



Kensington Police Protection & Community Services District

Item #1

Date: October 14, 2021
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:

The State has 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. Adoption of the resolution will authorize the Board of Directors to continue that practice.

Background, Discussion and Analysis:

AB 361 authorizes teleconferenced meetings during a proclaimed state of emergency under the circumstances and criteria discussed at the Board's special meeting on September 28, 2021.¹ At that meeting, the Board determined that the then-current circumstances met those requirements, codified as Government Code Section 54953(e)(1), adopting Resolution 2021-19.

Section 54953(e)(3) limits the duration of the Board's September 28th action 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.

The Board adopted Resolution 2021-19 less than 30 days ago. However, the Board typically meets only once a month. 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 will have to regularly renew the findings of Resolution 2021-19. The attached draft Resolution 2021-20 will authorize continued teleconferenced meetings; it also contains the findings required for meetings held more than 30 days since the prior authorization and thus can be used as a template for such meetings.

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

The current circumstances differ little from those prevailing on September 28th. Governor Newsom's 2020 declaration of a state of emergency remains in effect. The Center for Disease Control has recommended booster shots for groups considered more vulnerable to Covid, or more likely to be exposed, evincing the on-going danger of the virus. Even vaccinated persons are vulnerable to Covid's Delta variant and can spread the infection to others, although they tend to be less likely to become ill and are infectious for a shorter period of time (<https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html>). Moreover, as of the writing of this report, the Center for Disease Control continues to recommend social distancing for unvaccinated persons and masks in some circumstances (see <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> as does Contra Costa County (see, e.g., <https://www.coronavirus.cchealth.org/prevention>, <https://www.coronavirus.cchealth.org/safer-social-interactions>).

The Bay Area generally enjoys a strong vaccination rate. However, 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.

Fiscal Impact:

There is no fiscal impact from approving the Resolution.

Exhibits

- Resolution Making Findings and Electing to Continue to Meet Remotely
- Staff Report for September 28, 2021, Meeting

RESOLUTION NO. 2021-20

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
KENSINGTON POLICE PROTECTION AND COMMUNITY
SERVICES DISTRICT MAKING FINDINGS AND DETERMINING A
NEED TO CONTINUE HOLDING REMOTE MEETINGS BY
TELECONFERENCE**

WHEREAS, the Board of Directors of the Kensington Police Protection and Community Services District (“District”) is committed to preserving public access and participation in Board of Directors’ meetings; and

WHEREAS, all meetings of the District’s Board 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 Board conduct its business; and

WHEREAS, Government Code section 54953(e)(1) of the Brown Act, allows a legislative body to hold a teleconference meeting, without compliance with the requirements of Government Code section 54953(b)(3), under any of the following conditions:

- A. State or local officials have imposed or recommended measures to promote social distancing.
- B. The meeting is for the purpose of determining, by majority vote, whether because of the emergency, meeting in person would present imminent risks to the health or safety of attendees
- C. The legislative body has determined, by majority vote, that, because of the emergency, meeting in person would present imminent risks to the health or safety of attendees;

and

WHEREAS, to meet by teleconference under Government Code section 54953(e), the Governor must have proclaimed a state of emergency under the California Emergency Services Act (Govt. Code § 8625 *et. seq.*); the legislative body must reconsider the circumstances of the state of emergency every thirty days; and the legislative body must find that the state of emergency continues to directly impact the ability of the members to meet safely in person and/or state or local officials continue to impose or recommend measures to promote social distancing; and

WHEREAS, if the legislative body does not make the above findings every thirty days, it must again determine whether the conditions specified in Government Code section 54953(e)(1) still pertain before holding further teleconferenced meetings under that subsection; and

WHEREAS, on September 28, 2021, the Board held a special meeting in which it found that then-current circumstances met the criteria of Government Code Section 54953(e)(1)(A) and (C); and

WHEREAS, on October 14, 2021, the Board reviewed the evidence in the records and determined the following by majority vote:

- A. The state of emergency proclaimed by Governor Newsom on March 4, 2020, continues to exist;
- B. State or local officials continue to impose or recommend measures to promote social distancing.

- C. Because of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
- D. The state of emergency continues to directly impact the ability of the members to meet safely in person

WHEREAS, many persons who regularly attend Board meetings are over the age of 65 and therefore considered particularly vulnerable to COVID-19; and

WHEREAS, the District provides in the public notices and agendas for all public meetings the online and telephone options for participation in public meetings, protecting the right of the public to address their local officials and to participate in public meetings, and posts this information on the District’s website, including instructions on how to access the public meeting remotely.

