

**STAFF REPORT FOR CALENDAR ITEM NO.: 8.2
FOR THE MEETING OF: December 8, 2022**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

In light of the resumption of in-person meetings, consider the continued use of teleconferencing technologies for COVID-related health reasons for meetings of the legislative bodies of the TJPA pursuant to the provisions of Assembly Bill 361.

EXPLANATION:

On March 4, 2020, Governor Newsom proclaimed a state of emergency in California in connection with the Coronavirus Disease 2019 (“COVID-19”) pandemic. On February 25, 2020, the Mayor declared a local emergency, and on March 6, 2020, the City’s Health Officer declared a local health emergency. The City’s Health Officer has issued orders and directives that recommend measures to promote physical distancing and other social distancing measures. San Francisco City Hall had been closed to TJPA Board meetings since shortly after the emergency began.

Resumption of In-Person Meetings

As of August 19, 2022, City Hall has re-opened to TJPA to hold in-person Board meetings. On October 17, 2022, the Governor announced that the state of emergency related to the COVID-19 pandemic will expire on February 28, 2023. As of November 10, 2022, the TJPA resumed in-person Board meetings at City Hall and members of the public are encouraged to attend in-person and provide public comment at the meetings. Additionally, in November 2022, the TJPA also resumed in-person meetings of the TJPA Citizens Advisory Committee (“CAC”), and any other standing committees of the TJPA, at the TJPA’s office.

Teleconference Under AB 361

On September 16, 2021, the Governor signed Assembly Bill (“AB”) 361, a bill that amends the Brown Act to allow local public agencies to continue to meet by teleconferencing during a state of emergency without complying with restrictions in the Brown Act that would otherwise apply.

AB 361 contains several requirements in order to continue the use of remote meetings. The key provisions include:

- There must be a state of emergency declared under the California Emergency Services Act. This effectively means the Governor must have declared the emergency.
- During that state of emergency, either (i) state or local officials must have imposed or recommended measures to promote social distancing; or (ii) the local legislative body must determine that meeting in-person would present an imminent risk to the health or safety of attendees.
- The local legislative body must reconsider the factors above at least every 30 days, and adopt specified findings that the facts relied upon still exist.

Under the Governor’s October 17 announcement, the state of emergency will expire on February 28, 2023. Thus, until the end of February 2023, local agencies may still rely on AB 361’s

provisions to meet via teleconference so long as they comply with the other requirements of the AB 361.

While the TJPA anticipates that Board members will attend Board meetings in-person, because of the COVID-19 pandemic, conducting meetings of this body and its committees in-person without allowing certain members of this body to participate by teleconference from a separate location for COVID-related health reasons would present imminent risks to the health or safety of certain attendees due to COVID-19, and the state of emergency continues to directly impact the ability of those members to meet safely in-person.

Accordingly, TJPA staff recommends the Board adopt the AB 361 resolution, anticipating that some Board members may appear remotely for COVID-related health reasons. TJPA staff recommends that if all members of the TJPA Board are unable to attend a meeting in-person for COVID-related health reasons, then the Board will hold the meeting remotely without providing an in-person meeting location. Under the proposed AB 361 resolution, and consistent with the approach of the San Francisco Board of Supervisors, the TJPA Board members would not be permitted to teleconference under AB 361 for reasons other than COVID-related health reasons.

By contrast, TJPA staff recommends that CAC members plan to meet in-person, but members continue to have the opportunity to participate in CAC meetings remotely for any reason so long as the requirements under AB 361 have been satisfied.

The resolution is drafted to make the action taken by the TJPA Board applicable to all of the TJPA's legislative bodies as defined by the Brown Act, which includes the TJPA CAC. If the TJPA Board adopts the recommended resolution, the CAC will not be required to make its own findings.

The TJPA Board last considered and adopted a resolution under AB 361 on November 10, 2022. AB 361 requires the Board to regularly reconsider the findings in the proposed resolution. Staff plan to include an item on the consent calendar of each Board meeting to allow the Board to consider and adopt (and/or update) the findings in the resolution for as long as the Governor's proclaimed state of emergency related to the COVID-19 pandemic remains in effect and state and local officials continue to recommend or require measures to promote social distancing.

RECOMMENDATION:

Adopt the enclosed resolution, making certain findings required under AB 361 and approving the continued use of teleconferencing technologies for COVID-related health reasons for TJPA Board members and for any reason for members of the CAC and any other legislative bodies of the TJPA.

