



---

Date: February 9, 2023  
To: Board of Directors  
From: Ann Danforth, General Counsel  
Subject: Resolution for the Board to Continue Holding Remote Meetings

---

**Recommendation:**

Review, discuss, amend (as necessary) and adopt the attached Resolution.

**Rationale for Recommendation:**

On September 16, 2021, the State of California adopted Assembly Bill 361, which amends the Brown Act (also known as the California Open Meetings Law) with respect to conducting remote meetings by teleconferencing. Staff believes that the present circumstances meet the criteria for continuing teleconferencing meetings, as explained below. Adoption of the resolution will authorize the Board of Directors to continue that practice, if necessary, for its February 9, 2023 meeting.

**Background, Discussion and Analysis:**

AB 361, codified as Government Code Section 54953(e)(1), authorizes teleconferenced meetings during a proclaimed state of emergency under the circumstances and criteria discussed at the Board's special meeting on September 28, 2021.<sup>1</sup> At that meeting, the Board determined that the then-current circumstances met those requirements, adopting Resolution 2021-19.

Section 54953(e)(3) limits the duration of each such determination to 30 days. If the state of emergency remains active or state or local officials have imposed or recommended measures to promote social distancing, the Board must reconsider the circumstances of the state of emergency within 30 days and determine either that the state of emergency continues to directly impact the ability of the members to meeting safely in person or that state or local officials have imposed or recommended measures to promote social distancing. Accordingly, on October 14, 2021, the Board re-considered the circumstances of the state of emergency and adopted Resolution No. 2021-20, deciding to continue to hold meetings remotely. The Board came to a similar decision on November 11, 2021, December 9, 2021, January 13, 2022, February 10, 2022, March 10, 2022, April 14, 2022, May 12, 2022, June 30, 2022, July 14, 2022, August 11, 2022, August 25, 2022, September 8, 2022, October 13, 2022, November 10, 2022, December 8, 2022, and January 12, 2023, adopting

---

<sup>1</sup> As also discussed at that meeting, the Brown Act also allows teleconferencing under Section 54954(b), but the restrictions are significantly more burdensome.

Resolutions 2021-21, 2021-22, 2022-01, 2022-02, 2022-03, 2022-04 2022-08, 2022-10, 2022-17, 2022-20, 2022-21, 2022-22, 2022-26, 2022-27, 2022-29, 2022-28 and 2023-01, respectively.

To continue holding teleconferenced meetings during the Covid 19 threat without calling special meetings when the interval between regular meetings exceeds once a month, the Board must regularly reconsider its decision to meet remotely. The attached draft Resolution 2023-02 will authorize continued teleconferenced meetings in the event that one or more directors cannot attend in person.

Contra Costa County's Covid level is currently low, down from medium last month. <https://www.cdc.gov/coronavirus/2019-ncov/your-health/covid-by-county.html>. The level has varied from medium to high during the previous six months or so. As of the date of this report, the CDC continues to recommend moving group activities outdoors rather than holding them indoors and increasing distance from others. <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html#ventilation>; <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html#space>. The CDC also continues to recommend masks as critical public health tool. <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/masks.html>. See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>. The CDC has published a list of medical conditions are associated with the highest risk of serious Covid 19 illness. Merely being over 65 significantly increases the likelihood of severe disease. <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>.

Contra Costa County Health Services Department updated its Covid prevention website on June 27, 2022, recommending masks and social distancing and discouraging indoor gatherings between people of different households. The website notes that the danger of catching Covid is higher indoors when people are close to each other. <https://www.coronavirus.cchealth.org/prevention>.

The Bay Area generally enjoys a strong vaccination rate. However, as of February 6, 2023, only 54.2 % of Contra Costa County residents have received the recommended additional dose. <https://www.coronavirus.cchealth.org/data-summary> (the County website does not provide information about the percentage of residents that have received the most recent booster). In addition, the District cannot assume that all meeting attendees are vaccinated. We do know that many Board meeting attendees are over 65 and therefore considered more vulnerable to Covid.

The Board has held two hybrid meetings to date. The system seems to work fairly well, but there were some glitches. In the future, hybrid meetings may be the key to holding in-person meetings while still allowing vulnerable or ill people to participate. With that in mind, the District has adopted protocols to promote health safety. Given the factors cited in the previous paragraph, and the fact that Governor Newsom's 2020 declaration of a state of emergency remains in effect, the Board may decide that current conditions warrant continuing to meet remotely. I note that the attached resolution will enable the Board to hold either remote or hybrid meetings.

### **Future Meetings**

The Governor's State of Emergency is currently scheduled to end on February 28, 2023. AB 361 does not apply in the absence of a proclaimed state of emergency. The Brown Act contains other provisions allowing members of a legislative body to meet remotely but they are more limited.

Gov. Section 54954(b) authorizes teleconference meetings as follows:

- (1) All teleconference locations are identified in the notice and agenda;

- (2) An agenda is posted at each teleconference location;
- (3) The public is entitled to attend at each teleconference location;
- (4) All votes are taken by roll call; and
- (5) At least a quorum of the members participating are within the geographic jurisdiction of the public agency.

Gov. Section 54954(f), effective January 1, 2023, authorizes teleconference meetings under the following circumstances:

- (1) A quorum of the Board must participate in person at a single location within the boundaries of the District.
- (2) A director who wishes to participate remotely must have either **just cause** or **emergency circumstances**, both of which terms are further described in the statute.
- (3) A director attending remotely because of just cause must describe the circumstances requiring their remote attendance and may not use the “just cause” provision more than twice in a calendar year.
- (4) A director attending remotely because of an emergency must give a general description of the emergency circumstances, but the member is not required to disclose any medical diagnosis, disability, or personal medical information. The Board of Directors must take action to approve the request
- (5) The director must disclose at the meeting before any action is taken whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals.
- (6) The member must participate through both audio and visual technology (i.e. the member must be on-screen.
- (7) A member cannot attend meetings remotely for a period of more than three consecutive months or 20 percent of the regular meetings for the local agency within a calendar year, or more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year.

**Fiscal Impact:**

There is no fiscal impact from approving the Resolution.

**Exhibits**

- Resolution No. 2023-02 Making Findings to allow Remote Attendance