




MEMORANDUM

November 5, 2021

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

FROM: Elaine Forbes
Executive Director 

SUBJECT: Request approval of a resolution adopting findings under new state urgency legislation to allow remote meetings during the COVID-19 emergency; continue remote meetings for the next 30 days; and direct the Commission Affairs Manager to agendize a similar resolution at a commission meeting within 30 days

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution No. 21-47

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, both of which remain in effect.

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

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30 days. Staff recommend that the Commission adopt the recommended findings allowing it 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. These orders also remain in effect. The Mayor's Office has indicated that it intends to keep those orders in place until at least January 1, 2021, which means commissions such as the Port Commission must continue to meet remotely through December 2021.

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) and one directive (Health Officer Directive No. 2020-33i, available online at 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 November 9, 2021 meeting the recommended findings allowing it 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. 21-48

- 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, In 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; those orders remain in effect, so City law currently allows policy bodies to meet remotely if they comply with restrictions in State law regarding teleconference meetings; and
- WHEREAS, On September 16, 2021, the Governor signed AB 361, a bill that amends 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 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) and one directive (Health Officer Directive No. 2020-33i, available online at 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
- 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, including physical distancing and other social distancing measures; 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 (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; and

WHEREAS, On July 31, 2020, the Mayor issued an emergency order that, with limited exceptions, prohibited policy bodies other than the Board of Supervisors and its committees from meeting in person under any circumstances, so as to ensure the safety of policy body members, City staff, and the public; and

WHEREAS, The Port Commission has met remotely during the COVID-19 emergency and 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 while this emergency continues; 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, State and City officials continue to recommend measures to promote physical distancing and other social distancing measures, in some settings.
3. As described above, because of the COVID-19 pandemic, conducting meetings of this body and its committees in person would present imminent risks to the safety of attendees, and the state of emergency continues to directly impact the ability of

members to meet safely in person; and, be it further

RESOLVED, For at least the next 30 days, meetings of the Port Commission will continue to occur 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). Such meetings of the Port Commission that occur by teleconferencing technology will provide an opportunity for members of the public to address this 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 Port Commission Affairs Manager is directed to place a resolution substantially similar to this resolution on the agenda of a future meeting of the Port Commission within the next 30 days. If the 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 Commission.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of November 9, 2021.

Secretary