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Date: September 28, 2021  
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:**

Under normal circumstances, the Brown Act allows the legislative bodies of public agencies to meet via teleconferencing only as permitted by Government Code Section 54953(b). That statute imposes the following requirements:

- The agency must post the meeting agenda at each teleconference location
- The agenda must list each teleconference location
- Each teleconference location must be accessible to the public
- The agenda must provide an opportunity for public comment at each teleconference location
- At least a quorum of the legislative body must meet within the jurisdiction of the agency

On March 4, 2020, Governor Newsom declared a state of emergency because of the growing threat of the Covid-19 pandemic. A series of executive orders followed, imposing safety measures to protect public health. On March 12, 2020, the Governor published EO N 25 20. Section 11 of this Executive Order authorized the use of teleconferencing without meeting the requirements of Section 54953(b) provided that the public agency met specified notice and accessibility standards. On March 17, 2020, the Governor issued EO N 29 20, Section 3 of which superseded Section 11 of EO N 25 20. Section 3's teleconference provisions were similar to those of the prior Executive Order. The District Board of Directors have met remotely since March 26, 2020.

The Governor lifted many Covid-related restrictions on June 15, 2021, by EO N 8 21. However, that Executive Order continues the earlier teleconference provisions until September 30, 2021. On September 26, the Governor signed AB 361, which adds a new Section 54953(e) to the Brown Act. This provision allows teleconferenced meetings during a proclaimed state of emergency under any of the following conditions:

- State or local officials have imposed or recommended measures to promote social distancing.
- 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
- 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.

If the Board decides that remote meetings are warranted under these criteria, Section 54953(e)(2) requires that the District continue posting agenda and noticing the public's options to attend and comment during teleconferenced meeting, as the District has done since the beginning of the pandemic period.

Governor Newsom's 2020 declaration of a state of emergency remains in effect. The Center for Disease Control has recommended booster shots for groups considered more vulnerable to Covid, or more likely to be exposed, evincing the on-going danger of the virus. Even vaccinated persons are vulnerable to Covid's Delta variant and can spread the infection to others, although they tend to be less likely to become 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 (see <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/participate-in-activities.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.

If the Board decides to continue meeting remotely, Section 54953(e) adds the following new requirements:

1. 54953(e)(2)(C) provides that public agencies must protect the statutory and constitutional rights of the parties and the public appearing before the legislative body of a local agency.
2. 54953(e)(2)(D) provides that if a disruption prevents the public agency from broadcasting the meeting, or prevent the public from offering public comments, the agency will take no further action on items on the agenda until access is restored.
3. Every 30 days, the agency's legislative body must reconsider the state of emergency and decide whether:
  - a. The state of emergency continues to affect the ability of members to meet in person; or
  - b. State or local officials continue to impose or recommend measures to promote social distancing

AB 361, and the above amendments to the Brown Act, expire on January 1, 2024.

**Fiscal Impact:**

There is no fiscal impact from approving the Resolution.

**Exhibits**

1. Resolution No. 2021-19 – Making Findings and Determining A Need to Continue Holding Remote Meetings by Teleconference

**RESOLUTION NO. 2021-19**

**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 meetings of the Board of Directors; 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) 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), subject to the existence of certain conditions; and

**WHEREAS**, in order 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; 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**, On March 4, 2020, Governor Newsom proclaimed a State of Emergency declared by Governor Newsom under the California Emergency Services Act due to COVID-19, which is still in existence; and

**WHEREAS**, on August 2, 2021, the Contra Costa County Health Officer issued a Health Order requiring the wearing of face coverings in workplaces and public settings due to the rise of the SARS-CoV-2 Delta Variant, which is still in effect; and

**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 Director \_\_\_\_\_, seconded by Director \_\_\_\_\_, on Tuesday, the \_\_\_\_ day of \_\_\_\_\_, 2021, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAINED:

\_\_\_\_\_  
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 regular meeting of said Board held on \_\_\_\_\_, the \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Lynelle M. Lewis  
District Clerk of the Board

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Richard J. Benson  
Interim General Manger