



Midpeninsula Regional
Open Space District

R-21-138
Meeting No. 21-29
October 13, 2021

AGENDA ITEM 7

AGENDA ITEM

Teleconferenced Board Meetings Pursuant to the Brown Act and Assembly Bill 361

GENERAL MANAGER'S RECOMMENDATION *den*

Adopt a resolution authorizing remote teleconferenced public meetings, pursuant to new Brown Act provisions enacted through AB 361.

SUMMARY

New legislation, Assembly Bill 361, amends the Brown Act to allow local agencies to continue to hold public meetings via teleconference under certain conditions, including under the ongoing state and/or local public health emergencies. The General Manager recommends that the Board of Directors (Board) adopt the attached resolution authorizing remote teleconferenced public meetings of the Midpeninsula Regional Open Space District (District) pursuant to the new law.

DISCUSSION

On March 4, 2020, Governor Gavin Newsom declared a state of emergency for the State of California. On March 16, 2020, the nine counties in the San Francisco Bay Area, including Santa Clara County and San Mateo County, issued an order ("Public Health Order") requiring residents to shelter in place starting on March 17, 2020 to slow the spread of the COVID-19 virus. Subsequently, numerous local and state orders were made in an effort to combat the spread of COVID-19, including but not limited to stay-at-home orders and social distancing orders. During the pandemic, the District declared its own local emergency, which was terminated in June 2021.

Although the Governor rescinded the stay-at-home order and several other executive orders in June 2021, the Proclamation of a State of Emergency in California remains in place.

The Governor's March 2020 Executive Order N-29-20 suspended a number of Brown Act requirements related to teleconferencing and allowed public agencies to hold public meetings remotely. That order expired on September 30, 2021. Without new legislation to replace this Executive Order, the default Brown Act law would apply, thus removing a level of flexibility that public agencies have relied on to conduct public meetings throughout the pandemic in a way that is protective of public health while maintaining transparency and promoting high public engagement. Although the Brown Act allows elected officials to participate in public meetings remotely, its requirements include stipulations that hinder social distancing safety precautions by

requiring both the posting of meeting notices at the teleconference meeting site and the acceptance of in-person public comment at the teleconference meeting site.

AB 361 was signed into law by Governor Newsom on September 16, 2021 and became effective immediately as urgency legislation. It amends the Brown Act to empower local public agencies to conduct meetings by teleconference, including video conference, without complying with traditional Brown Act teleconference regulations during a period of emergency. In order to continue holding virtual public meetings in the same way as the District has for the past 18 months, the General Manager recommends that the Board of Directors adopt a resolution acknowledging the reasons for foregoing in-person meetings at this time in order to protect the health and safety of attendees and District Board and staff, due to the characteristics of the COVID-19 pandemic.

The proposed Resolution (Attachment 1) makes certain findings that will allow the District to continue holding teleconferenced meetings as conducted in the last 18 months, provided that certain procedures are followed. The authorization for remote public meetings required under AB 361 is valid for 30 days, and the Board of Directors must reconsider the continuing need for virtual meetings every 30 days and decide whether it can make a finding that meeting in person would present imminent risks to the health and safety of attendees.

It is uncertain when the COVID-19 pandemic will be fully brought under control. As evidenced by the emergence of the Delta variant, the number of cases and the test positivity rate can change unpredictably. On August 2, 2021, due to the Delta variant spike in case numbers and hospitalizations, eight Bay Area Health Officers, including Santa Clara County, issued Health Orders mandating face coverings indoors in public places, regardless of vaccination status, beginning August 3, 2021. Further, on September 21, 2021, the Santa Clara County Health Officer issued a formal recommendation that governmental entities continue to hold remote public meetings due to the ongoing threat of COVID-19. Therefore, emergency conditions related to COVID-19 are ongoing and the Board has ample evidence to conclude that there is a need to continue teleconferencing for public meetings without posting the teleconferencing locations on the agenda and without requiring the teleconference locations to be publicly accessible.

