

RESOLUTION NO. MA11-21

Resolution Of The Board Of Directors Of The Management Of Emeryville Services Authority (“MESA”) Making Required Findings To Allow The Continuation Of Remotely Held Meetings Of MESA, Pursuant To AB 361

WHEREAS, on March 4, 2020, the Governor of the State of California (“Governor”) issued a Proclamation of a State of Emergency due to COVID-19, which 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, on March 17, 2020, the Governor issued Executive Order N-29-20 allowing local legislative bodies to hold meetings via teleconference and to make meetings accessible electronically without it constituting a violation of the open meeting laws found in the Ralph M. Brown Act (California Government Code Sections 54950 et seq., “Brown Act”); and

WHEREAS, there has been an increase in public participation at public meetings that are held via teleconference during the course of the pandemic; and

WHEREAS, on March 19, 2020, pursuant to Resolution No. 20-23, the City Council of the City of Emeryville (“City Council”) ratified the City of Emeryville’s Director of Emergency Services Proclamation of Local Emergency dated March 17, 2020; and

WHEREAS, the Health Officer of the County of Alameda (“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, as of August 3, 2021, the Health Officer continued to state that indoor settings, whether public or private, are a higher risk for COVID-19 transmission and, that while vaccination protects against severe COVID-19 illness, the COVID-19 Delta variant was beginning to infect a small percentage of vaccinated people as well as many unvaccinated people; and

WHEREAS, eight Bay Area health officers, including Alameda County’s, have issued Health Orders requiring masks indoors in public places, which require all individuals, regardless of vaccination status, to wear face coverings when indoors in public settings, with limited exceptions, starting at 12:01 a.m. on Tuesday, August 3, 2021; and

WHEREAS, as of October 13, 2021, 22.1% of Emeryville residents remained unvaccinated, and 17 % had received only one dose, both of which exceed the average numbers for Alameda County of 16.6% and 11.1%, respectively; 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 so-called Brown Act Orders that allowed exemptions to public meeting laws; and

WHEREAS, since the issuance of Executive Order N-08-21, the Delta variant has proliferated, causing a spike in COVID-19 cases throughout the state; and

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WHEREAS, the Center for Disease Control has found that after getting vaccinated against COVID-19, protection against the virus may decrease over time and be less able to protect against the Delta Variant, and recently recommended that individuals receive booster shots; and

WHEREAS, pursuant to Executive Orders N-29-20 and N-08-21, MESA has been holding remote meetings using teleconferencing and virtual meeting technology in an effort to help protect the public, members of MESA and staff attending such meetings (“Attendees”) from COVID-19; and

WHEREAS, due the rise in COVID-19 case, including due to the Delta variant, MESA 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 have and transmit the virus before knowing they are infected and/or if they are asymptomatic; meetings of MESA can exceed fifteen minutes, and its meeting facilities are limited in space with seats close together, and facilities 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, to be effective immediately, and which amends the Brown Act to allow local legislative bodies to continue meeting remotely using 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 MESA desires to continue holding public meetings of the MESA remotely using teleconferencing and virtual meeting technology in order to avoid the imminent risk to the health and safety of attendees; and

WHEREAS, the Board of Directors held a duly noticed public meeting on November 16, 2021; and

WHEREAS, at such public meeting, the Board of Directors considered all pertinent information, exhibits, testimony, and comments received during the public review process, including, without limitation, information received at the public meeting, the written report from staff dated November 16, 2021, this Resolution, and all other information on which the Board of Directors has based its decision; now, therefore, be it

RESOLVED that the Board of Directors of Management of Emeryville Services Authority hereby finds the following:

- a. The foregoing recitals are true and correct.
- b. A state of emergency remains active.

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- c. State and local officials have imposed or recommended measures to promote social distancing.
- c. Board of Directors has reconsidered the circumstances of the state of emergency.
- d. The following circumstances exist:
 - (i) The state of emergency continues to directly impact the ability of meeting attendees to meet safely in person.
 - (ii) State or local officials continue to impose or recommend measures to promote social distancing; and, be it further

RESOLVED, that as of the effective date of AB 361, meetings of MESA will continue to be conducted remotely using teleconferencing and virtual meeting technology for the next 30 days in compliance with AB 361 and MESA will revisit the need to so conduct its meetings within 30 days of the adoption of this Resolution.

ADOPTED, by the Board of Directors of the Management of Emeryville Services Authority at a special meeting held Tuesday, November 16, 2021, by the following vote:

AYES:	<u>4</u>	Chair Martinez, Vice Chair Donahue, and Members Bauters and Medina
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	

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CHAIR

ATTEST:

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CITY CLERK

APPROVED AS TO FORM:

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INTERIM LEGAL COUNSEL