




## MEMORANDUM

April 8, 2022

**TO:** MEMBERS, PORT COMMISSION  
Hon. Willie Adams, President  
Hon. Doreen Woo Ho, Vice President  
Hon. Kimberly Brandon  
Hon. John Burton  
Hon. Gail Gilman

**FROM:** Elaine Forbes  
Executive Director 

**SUBJECT:** Request approval of a resolution adopting findings under new State urgency legislation to allow certain members of this body to attend meetings remotely during the COVID-19 emergency; continuing to allow certain members to attend remotely for the next 30 days; and directing the Commission Affairs Manager to agendize a similar resolution at a Commission meeting within 30 days.

**DIRECTOR'S RECOMMENDATION:** Approve the Attached Resolution No. 22-16

### EXECUTIVE SUMMARY

In March 2020, the Governor of California proclaimed a state of emergency in connection with the Coronavirus Disease 2019 pandemic (COVID-19 emergency), which remains in effect. In early 2020, the Governor issued an order suspending the teleconferencing provisions of the Brown Act, enabling local boards and commissions to hold remote meetings without complying with certain rules. In early 2020, Mayor Breed also issued orders suspending the local Charter prohibition on remote meetings and prohibiting boards and commissions, other than the Board of Supervisors, from meeting in person. On February 10, 2022, the Mayor issued an emergency order that requires decision-making boards and commissions established in the Charter to hold meetings in person at a physical location but allows members of those boards and commissions to participate remotely in the in-person meetings for COVID-related health reasons.

**THIS PRINT COVERS CALENDAR ITEM NO. 7A**

The Governor's order on remote meetings expired on September 30, 2021, but the Governor recently signed AB 361, which is currently effective. AB 361 allows boards and commissions, including the Port Commission, to hold remote meetings under certain conditions including making certain findings and renewing those findings every 30 days. Staff recommend that the Commission adopt the recommended findings allowing certain members to continue to meet remotely at this meeting and direct the Commission Affairs Manager to agendize a similar resolution at a Commission meeting within the next 30 days.

## **BACKGROUND**

### **Circumstances Leading to Remote Meetings**

In March 2020, the Governor of the State of California proclaimed a state of emergency in California in connection with the COVID-19 emergency, and that state of emergency remains in effect. In early 2020 in response to the COVID-19 emergency, the Governor issued an order suspending the teleconferencing provisions of the Brown Act. The Governor's order enabled boards and commissions to hold remote meetings without complying with rules regarding notice and public attendance at teleconference locations. The Governor's order terminated on September 30, but the Legislature recently passed and the Governor signed AB 361, which enacts many provisions of the emergency order and allows boards and commissions to continue meeting remotely, as discussed further below.

In San Francisco, 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; both of those declarations remain in effect. In March 2020, the Mayor issued an order suspending the local Charter prohibition on remote meetings. And the Mayor issued a separate order prohibiting boards and commissions (other than the Board of Supervisors) from meeting in person.

On February 10, 2022, the Mayor issued an emergency order that (1) requires decision-making boards and commissions established in the Charter (with the exception of the Board of Supervisors) to hold meetings in person at a physical location where members of the public may attend and provide comment, (2) allows members of those boards and commissions to participate remotely in the in-person meetings for COVID-related health reasons, (3) allows but does not require subcommittees of those boards and commissions to meet in person at a physical location where members of the public may attend and provide comment, and (4) prohibits all other policy bodies (with the exception of the Board of Supervisors and its committees) from meeting in person under any circumstances, with limited exceptions. This order is still in effect.

### **State Urgency Legislation (AB 361)**

On September 16, 2021, the Governor signed AB 361, amending the Brown Act to allow local policy bodies to continue to convene by teleconferencing technology during a

proclaimed state of emergency under the State Emergency Services Act so long as certain conditions are met, including that the policy body makes certain findings related to the emergency at least once every 30 days.

As noted above, the Governor's March 2020 order proclaiming a state of emergency remains in effect. AB 361 requires each board or commission to make two findings at least once every 30 days to justify continuing to meet remotely:

- (1) the board or commission has considered (or reconsidered) the circumstances of the state of emergency, and
- (2a) the state of emergency continues to directly impact the ability of members to meet safely in person, or
- (2b) state or local officials continue to impose or recommend measures to promote social distancing.

The bill will remain in effect until January 1, 2024, but only applies if the Governor's proclamation of a state of emergency remains in effect.

### **Current State of the Emergency and Recommended Health Protocols Supporting Findings**

While Federal, State, and local health officials emphasize the critical importance of vaccination and consistent mask-wearing to prevent the spread of COVID-19, the City's Health Officer has issued at least one order (Health Officer Order No. C19-07y, available online at [www.sfdph.org/healthorders](http://www.sfdph.org/healthorders)) and one directive (Health Officer Directive No. 2020-33i, available online at [www.sfdph.org/directives](http://www.sfdph.org/directives)) that continue to recommend measures to promote physical distancing and other social distancing measures, such as masking, in certain contexts. And, the California Department of Industrial Relations 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 in the City, to train and instruct employees about measures that can decrease the spread of COVID-19, including physical distancing and other social distancing measures.