With a gradual return to in-person work by District staff, the District has taken numerous steps to ensure the health and safety of Board members and staff. Specifically, the District has implemented administrative controls, such as vaccines, testing, partitions and masking indoors. However, the public has a right to participate in all public meetings under the Brown Act. The District cannot require members of the public who wish to attend meetings to submit proof of vaccination or negative test results. In order to balance the rights of the public in meeting attendance and participation with the need to ensure a safe workplace for District officials and staff, continuing with teleconferenced meetings is recommended. Adopting the proposed Resolution ensures that the public will still be able to join Board meetings via telephone or video conference in a safe manner.

Under AB 361, once the Board adopts a resolution to hold teleconferenced meetings, all of the following requirements apply under the Brown Act:

1. Notice and agenda posting requirements generally remain the same.
2. No physical location is required for public attendance or public comment at public meetings. However, the public must be able to access and participate in the meeting

through a call-in or an internet-based service, and instructions for how to participate must appear in the posted notices or agenda.

3. Teleconferenced meetings must protect the statutory and constitutional rights of the parties and the public.
4. If there is any disruption of the call-in or internet-based service, the agency must suspend the meeting until the problem is fixed.
5. Legislative bodies may allow public comments to be submitted prior to a meeting, but must also allow the public to participate in real time through call-in or internet-based service.
6. If an internet-based service requires registration through a third-party, individuals can be required to register with the third-party to participate in the meeting.
7. When providing a public comment period, whether after each item or during a general comment period, a legislative body must allow reasonable time for members of the public to comment, and must also include reasonable time for members to register with a third-party host, if applicable.

The District's current remote meeting operations meet these requirements, and staff is prepared to ensure compliance going forward.

FISCAL IMPACT

The cost of continuing teleconferenced meetings is approximately \$500 per month for the Zoom webinar subscription. There are sufficient funds in the FY22 budget for this expense.

BOARD COMMITTEE REVIEW

None.

PUBLIC NOTICE

Public notice was provided as required by the Brown Act.

CEQA COMPLIANCE

This item is not a project subject to the California Environmental Quality Act.

NEXT STEPS

The Board of Directors will reconsider the need for remote meetings every 30 days.

Attachments:

1. Resolution authorizing remote teleconferenced public meetings of the District, pursuant to new Brown Act provisions enacted through AB 361
2. Santa Clara County Health Officer Recommendation Regarding Continued Remote Public Meetings of Governmental Entities, dated September 21, 2021

Responsible Department Head:
Ana Ruiz, General Manager

Prepared by:
Hilary Stevenson, General Counsel

Staff contact:
Ana Ruiz, General Manager
Hilary Stevenson, General Counsel

RESOLUTION NO. 21-__**RESOLUTION OF THE BOARD OF DIRECTORS OF THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT RECOGNIZING THE PROCLAMATION OF A STATE OF EMERGENCY BY GOVERNOR NEWSOM ON MARCH 4, 2020 AND AUTHORIZING REMOTE TELECONFERENCED PUBLIC MEETINGS OF THE BOARD OF DIRECTORS AND BOARD COMMITTEES**

WHEREAS, the Midpeninsula Regional Open Space District (“District”) is committed to preserving and nurturing public access and participation in meetings of the Board of Directors; and

WHEREAS, all public meetings of the 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 conduct its business; and

WHEREAS, on March 4, 2020, Governor Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the State prepare for a broader spread of COVID-19; and

WHEREAS, on March 17, 2020, in response to the COVID-19 pandemic, Governor Newsom issued Executive Order N-29-20 suspending certain provisions of the Ralph M. Brown Act in order to allow local legislative bodies to conduct meetings telephonically or by other means; and

WHEREAS, as a result of Executive Order N-29-20, the District held remote teleconferenced remote meetings for all legislative bodies of the District via Zoom, and for purposes of Brown Act teleconferenced meetings the term “legislative body” includes the Board of Directors, all standing and ad hoc committees of the Board, and all advisory committees created or appointed by the Board, including the Bond Oversight Committee; and

WHEREAS, on June 11, 2021, Governor Newsom issued Executive Order N-08-21, which designated an end date of September 30, 2021, for agencies to hold remote teleconferenced meetings; and

WHEREAS, since the issuance of Executive Order N-08-21, the Delta variant has emerged, causing a spike in COVID-19 cases throughout the state; and

WHEREAS, on August 2, 2021, in response to the Delta variant of COVID-19, the Santa Clara County and San Mateo County Health Departments ordered a mask mandate for indoor public settings; and

