



East Bay Regional Communications System Authority



Participating agencies include Alameda and Contra Costa Counties and the following cities and special districts: Alameda, Albany, Antioch, Berkeley, Brentwood, Clayton, Concord, Danville, Dublin, El Cerrito, Emeryville, Fremont, Hayward, Hercules, Lafayette, Livermore, Martinez, Moraga, Newark, Oakland, Oakley, Pinole, Pittsburg, Pleasant Hill, Pleasanton, Richmond, San Leandro, San Pablo, San Ramon, Union City, Walnut Creek, East Bay Regional Park District, Kensington Police Community Services District, Livermore Amador Valley Transit Authority, Moraga-Orinda Fire District, Rodeo-Hercules Fire District, San Ramon Valley Fire District, California Department of Transportation, Ohlone Community College District, Contra Costa Community College District, Dublin-San Ramon Services District and University of California, Berkeley

BOARD OF DIRECTORS SPECIAL MEETING

NOTICE OF SPECIAL MEETING

DATE: December 28, 2022

TIME: 10:00 a.m.

PLACE: Alameda County Office of Homeland Security and Emergency Services, Room 1013
4985 Broder Blvd., Dublin, CA 94568

Notice is hereby given that a Special Meeting of the East Bay Regional Communications System Authority will be held on Wednesday, December 28, 2022, at 10:00 a.m.

Meeting Procedure During Coronavirus (COVID-19) Outbreak:

Pursuant to the provisions of California Governor's March 4, 2020 State of Emergency Declaration and enactment of Assembly Bill 361 on September 16, 2021 which adopted exemption to the Ralph Brown M. Act and the proposed findings to be adopted by the Board at this meeting, this meeting will be conducted by teleconference only in accordance with Government Code section 54953(e). No physical location will be available for this meeting. Members of the public may participate in this meeting, on Zoom at Meeting ID: 85494381091 and Passcode: 849208 or by calling 1-253-215-8782. This meeting agenda is available online at <http://www.ebrcsa.org/meetings/board-of-directors.page>,

- The Public will be asked if there is any comment or question concerning the meeting during the Public Comment Period and as each item is discussed.
- The Speaker may provide their name for the record if they so choose.

AGENDA

-
1. **Call to Order/Roll Call:** **Time:** 10:00 a.m.
 2. **Public Comments (Meeting Open to the Public)**
 3. **Consent Calendar:** Consent Calendar items are typically non-controversial in nature and are considered for approval by the East Bay Regional Communications System Authority Board with one single action. Members of the audience, Staff or the Board of Directors who

**Alameda County Office of Homeland Security and Emergency Services
4985 Broder Blvd, Dublin CA 94568 • (925) 803-7802 • www.ebrcsa.org**

would like an item removed from the Consent Calendar for purposes of public input may request the Board Chair to remove the item.

3.1 Adoption of AB 361 Findings to Allow Teleconferenced Meetings

4. Adjournment

This AGENDA is posted in accordance with Government Code Section 54954.2(a) If requested, pursuant to Government Code Section 54953.2, this agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12132), and the federal rules and regulations adopted in implementation thereof. To make a request for disability-related modification or accommodation, please contact the EBRCSA at (925) 803-7802 at least 24 hours in advance of the meeting.

I hereby certify that the attached agenda was posted 24 hours before the noted meeting.



Tom McCarthy
Executive Director
Dated: 12/20/2022



**East Bay Regional
Communications
System Authority**



Participating agencies include Alameda and Contra Costa Counties and the following cities and special districts: Alameda, Albany, Antioch, Berkeley, Brentwood, Clayton, Concord, Danville, Dublin, El Cerrito, Emeryville, Fremont, Hayward, Hercules, Lafayette, Livermore, Martinez, Moraga, Newark, Oakley, Pinole, Pittsburg, Pleasant Hill, Pleasanton, Richmond, San Leandro, San Pablo, San Ramon, Union City, Walnut Creek, East Bay Regional Park District, Kensington Police Community Services District, Livermore Amador Valley Transit Authority, Moraga-Orinda Fire District, Rodeo-Hercules Fire District, San Ramon Valley Fire District, California Department of Transportation, Ohlone Community College District, Contra Costa Community College District, Dublin-San Ramon Services District and University of California, Berkeley

AGENDA ITEM NO. 3.1

**AGENDA STATEMENT
BOARD OF DIRECTORS MEETING
MEETING DATE: December 28, 2022**

TO: Board of Directors
East Bay Regional Communications System Authority (EBRCSA)

FROM: Thomas McCarthy, Executive Director

SUBJECT: Continuation of AB 361 Findings to Allow Teleconferenced Meeting.

RECOMMENDATIONS:

Staff recommends that the Board of Directors of the East Bay Regional Communications System Authority (“**Authority**”) consider adopting the proposed Resolution to continue conducting Board of Director and all other Authority Committee meetings remotely due to health and safety concerns for the public and making related findings in compliance with Assembly Bill 361 (2021) (“**AB 361**”) effective December 29, 2022 through January 27, 2023.

