



Midpeninsula Regional  
Open Space District

R-22-05  
Meeting No. 22-01  
January 12, 2022

### AGENDA ITEM 3

#### AGENDA ITEM

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

#### GENERAL MANAGER'S RECOMMENDATION *den*

Adopt a resolution affirming findings on the continued need for remote teleconferenced public meetings pursuant to AB 361.

#### SUMMARY

On October 13, 2021 the Board of Directors (Board) adopted Resolution 21-33, recognizing the continuing state of emergency in California, and authorizing remote teleconferenced public meetings of the Midpeninsula Regional Open Space District (District). This action was taken pursuant to new legislation modifying 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 ("AB 361"). The legislation requires the Board to reconsider the need for remote public meetings every 30 days.

#### DISCUSSION

On October 13, 2021 the Board of Directors (Board) adopted Resolution 21-33, recognizing the continuing state of emergency in California, and authorizing remote teleconferenced public meetings of the Midpeninsula Regional Open Space District (District). This action was taken pursuant to new legislation modifying 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 ("AB 361"). The legislation requires the Board to reconsider the need for remote public meetings every 30 days.

Pursuant to California Government Code section 54953(e), the General Manager recommends that the Board continue to forego 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 Resolution (Attachment 1) makes findings to allow the District to continue holding teleconferenced meetings in light of the continuing imminent risks to the health and safety of attendees.

It is uncertain when the COVID-19 pandemic will be fully brought under control. On September 21, 2021, the Santa Clara County Health Officer issued a formal recommendation that governmental entities continue to hold remote public meetings given the ongoing threat of

COVID-19. In addition, the region is currently experiencing a new surge of infections related to the Omicron variant. 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.

On November 10, 2021, Governor Newsom issued Executive Order N-21-21, extending the proclaimed state of emergency in California through March 31, 2022.

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 and 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 AND 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 affirming findings on the continued need for remote teleconferenced public meetings of the Board of Directors and Board Committees

**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. 22-xx****RESOLUTION OF THE BOARD OF DIRECTORS OF THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT AFFIRMING FINDINGS ON THE CONTINUED NEED FOR 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**, California Government Code section 54953(e) empowers local legislative bodies to conduct meetings via teleconferencing under specified conditions, including that the Board of Directors make specified findings every 30 days; and

**WHEREAS**, the Governor of the State of California’s March 4, 2020 Proclamation of a State of Emergency remains in effect as of the date of this Resolution; 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 conditions under which Board of Directors initially determined that there is a need to conduct meetings via teleconferencing as set forth in Resolution 21-33 are therefore still in existence.

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

1. The Board of Directors has reviewed the need for continuing teleconferenced meetings.
2. In compliance with California Government Code section 54953(e), the Board makes the following findings:
  - a. The state of emergency continues to impact the ability of the District’s legislative bodies, as well as staff and members of the public, to meet safely in person.
  - b. State or local officials continue to impose or recommend measures to promote social distancing.

- 3. The Board of Directors authorizes and directs the General Manager and legislative bodies of the District, including 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.
- 4. This Resolution is effective upon adoption.

\* \* \* \* \*

PASSED AND ADOPTED by the Board of Directors of the Midpeninsula Regional Open Space District on \_\_\_\_, 2022, at a regular meeting thereof, by the following vote:

**AYES:**  
**NOES:**  
**ABSTAIN:**  
**ABSENT:**

**ATTEST:**

**APPROVED:**

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Secretary  
Board of Directors

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President  
Board of Directors

**APPROVED AS TO FORM:**

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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.

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Jennifer Woodworth, District Clerk