ENCLOSURES:

1. Resolution

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The Transbay Joint Powers Authority (“TJPA”) is a joint powers agency organized and existing under the laws of the State of California to design, build, and operate the Transbay Transit Center Program; and

WHEREAS, California Government Code Section 54953(e) empowers local public agencies to convene by teleconferencing technology during a proclaimed state of emergency under the State Emergency Services Act so long as certain conditions are met; and

WHEREAS, On March 4, 2020, the Governor of the State of California proclaimed a state of emergency under the State Emergency Services Act in connection with the Coronavirus Disease 2019 (“COVID-19”) pandemic, and that state of emergency remains in effect; and

WHEREAS, On February 25, 2020, the Mayor (“Mayor”) of the City and County of San Francisco (the “City”) declared a local emergency (as subsequently amended and supplemented), and on March 6, 2020, the City’s Health Officer declared a local health emergency, and both those declarations remain in effect; and

WHEREAS, The City’s Health Officer has issued at least one order (Health Office Order No. C-19-07y) (updated) that recommends measures to encourage vaccination, masking, personnel health screening, signage, and ventilation, and that order remains in effect; and

WHEREAS, The California Department of Industrial Relocations Division of Occupational Safety and Health (“Cal/OSHA”) has promulgated Section 3205 of Title 8 of the California Code of Regulations, which requires most employers in California, including the TJPA, to train and instruct employees about measures that can decrease the spread of COVID-19, including physical distancing and other social distancing measures, and those regulations remain in effect; and

WHEREAS, On September 16, 2021, the Governor signed Assembly Bill (“AB”) 361 (Rivas, Chapter 165, Statutes of 2021), a bill that amends the Brown Act to allow local public agencies to continue to meet by teleconferencing technology during a state of emergency without complying with restrictions in the Brown Act that would otherwise apply, subject to certain conditions, which must be reconsidered every 30 days; and

WHEREAS, The TJPA Board last considered and adopted a resolution under AB 361 on November 10, 2022, as AB 361 requires the Board to regularly reconsider the findings in the proposed resolution; and

WHEREAS, Staff plans to include an item on the consent calendar of each Board meeting to allow the Board to consider and adopt (and/or update) the findings in the resolution for as long as the Governor’s proclaimed state of emergency related to the COVID-19 pandemic remains in effect and state and local officials continue to recommend or require measures to promote social distancing, and

WHEREAS, On November 10, 2022, the TJPA Board resumed in-person Board meetings in City Hall, while allowing members to participate by teleconference from a separate location for COVID-related health reasons, and providing members of the public an opportunity to observe and provide public comment either in-person or remotely; and

WHEREAS, The CAC and other standing committees of the TJPA also resumed in-person meetings in November 2022 at the TJPA's office, while allowing members to participate by teleconference from a separate location for any reason, and providing members of the public an opportunity to observe and provide public comment either in-person or remotely; now, therefore, be it

RESOLVED, The TJPA Board of Directors finds as follows:

1. As described above, as of the date of this meeting, the Governor's proclaimed state of emergency remains in effect; and

2. As described above, because of the COVID-19 pandemic, conducting meetings of this body and its committees in-person without allowing certain members of this body to attend remotely due to COVID-related health reasons would present imminent risks to the health or safety of certain attendees due to COVID-19, and the state of emergency continues to directly impact the ability of those members to meet safely in-person; and, be it

FURTHER RESOLVED, For the reasons described above, the TJPA Board of Directors finds that for at least the next 30 days members of the TJPA Board may participate in TJPA Board meetings by teleconferencing technology due to COVID-related health reasons, and members of the TJPA Citizens Advisory Committee ("CAC") and any other standing bodies of the TJPA may participate in committee meetings by teleconferencing technology for any reason; and, be it

FURTHER RESOLVED, That meetings of the TJPA's legislative bodies will provide an opportunity for members of the public to address the body and will otherwise occur in a manner that protects the statutory and constitutional rights of parties and members of the public to attend such meetings; and, be it

FURTHER RESOLVED, That the TJPA Board of Directors will review and reconsider the findings made herein at a meeting of the Board within the next 30 days, or if the Board does not meet within the next 30 days, at the next earliest meeting of the Board; and, be it

FURTHER RESOLVED, That the TJPA Board of Directors' findings contained herein are made on behalf of and shall apply to all legislative bodies of the TJPA.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of December 8, 2022.

Secretary, Transbay Joint Powers Authority