

**STAFF REPORT FOR CALENDAR ITEM NO.: 8.2
FOR THE MEETING OF: November 10, 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, and elect not to rely on teleconferencing provisions under Assembly Bill 2449.

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 the date of this meeting, the TJPA is planning for Board meetings to be held in-person and members of the public are encouraged to attend in person and provide public comment at the meeting. The TJPA is also planning for meetings of the TJPA Citizens Advisory Committee (“CAC”), and any other standing committees of the TJPA, to be held in-person at the TJPA’s offices.

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 agency's 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 September 8, 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.

Election Not to Rely on Teleconferencing Under AB 2449

On September 13, 2022, the Governor signed AB 2449, a bill that amends and supplements the Brown Act to provide two additional short-term and limited options for members of a legislative body to participate in meetings of a legislative body via teleconference. The first option would allow a member to appear via teleconference for qualifying "just cause." The second option would allow a member to appear via teleconference for a qualifying "personal emergency." The options are scheduled to sunset in 2025.

After careful consideration, TJPA staff recommend that the Board elect not to rely on teleconferencing under AB 2449. Some of the concerns that support staff's recommendation are:

- At least a quorum of the body must be present in person at a single location open to the public. If more than a quorum of the members desire to rely on these options, the law does not provide guidance on how to resolve the competing requests.
- There are limits on the number of times a legislative body member may rely on the clauses. This limitation presumably would present some additional burden on agency staff to track.
- Under the “personal emergency” option, the agency’s legislative body must formally approve a colleague’s claim of personal emergency. The law explains that a personal emergency must be medical in nature, but does not provide guidance on how the legislative body should assess the adequacy of the claim of emergency. Providing adequate evidence of personal emergency may be perceived as an invasion of privacy. Considering the claim presumably would present some additional burden to the work of the legislative body.
- The claim of just cause or personal emergency must be made “at the earliest opportunity possible” and “as soon as possible”, respectively. Nonetheless, the law acknowledges that the claim could be made at the start of a legislative body’s meeting. Accordingly, the legislative body and supporting agency staff may need to consider and accommodate claims with little advanced notice, which may be distracting to the regular business of the agency.

Although staff recommend against the Board relying on AB 2449, TJPA Board members would still be permitted to participate in TJPA Board meetings via teleconference either (1) under AB 361, as discussed above, or (2) following the provisions in the Brown Act that pre-date COVID-19 and permit teleconferencing if the Board member posts notice of the meeting at their remote meeting location and allows members of the public to attend the meeting at that remote location and follows certain other requirements under the Brown Act.

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, and electing not to rely on teleconferencing under AB 2449.

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, As of the date of this meeting, the TJPA is planning for Board meetings to be held in-person and members of the public are encouraged to attend in person and provide public comment at the meeting. The TJPA is also planning for meetings of the TJPA Citizens Advisory Committee (“CAC”), and any other standing committees of the TJPA, to be held in-person at the TJPA’s offices; 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 will begin holding its meetings in person, 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 any other standing committees of the TJPA will also begin holding their meetings in person, 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; and

WHEREAS, Notwithstanding Assembly Bill 2449 and its additional bases to permit teleconferencing under the Brown Act, TJPA staff recommends that for transparency and efficiency, and because of limited administrative resources, the Board elect not to rely on the teleconferencing provisions under the bill for any legislative bodies of the TJPA; 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

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; and, be it

FURTHER RESOLVED, Notwithstanding Assembly Bill 2449 and its additional bases to permit teleconferencing under the Brown Act, for transparency and efficiency, and because of limited administrative resources, the Board has elected not to rely on the teleconferencing provisions under the bill for any meetings of the 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 November 10, 2022.

Secretary, Transbay Joint Powers Authority