

AGENDA
REGULAR MEETING
BOARD OF DIRECTORS

EAST BAY REGIONAL PARK DISTRICT

Tuesday, November 15, 2022

D. BUSINESS BEFORE THE BOARD

2. EXECUTIVE AND LEGISLATIVE DIVISION

- a. Resolution Recognizing the March 4, 2020 Proclamation of a State of Emergency by Governor Newsom, and Authorizing Remote Teleconferencing Meetings of the Legislative Bodies of the East Bay Regional Park District for a Thirty (30) Day Period, Pursuant to the Brown Act, as Permitted by AB 361

(Rosenberg/Bourgault)

RECOMMENDATION

The General Manager recommends that the Board of Directors adopt a Resolution Recognizing the March 4, 2020 Proclamation of a State of Emergency and authorizing remote teleconferencing meeting provisions under AB 361 in order to facilitate hybrid in-person and/or teleconference legislative public meetings.

REVENUE/COST

There is no additional cost associated with this action.

BACKGROUND

The State of California declared a state of emergency on March 4, 2020 related to the impacts of COVID-19. Subsequently, numerous local and state orders ensued associated with combatting the spread of COVID-19, including but not limited to stay-at-home orders and social distancing orders. During the pandemic, the Park District also issued numerous local declarations of emergency. Although the Governor has since rescinded the stay-at-home order and several other executive orders related to COVID-19, the Proclamation of a State of Emergency remains in place.

On September 30, 2021, Executive Order N-29-20 expired, which had previously relaxed several Brown Act requirements related to teleconferencing and allowed public agencies to easily hold meetings remotely. Absent new legislation to replace Executive Order N-29-20, the default Brown Act regulations regarding teleconference would apply, thereby removing a level of flexibility that public agencies relied on to conduct meetings during the pandemic. Recognizing this, AB 361 was signed into law by Governor Newsom on September 16, 2021. AB 361 is modeled after Executive Order N-29-20 and became effective immediately, giving public agencies

the continued ability to conduct meetings by teleconference, including video conference, without following the traditional Brown Act teleconference regulations throughout the duration of the COVID-19 pandemic.

In order to continue holding virtual and/or hybrid meetings in a similar fashion as the Park District has since March 2020, the Board of Directors has adopted several resolutions pursuant to AB 361 acknowledging that there still exists a state of emergency and holding an entirely in person meeting would present certain risks to health and safety to attendees due to the characteristics of this pandemic. AB 361 provides that any resolution that is adopted to authorize remote or hybrid meetings is valid for thirty (30) days and needs to be reauthorized every thirty (30) days. The attached resolution would allow for hybrid and/or remote meetings to occur for thirty (30) days, from **November 15, 2022 to December 15, 2022**. If the Board wishes to continue to allow for remote and/or hybrid board and committee meetings, another resolution making findings and approving remote meetings would need to be adopted every thirty (30) days from the date of adoption of the attached resolution.

Making the necessary findings and adopting the attached resolution to authorize continued remote meetings also provides the opportunity for the public to join board meetings and committee meetings via telephone or video conference in a safe manner. The purpose of conducting meetings as contemplated is to provide the safest environment for staff and the public, while allowing for maximum public participation. Given the continued prevalence of the Omicron variant and sub-variants that are emerging in the Bay Area, allowing for continued remote and hybrid meetings would enable the public and staff to participate in meetings to the maximum extent possible without jeopardizing public health.

In addition to ensuring health and safety, local agencies found the flexibility that teleconferencing provides is valuable, especially for members of the public who had to travel long distances to attend meetings; had work commitments or familial commitments during the meetings; or who just found it convenient to listen to meetings at home instead of sitting through hours of meetings in person. Members of the public who previously were unable to attend meetings could call in and provide comments, bringing new voices into local agency meetings.

It is uncertain as to when the COVID-19 pandemic will be fully brought under control, as it is dependent on multiple factors. The development, manufacture, and distribution of multiple highly effective vaccines raises the prospect of a return to normal in the foreseeable future. However, the highly transmissible Omicron variant and subvariants demonstrates that there is a continuing need to hold remote meetings. Current trends in COVID-19 case rate, COVID-19 test positivity, and COVID-19 hospitalizations are once again increasing, with case rates remaining high with the Omicron subvariants of COVID-19 being the predominant variant identified, the impact of which on the spread of COVID-19 has shown to dramatically increase COVID-19 transmission. On March 1, 2022, the Contra Costa County Health Officer issued an order strongly recommending holding online meetings (i.e. teleconferencing meetings), as these meetings present the lowest risk of transmission of COVID-19. Additionally, recently the Bay Area Health Officers have encouraged the use of masks when in indoor settings.

The Park District has implemented administrative controls, such as partitions and masking indoors, as well as a District-wide vaccination requirement to ensure safety. However, in order to balance the public's right to participate in all Board meetings and committee meetings, the Park District's ability to require members of the public who wish to attend meetings to submit proof of vaccination or negative test results is limited. In order to balance the rights of the public in meeting attendance and participation with establishing a safe workplace, enabling the ability to hold continued teleconference meetings is recommended.

Once a legislative body votes to utilize the remote meeting provisions of AB 361, these requirements for meetings will apply:

1. Notices and agenda requirements remain the same under the Brown Act;
2. No physical location is required for public attendance or public comment. 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. Teleconference 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; and
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.

Staff has been complying with these requirements since the first AB 361 resolution adoption, and staff is positioned to continue to ensure compliance going forward.

