

**DIABLO COMMUNITY SERVICES DISTRICT
AND
DIABLO MUNICIPAL ADVISORY COUNCIL
SPECIAL JOINT MEETING AGENDA¹
TELECONFERENCE VIA THE APPLICATION ZOOM
TUESDAY, JANUARY 11, 2022, 7:30 P.M.**

MEETING PROCEDURE

Pursuant to California Assembly Bill 361, the Diablo Community Services District is authorized to hold public meetings remotely and to make those meetings accessible to all members of the public seeking to observe and to address the Board by remote means. All members of the public seeking to observe and/or address the Board may participate in the meeting in the manner described below. This meeting can be viewed using the Zoom platform:

ZOOM WEBSITE: **<https://zoom.us/j/4680449859>**

MEETING ID: **468 044 9859**

FOR AUDIO PARTICIPATION ONLY: Call (346) 248-7799 or (669) 900-9128 and enter Meeting ID# 468 044 9859 followed by the pound (#) key.

To submit public comments before the meeting, email generalmanager@diablocsd.org before 12 pm on the day of the meeting.

CALL TO ORDER:

President: **Kathy Urbelis**

ROLL CALL:

Secretary: **Jeff Eorio**

Urbelis, Becker, Eorio, Isom, Cox

PUBLIC COMMENTS: *Public comments will be taken on any subject including items on this agenda and are limited to 3 minutes per person when speaking in English, and 6 minutes per person when using a translator. Comments by the audience are not intended to result in a dialogue between members of the audience or between the audience and the Board. Please note that under Brown Act regulations, no member of the Board may engage in any discussion, other than a brief comment or request for clarification, of any item raised by any member of the audience unless that item is included as an agenda item.*

1. BOARD/STAFF COMMUNICATION AND ACTIONS:

ADMINISTRATIVE: Director Urbelis

- a) Review and adopt Joint Resolution 2022-01, proclaiming a state of emergency exists due to COVID-19 and authorizing remote teleconference (Zoom) meetings of the DCSD Board and DMAC Board for the period January 11, 2022, through February 11, 2022, pursuant to California Assembly Bill 361.

¹ Agenda attachments are available on the DCSD's website (www.diablocsd.org) home page under Agenda.

2. **ADJOURNMENT:**

The DCSD and DMAC will hold joint meetings as necessary to consider AB 361 findings but currently have no joint meetings scheduled.

Diablo Community Services District by

Kathy Torru, General Manager
generalmanager@diablocsd.org

DCSD and DMAC Board Meetings are accessible to people with disabilities and others who need assistance. Individuals who need special assistance or a disability-related modification or accommodation (including auxiliary aids or services) to observe and/or participate in this meeting; or who have a disability and wish to request an alternative format for the agenda, meeting notice, agenda packet, or other writings that may be distributed at the meeting should contact the General Manager at least one working day before the meeting at (925) 683-4956 or generalmanager@diablocsd.org. Notification in advance of the meeting will enable the District to make reasonable arrangements to ensure accessibility to this meeting and the materials related to it. Public records that relate to any item on the open session agenda are available for public inspection by contacting the General Manager and on the District's website <http://diablocsd.org>.

RESOLUTION NO. 2022-01

RESOLUTION OF THE DIABLO COMMUNITY SERVICES DISTRICT AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF THE BOARD OF DIRECTORS PURSUANT TO THE BROWN ACT AND AB 361

WHEREAS, on March 4, 2020, the Governor of the State of California issued a Proclamation of a State of Emergency due to COVID-19. Such Proclamation remains and is in effect as of the date of this Resolution, as are the facts, circumstances, and emergency under which it was issued; and

WHEREAS, the Diablo Community Services District ("District") ordinarily holds its regular meetings on the second Tuesday of each month (excluding July and December) 7:30 p.m. at the Diablo Country Club, 1700 Club House Road, Diablo, CA 94528; and

WHEREAS, the District has held its meetings via teleconference, specifically the Zoom platform, pursuant to the Governor's Executive Order N-29-20; and

WHEREAS, the Contra Costa County Health Officer ("Health Officer") has issued various health orders and updates designed to slow the spread of COVID-19 (including variants thereof) such as vaccinations, quarantines, face covering requirements, and social distancing recommendations designed to protect public health; and