WHEREAS, on September 16, 2021, Governor Newsom signed AB 361 (2021) which allows local legislative bodies and advisory bodies to continue to conduct meetings via teleconferencing under specified conditions, including that the Board of Directors make specified findings; and

WHEREAS, on September 21, 2021, the Santa Clara County Health Officer issued a Recommendation Regarding Continued Remote Public Meetings of Governmental Entities, basing the recommendation on: 1) the continued threat of COVID-19 to the community, 2) the unique characteristics of public governmental meetings (such as the increased mixing associated with bringing together people from across the community, the need to enable those who are immunocompromised or unvaccinated to be able to safely continue to fully participate in public governmental meetings, and the challenges with fully ascertaining and ensuring compliance with vaccination and other safety recommendations at such meetings), and 3) the continued increased safety protection that social distancing provides as one means by which to reduce the risk of COVID-19 transmission; and

WHEREAS, for the reasons set forth in the Santa Clara County Health Officer’s recommendation, the District is concerned about the health and safety of all individuals who attend open and public meetings of the District; and

WHEREAS, the Board of Directors does hereby find that the existence of the March 4, 2020 Proclamation of a State Emergency, and the aforesaid conditions, pose an imminent risk to health and safety of meeting attendees; and

WHEREAS, for the reasons set forth herein, the Board of Directors does hereby find that the legislative bodies of the 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.

NOW, THEREFORE, BE IT RESOLVED THAT THE BOARD OF DIRECTORS OF THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT AS FOLLOWS:

1. The Board of Directors hereby recognizes the Governor of the State of California’s March 4, 2020 Proclamation of a State of Emergency.
2. The Board of Directors authorizes and directs the General Manager and legislative bodies of the District, which shall include all standing and ad hoc committees of the Board of Directors, and all advisory bodies created or appointed by the Board of Directors, including the Bond Oversight Committee, 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.
3. This Resolution shall take effect immediately upon adoption and shall be effective until the earlier of thirty (30) days from the date of adoption of this Resolution, or such time as the Board of Directors votes, by majority vote in accordance with Government Code section 54953(e)(3), whether to extend the time during which the District may continue to teleconference without compliance with paragraph (3) of subdivision (b) of section 54953.
4. The General Manager is hereby authorized and directed to execute and deliver any documents and to do such acts as may be deemed necessary or appropriate to accomplish the intentions of this Resolution.

* * * * *

PASSED AND ADOPTED by the Board of Directors of the Midpeninsula Regional Open Space District on _____, 2021, at a regular meeting thereof, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

Larry Hassett, Secretary
Board of Directors

Curt Riffle, President
Board of Directors

APPROVED AS TO FORM:

Hilary Stevenson, General Counsel

I, the District Clerk of the Midpeninsula Regional Open Space District, hereby certify that the above is a true and correct copy of a resolution duly adopted by the Board of Directors of the Midpeninsula Regional Open Space District by the above vote at a meeting thereof duly held and called on the above day.

Jennifer Woodworth, District Clerk

County of Santa Clara

Public Health Department

Health Officer
976 Lenzen Avenue, 2nd Floor
San José, CA 95126
408.792.3798



Recommendation Regarding Continued Remote Public Meetings of Governmental Entities

Issued: September 21, 2021

In light of the continued state of emergency related to COVID-19, the County Public Health Officer continues to recommend that public bodies meet remotely to the extent possible, specifically including use of newly enacted AB 361 to maintain remote meetings under the Ralph M. Brown Act and similar laws.

Among other reasons, this recommendation is made due to the continued threat of COVID-19 to the community, the unique characteristics of public governmental meetings (such as the increased mixing associated with bringing together people from across the community, the need to enable those who are immunocompromised or unvaccinated to be able to safely continue to fully participate in public governmental meetings, and the challenges with fully ascertaining and ensuring compliance with vaccination and other safety recommendations at such meetings), and the continued increased safety protection that social distancing provides as one means by which to reduce the risk of COVID-19 transmission. This recommendation does not apply to those meetings of a quasi-judicial nature that have been already meeting in person prior to September 21, 2021, for example to allow for credibility determinations of witnesses.

The Health Officer will continue to evaluate this recommendation on an ongoing basis and will communicate when there is no longer such a recommendation with respect to meetings for public bodies.