

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT



STAFF REPORT

MEETING DATE: 11/9/2022

Staff Report No. 22-614

TO: Financing Corporation Board of Directors
FROM: Linda A. Nemeroff, Corporation Secretary
SUBJECT: Remote Brown Act Meetings

ACTION ITEM

RECOMMENDED ACTION(S):

Consider the adoption of Financing Corporation Resolution No. 22-004 authorizing the AC Transit Financing Corporation Board of Directors to hold remote teleconference meetings during a declared state of emergency, subject to the requirements of the Brown Act.

Staff Contact: Linda Nemeroff, Corporation Secretary

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 took immediate effect as an urgency measure to amend the Brown Act to permit 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.

Staff is requesting consideration of Resolution No. 22-004 authorizing the AC Transit Financing Corporation Board of Directors to hold remote teleconference meetings during a declared state of emergency, subject to the requirements of the Brown Act. 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, and masks continue to be required at all AC Transit facilities.

On October 26th, the AC Transit Board of Directors began holding hybrid meetings with both in-person and remote public attendance options. The AC Transit Board and Financing Corporation Board consist of the same members and are held on the same date and in the same meeting space. In order to maintain consistency between the two bodies, the Financing Corporation Board will hold hybrid meetings as well and

will follow the same protocols for hybrid meetings as the AC Transit Board. The attached resolution outlines the protocols described below for in-person attendance at Board meetings, which are required for all AC Transit Board of Directors meetings:

The following COVID-19 protocols shall be observed for in-person attendance:

- A. Visitors experiencing the following symptoms of COVID-19 may not enter the meeting venue: cough, chills, sore throat, shortness of breath, muscle pain, loss of taste or smell, fever;
- B. Visitors must use the temperature scanners upon entry to the building. Entrance will be prohibited if a temperature is measured at 100.4 or above; and
- C. Visitors must show proof of Covid-19 vaccination and masks will be required for all visitors.

ADVANTAGES/DISADVANTAGES:

Permitting in-person public participation at Financing Corporation Board meetings will allow greater access to 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 this report.

PRIOR RELEVANT BOARD ACTION/POLICIES:

None

ATTACHMENTS:

- 1. Resolution No. 22-004

Prepared by:

Linda A. Nemeroff, Corporation Secretary

Approved/Reviewed by:

Linda A. Nemeroff, Corporation Secretary

Jill A. Sprague, Corporation Legal Counsel