NOW, THEREFORE BE IT RESOLVED, that the Board of Directors has reconsidered the circumstances of the state of emergency; and be it

FURTHER RESOLVED, that the Board finds that State or local officials continue to impose or recommend measures to promote social distancing and that State of Emergency declared by Governor Newsom on March 4, 2020, continues to directly impact the ability of Board members, staff, and the public to meet safely in person; and, be it

FURTHER RESOLVED, that the Board finds that because of the aforesaid declared State of Emergency, meeting in person would present an imminent risk to the health or safety of meeting attendees; and be it

FURTHER RESOLVED, that the Board authorizes and directs the General Manager to place on the Board’s agenda, at least once monthly, reconsideration of the State of Emergency to determine whether circumstances warrant continuing to meet by teleconference under Government Code section 54953(e)(3); and be it

FURTHER RESOLVED, that the Board authorizes and directs the General Manager 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.

PASSED AND ADOPTED by the Board of Directors of the Kensington Police Protection and Community Services District upon motion by President Sylvia Hacaj, seconded by Vice-President Eileen Nottoli, on Thursday, the 14th day of October, 2021, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAINED:

Sylvia Hacaj
President, Board of Directors

HEREBY CERTIFY the foregoing resolution was duly and regularly adopted by the Board of Directors of the Kensington Police Protection and Community Services District at the special meeting of said Board held on Thursday, the 14th day of October, 2021.

Lynelle M. Lewis
District Clerk of the Board

Richard J. Benson
Interim General Manger



Date: September 28, 2021
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:

The State has 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. Adoption of the resolution will authorize the Board of Directors to continue that practice.

Background, Discussion and Analysis:

Under normal circumstances, the Brown Act allows the legislative bodies of public agencies to meet via teleconferencing only as permitted by Government Code Section 54953(b). That statute imposes the following requirements:

- The agency must post the meeting agenda at each teleconference location
- The agenda must list each teleconference location
- Each teleconference location must be accessible to the public
- The agenda must provide an opportunity for public comment at each teleconference location
- At least a quorum of the legislative body must meet within the jurisdiction of the agency

On March 4, 2020, Governor Newsom declared a state of emergency because of the growing threat of the Covid-19 pandemic. A series of executive orders followed, imposing safety measures to protect public health. On March 12, 2020, the Governor published EO N 25 20. Section 11 of this Executive Order authorized the use of teleconferencing without meeting the requirements of Section 54953(b) provided that the public agency met specified notice and accessibility standards. On March 17, 2020, the Governor issued EO N 29 20, Section 3 of which superseded Section 11 of EO N 25 20. Section 3's teleconference provisions were similar to those of the prior Executive Order. The District Board of Directors have met remotely since March 26, 2020.

The Governor lifted many Covid-related restrictions on June 15, 2021, by EO N 8 21. However, that Executive Order continues the earlier teleconference provisions until September 30, 2021. On September 26, the Governor signed AB 361, which adds a new Section 54953(e) to the Brown Act. This provision allows teleconferenced meetings during a proclaimed state of emergency under any of the following conditions:

- State or local officials have imposed or recommended measures to promote social distancing.
- The meeting is for the purpose of determining, by majority vote, whether because of the emergency, meeting in person would present imminent risks to the health or safety of attendees
- The legislative body has determined, by majority vote, that, because of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

If the Board decides that remote meetings are warranted under these criteria, Section 54953(e)(2) requires that the District continue posting agenda and noticing the public's options to attend and comment during teleconferenced meeting, as the District has done since the beginning of the pandemic period.

Governor Newsom's 2020 declaration of a state of emergency remains in effect. The Center for Disease Control has recommended booster shots for groups considered more vulnerable to Covid, or more likely to be exposed, evincing the on-going danger of the virus. Even vaccinated persons are vulnerable to Covid's Delta variant and can spread the infection to others, although they tend to be less likely to become ill and are infectious for a shorter period of time (<https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html>). Moreover, as of the writing of this report, the Center for Disease control continues to recommend social distancing for unvaccinated persons (see <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/participate-in-activities.html>) as does Contra Costa County (see, e.g., <https://www.coronavirus.cchealth.org/prevention>, <https://www.coronavirus.cchealth.org/safer-social-interactions>).

The Bay Area generally enjoys a strong vaccination rate. However, 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.

If the Board decides to continue meeting remotely, Section 54953(e) adds the following new requirements:

1. 54953(e)(2)(C) provides that public agencies must protect the statutory and constitutional rights of the parties and the public appearing before the legislative body of a local agency.
2. 54953(e)(2)(D) provides that if a disruption prevents the public agency from broadcasting the meeting, or prevent the public from offering public comments, the agency will take no further action on items on the agenda until access is restored.
3. Every 30 days, the agency's legislative body must reconsider the state of emergency and decide whether:
 - a. The state of emergency continues to affect the ability of members to meet in person; or
 - b. State or local officials continue to impose or recommend measures to promote social distancing

AB 361, and the above amendments to the Brown Act, expire on January 1, 2024.

Fiscal Impact:

There is no fiscal impact from approving the Resolution.

Exhibits

1. Resolution No. 2021-19 – Making Findings and Determining A Need to Continue Holding Remote Meetings by Teleconference