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Date: February 10, 2022  
To: Board of Directors  
From: Ann Danforth, General Counsel  
Subject: Resolution for the Board to Continue Holding Remote Meetings

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**Recommendation:**

Review, discuss, amend (as necessary) and adopt the attached Resolution.

**Rationale for Recommendation:**

The State has adopted Assembly Bill 361, which amends the Brown Act (also known as the California Open Meetings Law) with respect to conducting remote meetings by teleconferencing. Staff believes that the present circumstances meet the criteria for continuing teleconferencing meetings. Adoption of the resolution will authorize the Board of Directors to continue that practice.

**Background, Discussion and Analysis:**

AB 361, codified as Government Code Section 54953(e)(1), authorizes teleconferenced meetings during a proclaimed state of emergency under the circumstances and criteria discussed at the Board's special meeting on September 28, 2021.<sup>1</sup> At that meeting, the Board determined that the then-current circumstances met those requirements, adopting Resolution 2021-19.

Section 54953(e)(3) limits the duration of each such determination to 30 days. If the state of emergency remains active or state or local officials have imposed or recommended measures to promote social distancing, the Board must reconsider the circumstances of the state of emergency within 30 days and determine either that the state of emergency continues to directly impact the ability of the members to meeting safely in person or that state or local officials have imposed or recommended measures to promote social distancing. Accordingly, on October 14, 2021, the Board re-considered the circumstances of the state of emergency and adopted Resolution No. 2021-20, deciding to continue to hold meetings remotely. The Board came to a similar decision on November 11, 2021, December 9, 2021 and January 13, 2022, adopting Resolutions 2021-21, 2021-22 and 2022-01, respectively.

To continue holding teleconferenced meetings during the Covid 19 threat without calling special meetings when the interval between regular meetings exceeds once a month, the Board must regularly

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<sup>1</sup> As also discussed at that meeting, the Brown Act also allows teleconferencing under Section 54954(b), but the restrictions are significantly more burdensome.

reconsider its decision to meet remotely. The attached draft Resolution 2022-01 will authorize continued teleconferenced meetings.

According to some newspapers, the Omicron variant surge is beginning to abate. However, the CDS continues to recommend wearing masks, especially indoors. infectious than previous variants. See <https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html>. The Contra Costa County Health Services Department described the County transmission rate as high as of February 4, 2022. <https://www.coronavirus.cchealth.org/>. Even vaccinated persons are vulnerable to Covid's Delta and Omicron variants and can spread the infection to others, although they tend to be less likely to become seriously ill and are infectious for a shorter period of time (<https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html>). Moreover, as of the writing of this report, the Center for Disease control continues to recommend social distancing for unvaccinated persons and masks in some circumstances (see <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> as does Contra Costa County (see, e.g., <https://www.coronavirus.cchealth.org/prevention>, <https://www.coronavirus.cchealth.org/safer-social-interactions>).

The Bay Area generally enjoys a strong vaccination rate. However, the District cannot assume that all meeting attendees are vaccinated. We do know that many Board meeting attendees are over 65 and therefore considered more vulnerable to Covid. Given all of these factors, and the fact that Governor Newsom's 2020 declaration of a state of emergency remains in effect, staff recommends that the Board continue to meet remotely.

**Fiscal Impact:**

There is no fiscal impact from approving the Resolution.

**Exhibits**

Resolution No. 2022-02, Making Findings and Electing to Continue to Meet Remotely

**RESOLUTION NO. 2022-02**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
KENSINGTON POLICE PROTECTION AND COMMUNITY  
SERVICES DISTRICT MAKING FINDINGS AND DETERMINING A  
NEED TO CONTINUE HOLDING REMOTE MEETINGS BY  
TELECONFERENCE**

**WHEREAS**, the Board of Directors of the Kensington Police Protection and Community Services District (“District”) is committed to preserving public access and participation in Board of Directors’ meetings; and

**WHEREAS**, all meetings of the District’s Board are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code §§ 54950 – 54963), so that any member of the public may attend, participate, and watch the Board conduct its business; and

