

STAFF REPORT FOR CALENDAR ITEM NO.: 8.2
FOR THE MEETING OF: December 9, 2021

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Consider continued use of teleconferencing technologies 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. Pursuant to emergency order of the Mayor, City Hall remains closed for TJPA Board of Directors meetings to ensure the safety of the legislative body, staff, and public that would otherwise attend the meetings in person.

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.

The San Francisco City Attorney’s Office released a recommended form of resolution for City policy bodies to rely on to satisfy AB 361. The enclosed resolution relies on that template, with certain modifications to make it appropriate to the TJPA.

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 Citizens Advisory Committee (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 18. 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 and directing the continued use of teleconferencing technologies for meetings of the 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, 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) and one directive (Health Officer Directive No. 2020-33i) that recommend measures to promote physical distancing and other social distancing measures, and those orders and directives remain 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 July 31, 2020, the Mayor issued an emergency order that, with limited exceptions, prohibits policy bodies from meeting in person under any circumstances, so as to ensure the safety of policy body members, staff, and the public. The TJPA Board of Directors historically has held its meetings at San Francisco City Hall. Pursuant to the Mayor’s order, the TJPA Board currently is not permitted to hold its meetings at City Hall; 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 of Directors and its legislative bodies have met remotely during the COVID-19 pandemic and, so long as the state of emergency continues, can continue to do so in a manner that allows public participation and transparency while minimizing health risks to members, staff, and the public that would be present with in-person meetings; now, therefore, be it

RESOLVED, On behalf of all legislative bodies of the TJPA, 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, as of the date of this meeting, State and City officials recommend measures to promote physical distancing and other social distancing measures; and, be it

FURTHER RESOLVED, For the reasons described above, the TJPA Board of Directors finds that for at least the next 30 days it is necessary for all legislative bodies of the TJPA to continue meeting exclusively by teleconferencing technology to promote public health and safety; and, be it

FURTHER RESOLVED, That all meetings of legislative bodies of the TJPA held exclusively by teleconferencing technology 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 via teleconferencing; 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 9, 2021.

Interim Secretary, Transbay Joint Powers Authority