- In addition, the City's Department of Public Health, in coordination with the City's Health Officer, has advised that for group gatherings indoors, such as meetings of boards and commissions, people can increase safety and greatly reduce risks to the health and safety of attendees from COVID-19 by maximizing ventilation, wearing well-fitting masks (as required by Health Officer Order No. C19-07), using physical distancing where the vaccination status of attendees is not known, and considering holding the meeting remotely if feasible, especially for long meetings, with any attendees with unknown vaccination status and where ventilation may not be optimal. Based on the above, State and City orders and recommended protocols support the recommended findings.

## **RECOMMENDATION**

Port staff recommend that the Commission adopt at its April 12, 2022 meeting the recommended findings allowing certain members to continue to meet remotely, and direct the Commission Affairs Manager to agendize a similar resolution at a Commission meeting within the next 30 days

Prepared by: Carl Nicita  
Commission Affairs Manager

For: Elaine Forbes  
Port Director

**PORT COMMISSION  
CITY & COUNTY OF SAN FRANCISCO**

**RESOLUTION NO. 22-16**

- WHEREAS, California Government Code Section 54953(e) empowers local policy bodies 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, In March, 2020, the Governor of the State of California proclaimed a state of emergency in California 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 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 also remain in effect; and
- WHEREAS, On March 11 and March 23, 2020, the Mayor issued emergency orders suspending select provisions of local law, including sections of the City Charter, that restrict teleconferencing by members of policy bodies; and
- WHEREAS, Consistent with the Mayor’s orders and State law, the Port Commission met remotely during the COVID-19 pandemic through March 6, 2022; and
- WHEREAS, On February 10, 2022, the Mayor issued an emergency order that (1) requires decision-making boards and commissions established in the Charter (with the exception of the Board of Supervisors) to hold meetings in person at a physical location where members of the public may attend and provide comment, (2) allows members of those boards and commissions to participate remotely in the in-person meetings for COVID-related health reasons, (3) allows but does not require subcommittees of those boards and commissions to meet in person at a physical location where members of the public may attend and provide comment, and (4) prohibits all other policy bodies (with the exception of the Board of Supervisors and its committees) from meeting in person under any circumstances, with limited exceptions; and
- WHEREAS, On September 16, 2021, the Governor signed AB 361, a bill that amended the Brown Act to allow local policy bodies to continue to meet by teleconferencing during a state of emergency without complying with restrictions in State law that would otherwise apply, provided that the policy bodies make certain findings at least once every 30 days; and

WHEREAS, While federal, State, and local health officials emphasize the critical importance of vaccination (including a booster once eligible) and consistent mask-wearing, regardless of vaccination status, to prevent the spread of COVID-19, the City's Health Officer has issued at least one order (Health Officer Order No. C19-07y, available online at [www.sfdph.org/healthorders](http://www.sfdph.org/healthorders)) and one directive (Health Officer Directive No. 2020-33i, available online at [www.sfdph.org/directives](http://www.sfdph.org/directives)) that continue to recommend measures to promote safety for indoor gatherings, including vaccination, masking, improved ventilation, and other measures, in certain contexts; and

WHEREAS, The California Department of Industrial Relations 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 in the City, to train and instruct employees about measures that can decrease the spread of COVID-19; and

WHEREAS, Without limiting any requirements under applicable federal, state, or local pandemic-related rules, orders, or directives, the City's Department of Public Health, in coordination with the City's Health Officer, has advised that for group gatherings indoors, such as meetings of boards and commissions, people can increase safety and greatly reduce risks to the health and safety of attendees from COVID-19 by maximizing ventilation, wearing well-fitting masks regardless of vaccination status (and as required for unvaccinated people by the State of California's indoor masking order), encouraging vaccination (including a booster as soon as eligible), staying home when sick or when experiencing any COVID-19 symptom, discouraging consumption of food or beverages in the meeting, following good hand hygiene practices, and making informed choices when gathering with people whose vaccination status is not known; and

WHEREAS, The Port Commission began meeting in person consistent with the Mayor's February 10, 2022 order, allowing members to participate by video 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; now, therefore, be it

RESOLVED, That the Port Commission finds as follows:

1. As described above, the State of California and the City remain in a state of emergency due to the COVID-19 pandemic. At this meeting, the Port Commission has considered the circumstances of the state of emergency.
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 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, That for at least the next 30 days, the Port Commission will hold in-person meetings, with some members possibly appearing remotely. If all members of the Port Commission are unable to attend in person for COVID-related health reasons, then the Port Commission will hold the meeting remotely without providing an in-person meeting location. If the Port Commission votes to allow it and appropriate space is available, the Port Commission's subcommittees may hold in-person meetings as well, or alternatively, the subcommittees may hold meetings exclusively by teleconferencing technology (and not by any in-person meetings or any other meetings with public access to the places where any policy body member is present for the meeting). All meetings of Port Commission and its committees 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 the members of the public attending the meeting via teleconferencing; and, be it further

RESOLVED, That the Commission Affairs Manager of Port Commission is directed to place a resolution substantially similar to this resolution on the agenda of a future meeting of Port Commission within the next 30 days. If the Port Commission does not meet within the next 30 days, the Commission Affairs Manager is directed to place a such resolution on the agenda of the next meeting of the Port Commission.

***I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of April 12, 2022.***

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**Secretary**