



Midpeninsula Regional  
Open Space District

R-23-16  
Meeting 23-04  
February 8, 2023

### AGENDA ITEM 3

#### AGENDA ITEM

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

#### GENERAL MANAGER'S RECOMMENDATION

Adopt a resolution affirming findings to continue remote teleconferenced public meetings, including as part of hybrid (remote/in-person) 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. The recommended action would apply through the end of February, coinciding with the termination of the Governor's state of emergency. As of March 1, Brown Act provisions enacted as AB 2449 on January 1, 2023 provide for remote attendance under specific circumstances, as described in this report.

#### 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 District. This action was taken pursuant to AB 361, which empowers local public agencies to conduct meetings by teleconference, including video conference, without complying with traditional Brown Act regulations during a period of emergency. 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 providing the public, Board, and staff the option to attend public meetings remotely or via teleconferencing in the near term in order to protect the health and safety of attendees due to the characteristics of the COVID-19 pandemic. The attached Resolution (Attachment 1) makes findings allowing the District to hold teleconferenced meetings for the next 30 days.

Despite the removal of state requirements for social distancing, the California Department of Public Health (CDPH) still recommends that persons who are at a higher risk for severe illness from COVID-19 - such as those older than 65, those who have high blood pressure or heart disease, or those with weakened immune systems - continue to protect themselves and their loved ones by staying at least six feet apart from people outside their households (refer to the [CDPH website](#)). On May 13, 2022, the Santa Clara County Emergency Operations Center issued a press release regarding the importance of taking safety precautions, including masking indoors, as the region continues to experience COVID cases and hospitalizations.

In February 2022, Governor Newsom issued Executive Orders sunsetting certain emergency measures that were no longer necessary to address the COVID pandemic. Nevertheless, to date, the state of California continues to operate under a proclaimed emergency. Governor Newsom has indicated that the emergency will terminate on February 28, 2023.

Additionally, the Santa Clara County Public Health Department issued a [memo dated September 21, 2021](#) that remains in effect recommending that public bodies continue to meet remotely, if possible, 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.

Under AB 361, once the Board adopts a resolution to allow 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, to accommodate teleconferencing, 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 meeting operations meet these requirements.

Taking the recommended action and adopting the proposed resolution allows the District to teleconference its public meetings, when feasible, allowing members of the Board and public to attend the meetings remotely, without adhering to the regular teleconference rules, through the end of February. For hybrid meetings, members of the Board and public can choose to attend the meeting either remotely or in person.

### **New Remote Attendance Brown Act Provisions**

AB 2449, effective January 1, 2023, creates two additional provisions for remote meeting attendance in addition to the regular teleconference rules that were available prior to the COVID emergency.

Specifically, after the COVID state of emergency ends on February 28, 2023, Board or Committee members have the following three options when the need arises to attend a public meeting remotely, provided, however, that at least a quorum of Board members (4 Board members) participates in the meeting in person, from a single physical location identified on the agenda and within the District boundaries:

- 1) Rely on pre-COVID teleconference rules, in which the meeting agenda must list the off-site address where the Board member is located during the meeting and the Board member must allow public access to their remote location; or
- 2) Invoke the new “just cause” exception that allows Board members to attend a limited number of meetings remotely for one of the following reasons: (i) a childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely; (ii) a contagious illness that prevents a member from attending in person; (iii) a need related to a physical or mental disability as defined by statute; or (iv) travel while on official business of the legislative body or another state or local agency; or
- 3) Invoke the new “emergency circumstances” exception that allows Board members to attend a limited number of meetings remotely when experiencing a physical or family medical emergency, if the Board approves the request to do so.

### **FISCAL IMPACT**

The cost of teleconferenced meetings is approximately \$500 per month for the Zoom webinar subscription. There are sufficient funds in the FY23 budget for this expense.

### **PRIOR 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 resolution is effective for 30 days.

The State of California's COVID emergency is set to terminate on February 28, 2023. Board members who wish to attend a public meeting remotely after March 1, 2023 will need to work with the District Clerk to ensure that their meeting location is included in public notices as required by the Brown Act, or that attending remotely falls within the just cause or emergency circumstance provisions of the Brown Act.

**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. 23-\_\_****RESOLUTION OF THE BOARD OF DIRECTORS OF THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT AFFIRMING FINDINGS 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**, the emergence of new COVID-19 variants, compounded with high levels of influenza (flu) and respiratory syncytial virus (RSV), continue to be of public health concern. Holding in-person meetings with numerous people from different households in a shared indoor meeting space could particularly impact persons who are at higher risk of severe illness; and

**WHEREAS**, for the reasons set forth above, the District is concerned about the health and safety of vulnerable 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 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 health and safety of vulnerable members of the public, Board and staff 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 February 8, 2023, at a regular meeting thereof, by the following vote:

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

**ATTEST:**

**APPROVED:**

---

Craig Gleason, Secretary  
Board of Directors

---

Yoriko Kishimoto, President  
Board of Directors

**APPROVED AS TO FORM:**

---

Hilary Stevenson, General Counsel

I, the Acting 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.

---

Maria Soria, Acting District Clerk