



Agenda

Board of Directors
Kensington Police Protection and
Community Services District

Special Meeting
Tuesday, September 28, 2021
Via Teleconference

www.kppcsd.org/2021-09-28-kppcsd-board-special-meeting

**The page at the URL above will have instructions on how to join the
online meetings.**

In response to the County and State "shelter in place" orders, the Governor issued an order expanding his prior waiver of normal Brown Act requirements. Executive Order N-29-20, issued March 17, 2020, authorizes all-electronic meetings without a physical location for agency officials or members of the public. The published agenda must advise the public of the means by which it may participate in the meeting and of a procedure by which disabled persons may submit requests for accommodation or modification. The order does not suspend notice requirements.

Executive Order N-29-20 is effective while state and/or local public health officials have imposed or recommended social distancing measure. The District must prioritize public health and containing the spread of the Covid-19 virus, which precludes holding physical public meetings. The District will comply with the usual Brown Act requirements to the extent compatible with the directives and recommendations of state and local health officials. We appreciate your understanding.

Special Meeting (5:00 p.m.)

Call To Order

Roll Call

Special Meeting Agenda Item Public Comments

Individuals wishing to address the District Board of Directors concerning any Special Meeting agenda items or on matters not already on the agenda are invited to make oral comments of up to three minutes. Please raise your hand via Zoom. When you are called on by the District President, you will be unmuted, and you can address the Board of Directors, please state your name clearly for the audio recording. You are requested to address your comments to the President and Board of Directors, and not to staff and/or the audience. By state law, the Board is not permitted to undertake any action or discussion on any item not appearing on the posted agenda. If you have any documentation that you would like distributed to the Board, please mail or email it to the Clerk of the Board at 917 Arlington Ave., Kensington, CA 94707 or llewis@kppcsd.org.

1. Remote Meetings

Recommended Action: Adopt Resolution No. 2021-19 Making Findings and Determining A Need to Continue Holding Remote Meetings By Teleconference.

Contact: Ann Danforth, General Counsel, adanforth8@outlook.com

Adjourn To Closed Session

The Board will discuss Closed Session agenda items via webinar or teleconference.

Special Closed Session Meeting

Special Meeting Agenda Item Public Comments

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1. **Conference with Real Property Negotiators** (Government Code § 54956.8)
Consider matters related to properties: 217 Arlington Avenue and 303 Arlington Avenue;
Agency negotiator: Interim General Manager Richard Benson; Under negotiation: price, terms of payment, space available.

Announcements from Closed Session

Adjournment

The next regular meeting will be held on Thursday, October 14, 2021.

General Information

- All proceedings of the Open Session will be audio and video recorded if possible.
- Upon request, the Kensington Police Protection and Community Services District will provide written agenda materials in appropriate alternative formats or disability-related modification of disabilities to participate in public meeting. Please send written request, including your name, mailing address, phone number, and a brief description of the requested materials and preferred alternative format or auxiliary aid or service at least two days before the meeting. Requests should be sent to Kensington Police Protection & Community Services District, 217 Arlington Ave, Kensington, CA 94707.
- To be added to the Board Agenda Mailing List, complete and submit the form at <https://www.kppcsd.org/agenda-mailing-list> or by notifying the Clerk of the Board at llewis@kppcsd.org.

POSTED AGENDA: Public Safety Building – Colusa Food – Arlington Kiosk and at www.kppcsd.org. Complete agenda packets are available at the Public Safety Building.

All public records that relate to an open session item of a meeting of the Kensington Police Protection & Community Services District that are distributed to a majority of the Board less

than 72 hours before the meeting, excluding records that are exempt from disclosure pursuant to the California Public Records Act, will be available for inspection at the **District offices, 217 Arlington Ave, Kensington, CA 94707** at the same time that those records are distributed or made available to a majority of the Board.



Date: September 28, 2021
To: Board of Directors
From: Ann Danforth, General Counsel
Subject: Resolution for the Board to Continue Holding Remote Meetings

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

Richard J. Benson
Interim General Manger