

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT



STAFF REPORT

MEETING DATE: 2/8/2023

Staff Report No. 22-053r

TO: AC Transit Board of Directors
FROM: Linda A. Nemeroff, Board Administrative Officer/District Secretary
SUBJECT: Remote Brown Act Meetings

ACTION ITEM

AGENDA PLANNING REQUEST: ☐

RECOMMENDED ACTION(S):

Consider the adoption of Resolution No. 23-010 making the necessary findings and re-authorizing the AC Transit Board of Directors and all District Advisory, Oversight, and Inter-Agency Liaison Committees to hold remote teleconference meetings during a declared state of emergency, subject to the requirements of the Brown Act, through March 10, 2023 or February 28, 2023 if the state of emergency is not extended.

Staff Contact:
Linda A. Nemeroff, Board Administrative Officer/District Secretary

STRATEGIC IMPORTANCE:

There is no strategic importance associated with this report.

BUDGETARY/FISCAL IMPACT:

There is no budgetary or fiscal impact associated with this report.

BACKGROUND/RATIONALE:

AB 361 (Rivas) was signed into law in September, 2021 as an urgency measure to amend the Brown Act to allow legislative bodies to continue to hold remote teleconference meetings during the pandemic. More specifically, this legislation allows local agencies to use teleconferencing without having to comply with the requirements of the Brown Act, provided that the legislative body meets "other requirements" (outlined later in this report) in any of the following circumstances:

- A. 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.
- B. The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health and safety of attendees.
- C. The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person

would present imminent risks to the health and safety of attendees.

On September 22, 2021, the Board of Directors adopted Resolution No. 21-038 finding that the requisite conditions exist for the legislative bodies of the Alameda-Contra Costa Transit District to conduct remote teleconference meetings without compliance with paragraph (3) of subdivision (b) of Government Code Section 54953 of the Brown Act.

The Board has adopted numerous resolutions making the necessary findings to re-authorize the AC Transit Board of Directors and all District Advisory, Oversight, and Inter-Agency Liaison Committees to hold remote teleconference meetings during a declared state of emergency.

In order to continue holding remote teleconference meetings without having to comply with the Brown Act, the Board, by a majority vote, is required to reconsider the circumstances of the emergency and make the necessary findings outlined below every 30 days after teleconferencing for the first time under the new law if 1) a state of emergency remains active; or 2) state or local officials have imposed or recommended measures to promote social distancing:

- The legislative body has reconsidered the circumstances of the state of emergency.
- Any of the following circumstances exists:
 - o The state of emergency continues to directly impact the ability of the members to meet safely in person.
 - o State or local officials continue to impose or recommend measures to promote social distancing.

Governor Newsom has signaled the end of the Covid-19 state of emergency on February 28, 2023, and since local officials are not expected to impose or recommend measures to promote social distancing, the Board and the District's various Advisory, Oversight, and Inter-Agency Liaison Committees will either need to follow the teleconference procedures under the Brown Act in place prior to the pandemic or the teleconference procedures prescribed in AB 2449 (reference Staff Report 23-089).

Other Requirements

Should a legislative body meet under any of the preceding circumstances, it shall do **all** of the following:

- Meet all posting requirements as required by the Brown Act.
- Provide an opportunity for members of the public to address the legislative body directly and give notice of the ways members of the public may access the meeting and offer public comment via a call-in option or an internet-based service option.
- The legislative body shall conduct teleconferenced meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body.
- In the event of a disruption which prevents the public agency from broadcasting the meeting to the public using the call-in option or the internet-based service option, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments using the call-in option or the internet-based service option, the body shall take no further action on items appearing on the meeting agenda until public access to the meeting has been restored.
- The legislative body shall not require public comments to be submitted in advance of the meeting and

must provide an opportunity for the public to address the legislative body in real time.

- An individual desiring to provide public comment through the use of a third-party internet website or online platform not under the control of the local agency may be required to register as required by the third-party internet website or online platform to participate.
- Other provisions related to timed public comment or public comment related to specific agenda items that is consistent with current practices.

Staff is requesting consideration of Resolution No. 23-010 making the necessary findings and re-authorizing the AC Transit Board of Directors and all District Advisory, Oversight, and Inter-Agency Liaison Committees to hold remote teleconference meetings for an additional 30 days through March 10, 2023 or February 28, 2023, if the state of emergency is not extended. While Alameda and Contra Costa Counties have high vaccination rates, both counties (as of the writing of his report) have “Substantial” rates of transmission for the highly transmissible Covid-19 virus variants according to the Centers for Disease Control. In addition, masks continue to be recommended by local, state and federal health authorities as a precaution in preventing the spread of Covid-19.

On October 26th, the Board of Directors began holding hybrid meetings with both in-person and remote public attendance options. However, District’s advisory, oversight and inter-agency liaison committees have discretion in determining whether to meet in person with advance notice to the District Secretary.

ADVANTAGES/DISADVANTAGES:

Permitting in-person public participation at Board meetings will allow greater access to elected officials and the legislative process for individuals who do not have the capacity to attend meetings remotely. In addition, the rules for attending meetings in person work to ensure a safe meeting environment for all participants. The only disadvantage is that the unpredictable nature of Covid-19 may dictate a return to meetings that are entirely remote at some point in the future.

ALTERNATIVES ANALYSIS:

There are no practical alternatives to the course of action recommended in the report, which endeavors to provide for a safe meeting environment for all meeting attendees.

PRIOR RELEVANT BOARD ACTION/POLICIES:

Board Policy 101 - Board of Directors Rules for Procedure

ATTACHMENTS:

1. Resolution No. 23-010

Prepared by:

Linda A. Nemeroff, Board Administrative Officer/District Secretary

Approved/Reviewed by:

Linda A. Nemeroff, Board Administrative Officer/District Secretary

Jill A. Sprague, General Counsel/Chief Legal Officer

Michael A. Hursh, General Manager/Chief Executive Officer