SUMMARY/DISCUSSION:

On March 4, 2020, Governor Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the State address the broader spread of COVID-19.

On March 17, 2020, in response to the COVID-19 pandemic, Governor Newsom issued Executive Order N-29-20, which suspended certain provisions of the Ralph M. Brown Act (“**Brown Act**”) in order to allow local legislative bodies to conduct meetings telephonically or by other means. Additionally, the State implemented a shelter-in-place order, requiring all non-essential personnel to work from home.

The Board of Directors established virtual meetings. The virtual meetings have allowed the Board to continue to conduct its business from remote locations while ensuring the public’s continued access to government meetings in a safe manner.

On June 11, 2021, Governor Newsom issued Executive Order N-08-21, which among other things, rescinded certain clauses of Executive Order N-29-20 after September 30, 2021, including clauses

that suspended certain provisions of the Brown Act. Thus, effective October 1, 2021, agencies would have had to transition back to in person public meetings. Since the Governor issued Executive Order N-08-21, the highly contagious Delta variant has emerged, causing a spike in cases throughout the state and within Alameda and Contra Costa Counties.

On August 2, 2021 the Alameda and Contra Costa County Health Officers issued Public Health Orders requiring all individuals in both Counties, regardless of vaccination status, to wear face coverings in all indoor public settings and businesses for the control of COVID-19. These August 2, 2021 Public Health Officer Orders will be in effect until rescinded, superseded or amended.

On September 16, 2021, Governor Newsom signed AB 361, which was an urgency measure that became effective on October 1, 2021, and it allows a local agency to use teleconferencing for public meetings during a Governor-proclaimed state of emergency as long as the legislative body adopts findings every 30 days that: 1) meeting in person would present imminent risks to the health or safety of attendees as a result of the emergency; or 2) state or local officials have imposed or recommended measures to promote social distancing.

Since the Health Officers' August Orders were issued, the highly contagious Omicron Variant has emerged, and resulted in the greatest nationwide infection rate since the beginning of the COVID-19 pandemic.

Alameda County and Contra Costa County Health Officers rescinded the prior Health Officer Orders regarding indoor masking and aligned with the California Department of Public Health (CDPH) Guidance lifting indoor mask mandates for vaccinated persons beginning February 16, 2022. However, unvaccinated individuals over age 2 will continue to be required to wear masks in all indoor public settings, and businesses may determine their own protocols to protect staff and patrons and may choose to require all patrons to wear masks.

Bay Area health officers continue to strongly recommend masks be used as an effective tool to prevent the spread of COVID-19, especially in crowded or poorly ventilated indoor public settings. Indoor masking is still required by the State for everyone, regardless of vaccination status, in public transportation; health care settings; congregate settings like correctional facilities and homeless shelters; long term care facilities; and in K-12 schools and childcare settings.

In such circumstances, a legislative body is not required to make available a physical location from which members of the public may observe the meeting and offer public comment or required to have a quorum of the members of the legislative body participate from locations within the boundaries of the agency's jurisdiction in the following circumstances:

- The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.
- The legislative body holds a meeting during a proclaimed state of emergency to determine, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees; or
- The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

The legislative body must make certain findings by majority vote every 30 days to continue using AB 361's teleconferencing requirements.

An additional provision of AB 361 states that, in the event of a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body is prohibited from taking any further action on items appearing on the meeting agenda until public access to the meeting via the call-in or internet-based options is restored.

These new provisions are only operative until January 1, 2024, at which point they are repealed, and the prior Brown Act teleconferencing requirements become effective again.

The CDPH and the Federal Centers for Disease Control and Prevention (CDC) caution that the Delta and Omicron Variants of COVID-19 are more transmissible than prior variants of the virus, may cause more severe illness, and even fully vaccinated individuals can spread the virus to others resulting in rapid and alarming rates of COVID-19 cases and hospitalizations.

The Authority meets the requirements to continue holding meetings remotely in order to ensure the health and safety of the public:

- The Governor has declared a State of Emergency related to the COVID-19 pandemic; and
- County Health Orders strongly recommend that individuals in indoor public spaces wear masks and the CDC recommends social distancing of at least six feet if an individual is not up to date on COVID-19 vaccinations/boosters due to COVID-19; and
- The Delta and Omicron Variants of COVID-19 have resulted in a significant increase of COVID-19 cases within the state and throughout Alameda and Contra Costa Counties.

Thus, meeting in person for Board and Authority Committee meetings would present imminent risks to the health and safety of attendees, the Board and staff. In the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, Authority staff recommends invoking the provisions of Assembly Bill 361 related to teleconferencing.

The Board must make its own determination and findings, no later than 30 days after the adoption of this initial Resolution, in order to continue holding teleconferenced meetings in accordance with AB 361. At this time, Staff intends to schedule special Board meetings every 30 days, if necessary, to consider adoption of similar findings in the future.

FINANCIAL IMPACT:

None.

COMMITTEE ACTION:

None.

RECOMMENDED ACTION:

It is recommended that the Board of Directors consider adopting the proposed Resolution to continue conducting Board of Director and all other Authority Committee meetings remotely due to health and December 29, 2022 through January 27, 2023.

Attachments:

Attachment "A" – Proposed Resolution

RESOLUTION NO. 22 - XX

**A RESOLUTION OF THE
EAST BAY REGIONAL COMMUNICATIONS SYSTEM AUTHORITY**

**AUTHORIZING TELECONFERENCE MEETINGS PURSUANT TO ASSEMBLY BILL
361 EFFECTIVE DECEMBER 29, 2022 THROUGH JANUARY 27, 2023**

WHEREAS, on March 4, 2020, Governor Gavin Newsom proclaimed the existence of a state of emergency in California under the California Emergency Services Act, Government Code section 8550 et seq. (Declaration); and

WHEREAS, on March 17, 2020, Governor Gavin Newsom issued Executive order N-29- 20 (Executive Order), which suspended the teleconferencing rules set forth in California Open Meeting law, the Ralph M. Brown Act (California Government Code §§ 54950 – 54963), provided certain requirements were met and followed; and

WHEREAS, on June 11, 2021, Governor Gavin Newsom issued Executive Order N-08- 21, which clarified the suspension of the teleconferencing rules set forth in the Ralph M. Brown Act and further provided that those provisions would remain suspended through September 30, 2021; and

WHEREAS, on September 16, 2021, Governor Gavin Newsom signed Assembly Bill 361, which provides that under Government Code section 54953(e), a legislation body subject to the Ralph M. Brown Act may continue to meet using teleconferencing without complying with the non-emergency teleconferencing rules in Government Code section 54953(b)(3) if a proclaimed state of emergency exists and state or local officials have imposed or recommended measures to promote social distancing; and

WHEREAS, such conditions exist in the East Bay Regional Communications System Authority (EBRCSA) jurisdiction. In addition to the Governor’s Declaration, both the Alameda and Contra Costa County Health Officers have issued numerous Health Orders regarding safety protocols during the COVID-19 pandemic. In particular, on August 2, 2021, both the Contra Costa County and Alameda County Health Officers issued an Order requiring all individuals in the County, regardless of vaccination status, to wear face coverings in all indoor public settings and businesses for the control of COVID-19; and

WHEREAS, the California Department of Public Health (CDPH) and the Federal Centers for Disease Control and Prevention (CDC) caution that the Delta and Omicron Variants of COVID-19, are more transmissible than prior variants of the virus, may cause more severe illness, and even fully vaccinated individuals can spread the virus to others resulting in rapid and alarming rates of COVID-19 cases and hospitalizations; and

WHEREAS, on February 16, 2022, the Health Officers’ Orders were modified to strongly recommend all individuals in the Counties, regardless of vaccination status, to wear face coverings in all indoor public settings and businesses for the control of COVID-19; and

WHEREAS, in the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, EBRCSA intends to invoke the provisions of Assembly Bill 361 related to teleconferencing in the manner authorized by Government Code § 54953(e), and such legislative body shall comply with the requirements to provide the public with access to the meetings as prescribed in Government Code § 54953(e)(2); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of East Bay Regional Communications System Authority as follows:

1. The Recitals set forth above are true and correct and are incorporated herein by reference.
2. In compliance with AB 361 (2021), and in order to continue to conduct teleconference meetings without complying with the usual teleconference meeting requirements of the Ralph M. Brown Act, the Board of Directors makes the following findings:
 - a. The Board of Directors has considered the circumstances of the state of emergency; and
 - b. The state of emergency, as declared by the Governor, continues to directly impact the ability of the Board of Directors, including EBRCSA's legislative bodies and staff, as well as staff and members of the public, from meeting safely in person; and
 - c. The CDC, Alameda and Contra Costa Counties Departments of Public Health continue to recommend physical distancing of at least six feet if an individual is not up to date on COVID-19 vaccinations/boosters due to COVID-19 and as a result of the presence of COVID-19 and the Delta and Omicron Variants, meeting in person would present imminent risks to the health or safety of attendees, the legislative bodies and staff.
3. The Board of Directors and EBRCSA's legislative bodies may continue to meet remotely in compliance with AB 361, in order to better ensure the health and safety of the public and staff in accordance with the provisions of Government Code section 54953(e).
4. The Board of Directors will revisit the need to conduct meetings remotely within 30 days of the adoption of this resolution.
5. Staff is authorized and directed to take all actions necessary to implement the intent and purpose of this resolution, including conducting open and public meetings in accordance with Government Code section 54953(e) and all other application provisions of the Ralph M. Brown Act; and
6. Staff is directed to return no later than 30 days after this resolution is adopted with an item for the Board of Directors of East Bay Regional Communications System Authority to consider whether to continue meeting under the provisions of Assembly Bill 361.

PASSED AND ADOPTED by the Board of Directors of East Bay Regional Communications System Authority at a regular meeting on the 28th day of December 2022, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ATTEST: _____
Caroline P. Soto, Secretary