**WHEREAS**, Government Code section 54953(e)(1) of the Brown Act, allows a legislative body to hold a teleconference meeting, without compliance with the requirements of Government Code section 54953(b)(3), under any of the following conditions:

- A. State or local officials have imposed or recommended measures to promote social distancing.
- B. The meeting is for the purpose of determining, by majority vote, whether because of the emergency, meeting in person would present imminent risks to the health or safety of attendees
- C. The legislative body has determined, by majority vote, that, because of the emergency, meeting in person would present imminent risks to the health or safety of attendees; and

**WHEREAS**, to meet by teleconference under Government Code section 54953(e), the Governor must have proclaimed a state of emergency under the California Emergency Services Act (Govt. Code § 8625 *et. seq.*); the legislative body must reconsider the circumstances of the state of emergency every thirty days; and the legislative body must find that the state of emergency continues to directly impact the ability of the members to meet safely in person and/or state or local officials continue to impose or recommend measures to promote social distancing; and

**WHEREAS**, if the legislative body does not make the above findings every thirty days, it must again determine whether the conditions specified in Government Code section 54953(e)(1) still pertain before holding further teleconferenced meetings under that subsection; and

**WHEREAS**, on September 28, 2021, October 14, November 11, 2021, December 9, 2021 and January 13, 2022, the Board held a special meeting in which it found that then-current circumstances met the criteria of Government Code Section 54953(e)(1)(A) and (C); and

**WHEREAS**, on February 10, 2022, the Board reviewed the evidence in the records and determined the following by majority vote:

- A. The state of emergency proclaimed by Governor Newsom on March 4, 2020, continues to exist;
- B. State or local officials continue to impose or recommend measures to promote social distancing.

- C. Because of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
- D. The state of emergency continues to directly impact the ability of the members to meet safely in person

**WHEREAS**, many persons who regularly attend Board meetings are over the age of 65 and therefore considered particularly vulnerable to COVID-19; and

**WHEREAS**, the District provides in the public notices and agendas for all public meetings the online and telephone options for participation in public meetings, protecting the right of the public to address their local officials and to participate in public meetings, and posts this information on the District’s website, including instructions on how to access the public meeting remotely.

**NOW, THEREFORE BE IT RESOLVED**, that the Board of Directors has reconsidered the circumstances of the state of emergency; and be it

**FURTHER RESOLVED**, that the Board finds that State or local officials continue to impose or recommend measures to promote social distancing and that State of Emergency declared by Governor Newsom on March 4, 2020, continues to directly impact the ability of Board members, staff, and the public to meet safely in person; and, be it

**FURTHER RESOLVED**, that the Board finds that because of the aforesaid declared State of Emergency, meeting in person would present an imminent risk to the health or safety of meeting attendees; and be it

**FURTHER RESOLVED**, that the Board authorizes and directs the General Manager to place on the Board’s agenda, at least once monthly, reconsideration of the State of Emergency to determine whether circumstances warrant continuing to meet by teleconference under Government Code section 54953(e)(3); and be it

**FURTHER RESOLVED**, that the Board authorizes and directs the General Manager to take all actions necessary to carry out the intent and purpose of this Resolution including conducting open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.

**PASSED AND ADOPTED** by the Board of Directors of the Kensington Police Protection and Community Services District upon motion by President Sylvia Hacaj, seconded by Director Sherris-Watt, on Thursday, the 10<sup>th</sup> day of February, 2022, by the following vote to wit:

AYES: .

NOES:

ABSENT:

ABSTAINED:

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Sylvia Hacaj  
President, Board of Directors

HEREBY CERTIFY the foregoing resolution was duly and regularly adopted by the Board of Directors of the Kensington Police Protection and Community Services District at the Special Meeting of said Board held on Thursday, the 10<sup>th</sup> day of February 2022.

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Lynelle M. Lewis  
District Clerk of the Board

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Richard J. Benson  
Interim General Manger