San Mateo County Libraries

Agenda Item II.

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| To: | JPA Governing Board |
| From: | Anne-Marie Despain, Director of Library Services |
| Date: | November 10, 2021 |
| Meeting: | November 15, 2021 |
| Re: | Authorize Continued Use of Virtual Meetings |

## Background

On September 16, 2021, Governor Newsom signed into law Assembly Bill 361 (AB 361) which sets forth remote meeting requirements and procedures for local legislative bodies during a proclaimed state of emergency. Specifically, AB 361 allows a local legislative body to continue holding remote meetings between October 1, 2021 and January 1, 2024 under the following circumstances:

- Automatically whenever 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; or
- When 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 or safety of attendees; or
- When the legislative body 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.

Once the Governing Board complies with AB 361, traditional Brown Act rules for remote meetings are suspended—specifically, requirements that (a) the Commission make available a physical location to observe the meeting or to make public comment and (b) teleconference locations each have posted notices or agendas, be accessible to the public, and be identified by address on the agenda. In addition, the following procedures apply to the remote meetings:

- AB 361 forbids agencies from requiring public comment to be submitted in advance and requires an opportunity to address the public/Committee in real time. Thus, limiting comments to emails received prior to the meeting is no longer acceptable.
- AB 361 regulates, for the first time, the rules and procedures for opening and closing a public comment period for agenda items. Specifically, a reasonable time for indicating a desire to comment (i.e., to use the "raise hand" feature in Zoom) must be provided.

- AB 361 prohibits agencies from taking action on agenda items when there is a disruption to the teleconference proceedings or technical failure on the agency's end which prevents members of the public from making comments, until public access is restored, and creates a cause of action to challenge agency actions taken during a disruption to public access.
- Notwithstanding Brown Act prohibitions on requiring attendees to register their names as a condition of meeting attendance, AB 361 expressly authorizes agencies to use third-party teleconference platforms that require registration (i.e., Zoom requiring an attendee to include their email).

## Discussion

Currently, the COVID-19-related proclaimed state of emergency remains in place, but the local health officer has not "imposed or recommended measures to promote social distancing" and the state's website indicates that social distancing "requirements" are no longer in effect, except for rules on "mega-events" over 1,000. Thus, under AB 361, the Governing Board's ability to hold remote meetings is not automatically extended and, in order to continue holding remote meetings for the next 30 days, the Governing Board must determine, by majority vote that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees. It would.

Both the California Department of Public Health and the United States Centers for Disease Control and Prevention caution that the Delta variant of COVID-19 is more transmissible than prior variants, may cause more severe illness, and even fully vaccinated individuals can spread the virus to others, resulting in rapid and alarming rates of COVID-19 cases and hospitalizations. Therefore, reducing the circumstances under which individuals come into close contact with each other indoors remains a vital component of the COVID-19 response strategy.

Indoor public meetings of the Governing Board pose particularly high risks for transmission of COVID-19, as such meetings would bring together people from across the county and the open nature of public meetings makes it difficult to enforce compliance with vaccination, physical distancing, masking, and other safety measures essential to enabling that all residents—including those who are immunocompromised or unvaccinated—can safely participate.

For these very reasons, on September 28, 2021 and again on October 19, 2021, the San Mateo County Board of Supervisors found that meeting in person would present imminent risks to the health or safety of its attendees, and, as a result, invoked the provisions of AB 361 and strongly encouraged other county legislative bodies to make similar finding and continue meeting remotely through teleconferencing.

Therefore, it is recommended that the Governing Board invoke the provisions of AB 361 for its meetings.

## Fiscal Impact

There is no fiscal impact associated with the continued use of virtual JPA Governing Board meetings.

## Recommendation

Approve the continued use of virtual JPA Governing Board meetings, as a result of the continuing COVID-19 pandemic state of emergency proclaimed by Governor Newsom and based on findings that meeting in person would present imminent risks to the health or safety of attendees. Operations Committee members present at the November 9, 2021 meeting concurred with this recommendation.