WHEREAS, on September 20, 2021, the Health Officer issued recommendations for safely holding public meetings, including strongly recommending teleconferencing meetings as those meetings present the lowest risk of transmission of SARS-CoV-2, the virus that causes COVID-19, and further recommended social distancing and face masking of all attendees; and

WHEREAS, as of September 24, 2021, 14.5% of Contra Costa County residents remain unvaccinated or partially vaccinated. The Health Officer recommend social distancing and further recommend avoiding crowded places, close contact settings, and confined places with poor airflow; and

WHEREAS, COVID-19 continues to spread, and the Delta variant and Omicron variant (highly infectious COVID-19 strains) are prevalent in the Bay Area. COVID-19 poses imminent health and safety concerns. The risk of exposure to COVID-19 depends on the likelihood of coming into close physical contact with people who may be infected and through contact with contaminated surfaces and objects. The severity of the illness varies. Per the US Centers for Disease Control and Prevention about 14% of the cases are severe (meaning, they required hospitalization), with an infection that affects both lungs and has the potential to lead to severe medical complications (such as respiratory failure, shock, or multiorgan dysfunction) that can cause death in some people. The number of cases of infections and deaths occurring locally can be determined by viewing the dashboard of the Health Officer; and

WHEREAS, on June 11, 2021, the Governor issued Executive Order N-08-21, which placed an end date of September 30, 2021, on the authority to hold teleconferenced meetings under Executive Order N-29-20; and

WHEREAS, due the rise in COVID-19 cases, including due to the Delta and Omicron variants, the District continues to be deeply concerned about protecting the health and safety of

attendees, particularly given that even fully vaccinated people have contracted the Delta variant, people may contract and transmit the virus before knowing they are infected and/or if they are asymptomatic; meetings of the District can last several hours, and the District's meeting facilities are shared spaces, limited in space with seats that are close together, and have restricted air flow; and

WHEREAS, the California State legislature adopted AB 361 as an urgency measure that was signed by the Governor on September 16, 2021. AB 361 amends the Brown Act to allow local governments to use teleconferencing and virtual meeting technology as long as there is a gubernatorial "proclaimed state of emergency" upon the local legislative body finding that State or local officials have imposed or recommended measures to promote social distancing or that meeting in person would present imminent risks to the health or safety of attendees; and

WHEREAS, the Board desires to continue holding public meetings of the District using teleconferencing and virtual meeting technology in order to avoid the imminent risk to the health and safety of attendees; and

WHEREAS, the District found that conducting its meetings using virtual meeting technology allowed equivalent access to the meetings for Directors, staff, and the public based on the ease of use and flexibility of technology. This experience has been confirmed by the Little Hoover Commission, which evaluated the effectiveness of remote meetings statewide; and

WHEREAS, the Board, after giving all public notices required by State Law, held a duly noticed public meeting on October 12, 2021; and

WHEREAS, at such public meeting, the Board considered all pertinent oral and written information, exhibits, testimony, and comments received during the public review process, including, without limitation, information received at the public hearing, the oral report from District staff, the written report from staff, this Resolution, and all other information on which each of the Directors has based their decision (collectively, "Remote Meeting Information").

NOW, THEREFORE, BE IT RESOLVED as follows:

Section 1. Recitals. The foregoing recitals are true and correct; the recitals are hereby incorporated by reference into each of the findings as though fully set forth therein. The recitals and the information below constitute findings in this matter, and together with the Remote Meeting Information, serve as an adequate and appropriate evidentiary basis for the findings and actions set forth herein.

Section 2. AB 361 Findings. The Board hereby further finds the following: A state of emergency remains active due to the coronavirus pandemic, which continues to directly impact the ability of attendees to meet safely in person. State and/or local officials have imposed and/or recommended measures to promote social distancing. They have strongly recommended public agencies hold their meetings online because doing so presents the lowest risk of transmission of SARS-CoV-2, the virus that causes COVID-19. COVID-19 poses an imminent risk to the health and safety of attendees because it can be contracted and transmitted by people without symptoms and regardless of vaccination status and has the potential to lead to severe disease and death.

Section 3. Remote Meetings. Meetings of the District will continue to be conducted remotely using teleconferencing for the next 30 days in compliance with AB 361.

Section 4. CEQA. This action does not constitute a “project” within the meaning of Public Resources Code Section 21065, 14 Cal Code Reg. Section 15060(c)(2), 15060(c)(3), and/or 15378 because it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. In addition, this action is categorically exempt pursuant to Section 15061(b)(3), “Review for Exemptions” of the CEQA Guidelines because there is no possibility that it may have a significant effect on the environment, and no further environmental review is required. No unusual circumstances exist and none of the exceptions under CEQA Guidelines Section 15300.2 apply. This determination reflects the Board’s independent judgment and analysis.

