

BEFORE THE BOARD OF DIRECTORS OF THE
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

In the Matter of Authorizing
the District's legislative and subordinate
legislative bodies to utilize the provisions
enacted by AB 361 to meet remotely
with teleconferenced meetings
during a proclaimed emergency as
authorized by law in accordance with
Government Code Section 54953(e)
and other applicable provisions of the
Ralph M. Brown Act. _____/

Resolution No. _____

WHEREAS, meetings of the San Francisco Bay Area Rapid Transit District are subject to the provisions of the Ralph M. Brown Act ("Brown Act"), the State's local agency public meeting law (Cal. Gov. Code 54950-549630, to ensure that the public can attend, watch, be informed about and participate in the affairs of the District as its legislative bodies conduct their proceedings; and

WHEREAS, the arrival of the COVID-19 pandemic in 2020 brought shelter-in-place orders from public health officials which prohibited the normal congregation of public officials and members of the public to meet in the manner contemplated by the Brown Act; and

WHEREAS, this condition caused Governor Newsom to issue Executive Orders N-25-20, N-29-20 and N-35-20 that collectively modified certain requirements of the Brown Act so as to permit remote participation in public "virtual meetings" while still facilitating genuine "safe" public participation and governmental transparency; and

WHEREAS, on June 11, 2021, the Governor issued Executive Order N-08-21 which rescinds the aforementioned modifications made to the Brown Act, effective September 30, 2021, after which local agencies are required to observe all the usual Brown Act requirements as they existed prior to the issuance of the Governor's Executive Orders; and

WHEREAS, Assembly Bill 361, introduced in February 2021 and passed on September 10, 2021 provides local agencies with the ability to meet remotely during gubernatorially proclaimed "state emergencies" under modified Brown Act requirements in a manner akin to the Governor's Executive Orders; and

WHEREAS, the State has authorized the continuation and/or resumption of such remote teleconferencing upon meeting certain established criteria and conditions; and

WHEREAS, a required condition is that a state of emergency is declared by the Governor pursuant to Government Code Section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the State caused by conditions as described in Government Code Section 8558; and

WHEREAS, a proclamation is made when there is an actual incident, threat of disaster, or extreme peril to the safety of persons and property within the jurisdictions that are within the District's boundaries, caused by natural, technological, or human-caused disasters; and

WHEREAS, it is further required that state or local officials have imposed or recommended measures to promote social distancing, or, the legislative body meeting in person would present imminent risks to the health and safety of attendees; and

WHEREAS, such conditions now exist in the District, specifically a state of emergency has been proclaimed due to the continuing effects of COVID-19 and its variants, which present an imminent risk to the health and safety of public meeting attendees which has continued since the Governor's Proclamation of a state of emergency on March 4, 2020 to the present day; and

WHEREAS, Federal, State and local health officials recognize that social distancing measures are still one of the most effective means of addressing the imminent risk to health and safety of public meeting attendees during the current state of emergency; and

WHEREAS, the Board of Directors does hereby find that COVID-19 and its variants have caused, and will continue to cause during the Governor's proclaimed state of emergency, conditions of peril to the safety of persons within the District that are likely to be beyond the control of services, personnel, equipment, and facilities of the District, and

WHEREAS, the Board of Directors desires to proclaim a local emergency and ratify the proclamation of the state of emergency by the Governor of the State of California, and

WHEREAS, AB 361 addresses "meetings of a legislative body of a local agency as those terms are defined," and Government Code Section 54952 defines "legislative body" to include subordinate legislative bodies, and

WHEREAS, as a consequence of the local emergency, the legislative and subordinate legislative bodies of the District may be directed to conduct their meetings without compliance with paragraph (3) of subdivision (b) of Government Code Section 54953, as authorized by subdivision (e) of Section 54953 with the further directive that such legislative and subordinate legislative bodies shall comply with the requirements to provide the public with access to the meetings as prescribed in paragraph (2) of subdivision (e) of Section 54953; and

WHEREAS, all appropriate measures are otherwise being taken to ensure public participation and public access to the District's Brown Act governed meetings including the swift resolution of any remote meeting disruption (e.g. a public comment line unexpectedly disconnects, a meeting agenda was sent out with the incorrect web link or dial-in information, the agency's internet connection is interrupted, etc.) before proceeding to take further action on items appearing on a meeting agenda; and

WHEREAS, these appropriate measures include allowing the public an opportunity to provide public comment directly – that is, live and at any point prior to public comment being officially closed during a public meeting (although comments may also be made in advance of a meeting indirectly, orally, written, or otherwise); and

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the San Francisco Bay Area Rapid Transit District does hereby resolve as follows:

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. Proclamation of Local Emergency. The Board hereby proclaims that a local emergency now exists throughout the District, and social distancing still appears necessary in order to avoid face-to-face in-person meetings from presenting an imminent risk to the public health of the community.

Section 3. Ratification of the Governor's Proclamation of a State of Emergency. The Board hereby ratifies the Governor of the State of California's Proclamation of a State of Emergency, effective as of its issuance date of March 4, 2020.

Section 4. Remote Teleconference Meetings. The General Manager and legislative and subordinate legislative bodies of the San Francisco Bay Area Rapid Transit District are hereby authorized and directed to take all actions necessary to carry out the intent and purposes 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.

Section 5. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption and shall be effective until the earlier of (i) *[enter date 30 days from adoption of resolution]*, or such time the Board of Directors adopts a subsequent resolution in accordance with Government Code Section 54953(e)(3) to extend the time during which the legislative and subordinate legislative bodies of the San Francisco Bay Area Rapid Transit District may continue to teleconference without compliance with paragraph (3) of subdivision (b) of section 54953.

PASSED AND ADOPTED by the Board of Directors of the San Francisco Bay Area Rapid Transit District, this ____ day of _____, 2021 by the following vote:

AYES:

NOES:

ABSENT:
ABSTAIN: