

THIS PRINT COVERS CALENDAR ITEM NO.: 10.8

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Board of Directors

BRIEF DESCRIPTION:

Recommending the SFMTA Board of Directors continue to meet remotely for at least the next 30 days; adopt findings under new State urgency legislation codified as Government Code Section 54953(e) (AB 361), including that (1) the State and the City remain in a state of emergency due to the COVID-19 pandemic, (2) State and City officials continue to recommend measures to promote physical and other social distancing in some settings, and (3) conducting meetings 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 directing the Board Secretary to agendize a similar resolution at a meeting within 30 days.

SUMMARY:

- In March 2020, the Governor of California proclaimed a state of emergency in connection with the Coronavirus Disease 2019 pandemic (COVID-19 emergency), and that state of emergency remains in effect; and in early 2020, the Governor issued an order suspending the teleconferencing provisions of the Brown Act thus enabling local boards and commissions to hold remote meetings without complying with rules regarding notice and public attendance at teleconference locations.
- In early 2020, Mayor Breed issued an order suspending the local Charter prohibition on remote meetings and a separate order prohibiting boards and commissions, other than the Board of Supervisors, from meeting in person, both of which remain in effect.
- The Governor's order expired on September 30, 2021 but on September 16, 2021, the Governor signed AB 361 which is currently effective and allows boards and commissions, including the SFMTA Board to hold remote meetings under certain conditions including making certain findings and renewing those findings every 30 days.
- Due to the COVID-19 emergency, State and City officials continue to recommend measures to promote physical and other social distancing in some settings and conducting meetings in person would present risks to the safety of attendees.

ENCLOSURES:

1. SFMTAB Resolution

APPROVALS:

DIRECTOR  _____

DATE

September 29, 2021

SECRETARY  _____

September 29, 2021

ASSIGNED SFMTAB CALENDAR DATE: October 5, 2021

PURPOSE

Recommending the SFMTA Board of Directors continue to meet remotely for at least the next 30 days; adopt findings under new State urgency legislation codified as Government Code Section 54953(e) (AB 361), including that (1) the State and the City remain in a state of emergency due to the COVID-19 pandemic, (2) State and City officials continue to recommend measures to promote physical and other social distancing in some settings, and (3) conducting meetings 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 directing the Board Secretary to agendize a similar resolution at a meeting within 30 days.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

Making required findings required by State urgency legislation allowing the MTA Board to hold remote meetings supports all of the goals and objectives in the SFMTA's Strategic Plan and Transit First Policy Principles

DESCRIPTION

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 Coronavirus Disease 2019 pandemic (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 will allow boards and commissions to continue meeting remotely, under certain conditions. AB 361 is an urgency measure and is currently effective.

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, and both 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 BOS) from meeting in person. These orders also remain in effect. The Mayor's office has indicated that they intend to keep those orders in place until at least November 1, which means boards such as the SFMTA Board must continue to meet remotely through October.

State Urgency Legislation (AB 361)

On September 16, 2021, the Governor signed AB 361, a bill that amends 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. In March 2020, the Governor proclaimed a state of emergency in California and that 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
- (2) one of the following circumstances exist: (a) the state of emergency continues to directly impact the ability of members to meet safely in person, or (b) state or local officials continue to impose or recommend measures to promote social distancing.

AB 361 also includes a new rule regarding disruptions of remote meetings. If there is a disruption that prevents the board or commission from broadcasting a remote meeting, or if there's a disruption within the board or commission's control that prevents members of the public from offering public comment, then the board or commission may not take any further action on agenda items until public access is restored.

The bill will remain in effect until January 1, 2024, but only applies if the Governor has proclaimed a state of emergency.

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, 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 Nos. 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

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ventilation may not be optimal.

Staff thus recommends that the SFMTA Board adopt the recommended findings at this meeting, and direct the Board Secretary to put a similar item on your agenda every 30 days thereafter as long as you continue to meet remotely.

STAKEHOLDER ENGAGEMENT

The State Legislature considered AB 361 during its legislative session.

ALTERNATIVES CONSIDERED

No alternatives were considered. Given that State and City officials continue to recommend measures to promote physical and other social distancing, the continued risks from the COVID-19 pandemic to the safety of attendees, and the Mayor's Order prohibiting boards and commissions from meeting in person, adopting the recommended findings is required to allow the SFMTA Board to continue to meet by teleconference and conduct its business consistent with state and local law.

FUNDING IMPACT

None.

ENVIRONMENTAL REVIEW

On September 27, 2021, the SFMTA, under authority delegated by the Planning Department, determined that the AB 361 findings described above are not a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

This item has been reviewed by the City Attorney. No other approvals are needed.

RECOMMENDATION

Recommending the SFMTA Board of Directors continue to meet remotely for at least the next 30 days; adopt findings under new State urgency legislation codified as Government Code Section 54953(e) (AB 361), including that (1) the State and the City remain in a state of emergency due to the COVID-19 pandemic, (2) State and City officials continue to recommend measures to promote physical and other social distancing in some settings, and (3) conducting

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meetings 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 directing the Board Secretary to agendize a similar resolution at a meeting within 30 days.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

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 pandemic (COVID-19 emergency), 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; 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 SFMTA Board of Directors has met remotely during the COVID-19 pandemic 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; and,

WHEREAS, On September 27, 2021, the SFMTA, under authority delegated by the Planning Department, determined that the AB 361 findings described above are not a “project” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference; now, therefore, be it

RESOLVED, That SFMTA Board of Directors 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 SFMTA Board of Directors 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, That for at least the next 30 days meetings of the SFMTA Board of Directors and its committees 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 that occur by teleconferencing technology will provide an opportunity for members of the public to address this body and its committees 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 Secretary of the SFMTA Board of Directors is directed to place a resolution substantially similar to this resolution on the agenda of a future meeting within the next 30 days. If the SFMTA Board of Directors does not meet within the next 30 days,

the Secretary is directed to place a such resolution on the agenda of the next meeting of the SFMTA Board of Directors.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of October 5, 2021.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency