, especially when combined with use of face coverings, frequent hand washing, staying home when ill, testing, and vaccination with U.S. Food and Drug Administration approved or authorized COVID-19 vaccines.

Remote meetings of legislative bodies allow for the virtual participation of agency staff, presenters, and community members in safer environments, with less risk of exposure to SARS-CoV-2, the virus that causes COVID-19.

The Monterey County Health Officer will continue to monitor local metrics and the necessity of this recommendation.”

Thus, meetings of the City Council and its legislative bodies may be held pursuant to the terms of Government Code Section 54953(e)(1)(A) so long as a proclaimed state of emergency continues and state or local officials continue to impose or recommend measures to promote social distancing.

If, for some reason, state or local officials discontinue imposing or recommending measures to promote social distancing, the proposed Resolution would also authorize teleconferencing under the rules of 54953(e) so long as a proclaimed state of emergency continues.

On October 4, 2021, the City Council adopted the initial Resolution No. 2021-057 authorized by AB 361 to allow for meetings of the City Council to be held telephonically.

Government Code Section 54953 (e) (3) provides that every 30 days after teleconferencing for the first time, and every 30 days thereafter, to continue teleconferencing the City Council must state that it has reconsidered the circumstances of the state of emergency and that either of the following circumstances exist: (1) The state of emergency continues to directly impact the ability of the members to meet safely in person or (2) State or local

officials continue to impose or recommend measures to promote social distancing. Currently, both of these circumstances continue to exist and, for that reason, the recommended action is for the City Council to adopt the attached Resolution of the City Council of the City of Carmel-by-the-Sea Proclaiming the Continuing Need To Meet By Teleconference Pursuant To Government Code Section 54953 (e), Attachment 2 to this Staff Report.

This Resolution will authorize the City Council, and other legislative bodies of the City, to hold teleconference meetings within the requirements of AB 361, but does not prohibit the City from holding in person meetings in the future.

If the Resolution is adopted, then the City and its legislative bodies which hold teleconference meetings must follow the procedures set forth by AB 361, which include the following:

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.
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." The agency 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.
5. The body 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 agency 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 legislative body must approve a resolution making findings every 30 days 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.

If the state of emergency ends or if the City Council decides to rescind the Resolution, then meetings of the City Council and other legislative bodies of the City must comply with the pre-COVID teleconferencing rules of 54953(b) described earlier in this Staff Report.

Without this Resolution, as noted, if a Council Member or a member of a City Board or Commission does not attend a meeting in person, then the agenda would need to be posted at the location of that person and the public would have access to that location. This Resolution (so long as Government Code Section 54953 allows) would provide flexibility to the Council, Board Members and Commissioners when meetings are held in person to attend remotely if they do not attend in person without the necessity of posting an agenda at their location and there would be no limit on the number (quorum must be physically present without this Resolution) of Council Members, Board Members and Commissioners who attend remotely. There are some public agencies in California which have adopted a Resolution authorized by AB 361 and use a "hybrid" method for attendance at meetings in which some members attend in person and other members attend remotely and the staff and public also can attend in person or remotely.

FISCAL IMPACT:

No direct fiscal impact for this action.

PRIOR CITY COUNCIL ACTION:

Adoption of Initial Resolution No.2021-057 on October 4, 2021 and continuing Resolutions at subsequent meetings of the City Council.

ATTACHMENTS:

Attachment 1) County of Monterey Health Department Recommendation Regarding Social Distancing Including Remote Meetings of Legislative Bodies issued September 22, 2021
Attachment 2) Resolution 2022-087



COUNTY OF MONTEREY HEALTH DEPARTMENT

Attachment 1

Elsa Mendoza Jimenez, Director of Health

Administration Animal Services Behavioral Health Clinic Services
Emergency Medical Services Environmental Health Public Administrator/Public Guardian Public Health

Recommendation Regarding Social Distancing Including Remote Meetings of Legislative Bodies

Issued: September 22, 2021

The Monterey County Health Department continues to recommend that physical and social distancing strategies be practiced in Monterey County, which includes remote meetings of legislative bodies of local agencies, to the extent possible.

Monterey County continues to experience transmission of COVID-19 locally. Physical and social distancing is still an effective measure to reduce the spread of COVID-19, especially when combined with use of face coverings, frequent hand washing, staying home when ill, testing, and vaccination with U.S. Food and Drug Administration approved or authorized COVID-19 vaccines.

Remote meetings of legislative bodies allow for the virtual participation of agency staff, presenters, and community members in safer environments, with less risk of exposure to SARS-CoV-2, the virus that causes COVID-19.

The Monterey County Health Officer will continue to monitor local metrics and the necessity of this recommendation.

**CITY OF CARMEL-BY-THE-SEA
CITY COUNCIL**

RESOLUTION NO. 2022-087

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL- BY-THE-SEA
PROCLAIMING THE CONTINUING NEED TO MEET BY TELECONFERENCE PURSUANT TO
GOVERNMENT CODE SECTION 54953 (e)**

WHEREAS, all meetings of the City of Carmel-by-the-Sea legislative bodies are open and public as required by the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963); 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, on March 4, 2020, Governor Newsom declared a State of Emergency as a result of the COVID-19 pandemic; and

WHEREAS, such State of Emergency remains in effect; and

WHEREAS, COVID-19 continues to threaten the health and lives of City of Carmel-by-the-Sea residents; and

WHEREAS, the Delta variant is highly transmissible in indoor settings; and

WHEREAS, breakthrough cases are becoming more common; and

WHEREAS, on October 4, 2021, the City Council adopted Resolution No. 2021-57 Proclaiming The Continuing Need To Meet By Teleconference Pursuant To Government Code Section 54953 (e).

NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Carmel-by-the-Sea that:

Section 1. Imminent Risk to Health and Safety. Due to COVID-19, holding City Council and other legislative body meetings in person will present imminent risk to the health and safety to attendees.

Section 2. Findings. The City Council has reconsidered the circumstances of the state of emergency and finds that: (1) The state of emergency continues to directly impact the ability of the members to meet safely in person and (2) The County of Monterey continues to recommend measures to promote social distancing.

Section 2. Compliance With Government Code Section 54953. The City Council and other legislative bodies will continue to meet by teleconference in accordance with Government Code section 54953(e).

Section 3. 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 date of adoption of this Resolution, or (ii) such time the City Council adopts a subsequent resolution rescinding this Resolution.

Section 4. Future Resolutions. The City Council expressly reserves the right to adopt Resolutions more than 30 days after this date of adoption of this Resolution to authorize the City Council and other legislative bodies to continue to meet by teleconference in accordance with Government Code section 54953(e) provided that a State of Emergency exists as of the date of adoption of such Resolutions.

PASSED AND ADOPTED by the City Council of the City of Carmel-by-the-Sea this 4th day of October, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Dave Potter
Mayor

Nova Romero, MMC
City Clerk