The resolution authorizing remote meetings under AB 361 is valid for thirty (30) days, and the Board of Directors must reconsider the continuing need for virtual meetings every thirty (30) days. The legislative body must find each time that it has reconsidered the circumstances of the state of emergency, the state of emergency continues to directly impact the ability of the members to meet safely in person, or state and local officials continue to impose or recommend measures to promote social distancing.

ALTERNATIVES

No alternatives are recommended. If the Board elects not to adopt the attached resolution, all future Board meetings and Committee meetings would need to take place in person or be subject to the traditional Brown Act regulations regarding teleconferencing.

EAST BAY REGIONAL PARK DISTRICT

RESOLUTION NO.: 2022 – 11 -

November 15, 2022

RESOLUTION RECOGNIZING THE MARCH 4, 2020 PROCLAMATION OF A STATE OF EMERGENCY BY GOVERNOR NEWSOM, AND AUTHORIZING REMOTE TELECONFERENCING MEETINGS FOR THE LEGISLATIVE BODIES OF THE EAST BAY REGIONAL PARK DISTRICT FOR A THIRTY (30) DAY PERIOD, PURSUANT TO BROWN ACT PROVISIONS, AS MODIFIED BY AB 361

WHEREAS, the East Bay Regional Park District is committed to preserving and nurturing public access and participation in meetings of the Board of Directors and any related legislative bodies; and

WHEREAS, all meetings of the East Bay Regional Park 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 Park District's legislative bodies conduct their 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;

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, staff set up virtual meetings for all legislative bodies of the East Bay Regional Park District; and

WHEREAS, on June 11, 2021, Governor Newsom issued Executive Order N-08-21, which placed an end date of September 30, 2021, for agencies to meet remotely; and

WHEREAS, the Omicron variant and its subvariants have emerged as the dominant variant among COVID-19 positive cases; and

WHEREAS, the Centers for Disease Control and Prevention ("CDC") continues to recommend physical distancing of at least 6 feet from others outside of the household; and

WHEREAS, because of the rise in cases due to the Omicron variant and subvariants of COVID-19, the Park District is concerned about the health and safety of all individuals who intend to attend Board meetings and meetings of the Park District's other legislative bodies; and

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

WHEREAS, on September 29, 2021, the Park District Board of Directors adopted Resolution No. 2021-09-277; on November 2, 2021 adopted Resolution No. 2021-11-298; on December 7, 2021 adopted Resolution No. 2021-12-327; on January 11, 2022 adopted Resolution No. 2022-01-001; on February 1, 2022 adopted Resolution No. 2022-02-013; on March 1, 2022 adopted Resolution No. 2022-03-042; on April 5, 2022 adopted Resolution No. 2022-04-065; on May 3, 2022 adopted Resolution No. 2022-05-091; on June 7, 2022 adopted Resolution No. 2022-06-132; on July 5, 2022 adopted Resolution No. 2022-07-168; on August 23, 2022 adopted Resolution No. 2022-08-198; on September 20, 2022 adopted Resolution No. 2022-09-223; and on **October 18, 2022 adopted Resolution No. 2022-10-253** authorizing remote meetings for all legislative bodies of the East Bay Regional Park District; and

WHEREAS, AB 361 (2021) requires that the Governor declare a State of Emergency pursuant to Government Code section 8625; and

WHEREAS, AB 361 (2021) further requires that state or local officials have imposed or recommended measures to promote social distancing, or, requires that the legislative body determines that meeting in person would present imminent risks to the health and safety of attendees; and

WHEREAS, such conditions now exist in the Park District and Governor Newsom has declared a State of Emergency due to COVID-19; and

WHEREAS, on March 1, 2022, Contra Costa County Health Officer issued an order recommending the continuance of online public meetings or when meeting in person to practice social distancing if possible; and

WHEREAS, the Board of Directors recognizes that there is a need to continue remote and/or hybrid meetings for all legislative bodies of the East Bay Regional Park District; and

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

WHEREAS, as a consequence of the local emergency, the Board of Directors does hereby find that the legislative bodies of the East Bay Regional Park District 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; and

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the East Bay Regional Park District hereby finds that the Recitals set forth above, including but not limited to the findings describing how meeting in person would present imminent risks to health and safety, are true and correct and are incorporated into this Resolution by this reference; and

BE IT FURTHER RESOLVED, that the Board of Directors hereby recognizes the State of California's March 4, 2020 Proclamation of a State of Emergency; and

BE IT FURTHER RESOLVED, that the Board of Directors authorizes and directs the General Manager and legislative bodies of the East Bay Regional Park District 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; and

BE IT FURTHER RESOLVED, that this Resolution will apply to all legislative meetings of the East Bay Regional Park District, including but not limited to the Park Advisory Committee; and

BE IT FURTHER RESOLVED, that this Resolution shall take effect immediately upon its adoption and shall be effective until the earlier of thirty (30) days from the date of adoption of this Resolution, or such time the Board of Directors adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the legislative bodies of the East Bay Regional Park District may continue to teleconference without compliance with paragraph (3) of subdivision (b) of section 54953; and

BE IT FURTHER RESOLVED, that the General Manager is hereby authorized and directed, on behalf of the Park District and in its name, to execute and deliver such documents and to do such acts as may be deemed necessary or appropriate to accomplish the intentions of this Resolution.

MOVED by Director _____, seconded by Director _____, and adopted this 15th day of November, 2022 by the following vote:

FOR:

AGAINST:

ABSTAIN:

ABSENT: