

# ALAMEDA-CONTRA COSTA TRANSIT DISTRICT



## STAFF REPORT

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**MEETING DATE:** 9/22/2021

**Staff Report No.** 21-453

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

### ACTION ITEM

#### RECOMMENDED ACTION(S):

Consider the adoption of Resolution No. 21-038 authorizing the AC Transit Board of Directors and all District Advisory, Oversight, Steering and Inter-Agency Liaison Committees to continue to meet remotely during a declared state of emergency, subject to the requirements outlined in Assembly Bill 361.

#### 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 on September 16, 2021 and takes immediate effect as an urgency measure to allow legislative bodies to continue to hold remote 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.

In addition, if a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without having to comply with the Brown Act, the legislative body shall, not later than 30 days after teleconferencing for the first time

pursuant to (A), (B) or (C) above, and every thirty (30) days thereafter, make the following findings by majority vote:

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

### **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.

*AB 361 will remain in effect until January 1, 2024, at which time the Brown Act will revert to its original language.*

The General Counsel and District Secretary have met with outside council to attain clarity on the provisions of AB 361 and how to implement it and were advised that the most prudent and efficient action would be for the Board of Directors, as the primary legislative body for the District, to take one action applicable to all subsidiary legislative bodies created by the Board.

The Accessibility Advisory Committee, in particular, has expressed concern about resuming in-person meetings and the posting requirements necessary to teleconference under Brown Act, which would require any member teleconferencing to the meeting to disclose their meeting location on the agenda and make it open

to the public, thus inviting the general public into their homes and possibly spreading/exposing Committee members and their families to Covid-19.

Staff is requesting consideration of Resolution No. 21-038 authorizing the AC Transit Board of Directors and all District Advisory, Oversight, Steering and Inter-Agency Liaison Committees to continue to meet remotely for 30 days in accordance with requirements outlined in Resolution No. 21-038. While Alameda and Contra Costa Counties have a high vaccination rates among the portion of the population that is eligible to be vaccinated, Alameda County continues to experience a “substantial” rate of transmission for the highly transmissible Covid -19 Delta Variant, while Contra Costa County continues to experience a “high” rate of transmission according the Centers for Disease Control. In addition, AC Transit’s Safety Department continues to caution against in-person meetings at this time due to an uptick in positive cases among employees and the high transmissibility of the Covid-19 Delta Variant.

**ADVANTAGES/DISADVANTAGES:**

Continuing to hold public meetings remotely will provide a safe meeting environment while allowing greater public participation in the legislative process and access to the Board and various committees. The disadvantage is that individuals who would prefer to attend meetings in-person would not be able to do so but would still have the option to attend meetings via teleconference.

**ALTERNATIVES ANALYSIS:**

The only alternative is to resume in-person/hybrid meetings on October 1, 2021; however, this is not recommended at this time out of caution for the health, safety and wellbeing on meeting participants and attendees.

**PRIOR RELEVANT BOARD ACTION/POLICIES:**

Board Policy 101 - Board of Directors Rules for Procedure

**ATTACHMENTS:**

1. Resolution No. 21-038

**Prepared by:**

Linda A. Nemeroff, District Secretary

**Approved/Reviewed by:**

Linda A. Nemeroff, District Secretary

Jill A. Sprague, General Counsel

Michael A. Hursh, General Manager