Section 5. Effective Date. This Resolution shall take effect on and after its adoption.

* * * * *

The foregoing Resolution was adopted by the Board of Directors of the Diablo Community Services District on January 11, 2022.

Adopted by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

Attest:

Kathy Urbelis, President of the Board

Kathy Torru, General Manager

STAFF REPORT

DATE: January 11, 2022
TO: DCSD Board Members
FROM: Kathy Torru, General Manager
RE: Continued teleconference/Zoom meetings under AB 361

I. Background/Summary

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 prepare for a broader spread of COVID-19.

On March 17, 2020, the Governor issued Executive Order N-29-20 which authorized meetings of local legislative bodies to be held by teleconference as long as specified notice and comment provisions were followed. Meeting remotely has allowed the District to ensure the public's and the directors' continued access to meetings while also ensuring everyone's safety.

On June 11, 2021, Governor Newsom issued Executive Order N-08-21, which rescinded his prior Executive Order N-29-20 and set a date of October 1, 2021 for agencies to transition back to public meetings held in full compliance with the Brown Act. However, the Delta variant has emerged, causing a spike in cases throughout the State. As a result, the Contra Costa County Health Department has issued numerous recent orders, including an order requiring masks in indoor public settings. Further, the Contra Costa County Health Department has also issued official recommendations for safely holding public meetings by teleconference.

The California Legislature recently approved AB 361, which was signed as an urgency statute by the Governor on September 16, 2021 and is effective immediately. This law allows local legislative bodies to continue to meet remotely after the October 1 deadline under specified circumstances. A local agency will be allowed to continue to meet remotely when:

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

To meet remotely, agencies must make certain findings demonstrating the requirements to continue to hold remote meetings apply. Staff is recommending that Resolution 2022-01 be adopted as these findings can be made. Specifically, the District meets the requirements to continue holding meetings remotely in order to ensure the health and safety of the public because:

- The District is still under a state of emergency as declared by the Governor.
- Contra Costa County Health Order dated August 2, 2021 requires that all individuals in indoor public spaces wear masks, regardless of vaccination status.
- Contra Costa County Health officers have issued other health orders, recommendations and updates designed to slow the spread of COVID-19, including recommendations for social distancing and holding public meetings remotely to protect public health. (See, e.g. Recommendations for Safely Holding Public Meetings dated September 20, 2021.)

- The District cannot maintain social distancing requirements for the public, staff, and Directors in their meeting spaces. The District is concerned about protecting the health and safety of attendees, particularly given that even fully vaccinated people have contracted the Delta variant, people may have and transmit the virus before knowing they are infected and/or if they are asymptomatic, meetings can last several hours, and District meeting facilities are shared with the Country Club.

Under AB 361, if the state of emergency remains active for more than 30 days, a local agency must make the following findings by majority vote every 30 days to continue using the bill's exemption to the Brown Act teleconferencing rules:

- The Board has reconsidered the circumstances of the emergency; and
- Either of the following circumstances exist: The state of emergency continues to directly impact the ability of members to meet safely in person, or State or local officials continue to impose or recommend social distancing measures.

For these reasons, Staff anticipates that if the pandemic continues, the District Board will be asked to approve a resolution on every agenda making findings regarding the circumstances of the emergency and vote to continue using the law's exemptions. AB 361 sunsets on January 1, 2024. It is important to note that holding meetings remotely does not compromise the level of transparency or engagement that the Brown Act was designed to ensure. Studies have shown that remote meetings maintain and, in many instances, enhance the transparency and accessibility of public agency meetings. The Little Hoover Commission has prepared a white paper which recommends that remote meetings be allowed on a permanent basis because of the evidence gathered showing that bringing meetings to the public, rather than the other way around, promotes public participation and engagement.¹

II. Recommendation: Adopt Resolution No. 2022-01 authorizing remote teleconference meetings of the Board of Directors pursuant to the Brown Act and AB 361

We recommend that the Board adopt Resolution No. 2022-01 authorizing remote teleconference meetings of the Board of Directors pursuant to the Brown Act and AB 361.

¹ Available online at The Government of Tomorrow: Online Meetings
<https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/261/Report261.pdf>