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Air Pollution Control Officer

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DATE: September 15, 2022

TO: SJVUAPCD Governing Board



FROM: Samir Sheikh, Executive Director/APCO

RE: **ITEM NUMBER 18: ASSEMBLY BILL 361 AND DISTRICT REMOTE TELECONFERENCING UPDATE**

RECOMMENDATION:

Approve Resolution 22-09-18 directing the District to continue conducting remote teleconference meetings with the intent to periodically review this determination every 30 days as required by Assembly Bill (AB) 361.

BACKGROUND:

Starting in March 2020, amid rising concern surrounding the spread of COVID-19, California Governor Gavin Newsom issued a series of Executive Orders aimed at containing COVID-19. These Executive Orders (N-25-20, N-29-20, and N-35-20) collectively modified certain requirements created by the Ralph M. Brown Act ("the Brown Act"), the state's local agency public meetings law.

The orders waived several requirements, including requirements in the Brown Act expressly or impliedly requiring the physical presence of members of the legislative body, the clerk, or other personnel of the body, or of the public as a condition of participation in or for the purpose of establishing a quorum for a public meeting. The orders also waived requirements for providing notice of teleconference locations, requirements that teleconference locations be open to the public, requirements that agendas be posted at each teleconference location, and requirements that at least a quorum of the members participate from locations within the boundaries of the local body.

On June 11, 2021, the Governor issued Executive Order N-08-21 which rescinds the aforementioned modifications made to the Brown

Act effective September 30, 2021. Subsequently, on September 16, 2021, the Governor signed AB 361 (Rivas) which provides local agencies additional flexibility to meet remotely beyond September 30, 2021, during a proclaimed state of emergency provided measures to promote social distancing are recommended or meeting in person would present imminent risks to the health and safety of attendees.

DISCUSSION:

Consistent with the requirements of the Brown Act, Executive Order N-02-21, and AB 361, on and after October 1, 2021, all meetings of special district boards and other local agencies:

- Must be conducted under standard Brown Act provisions (i.e., meeting in-person or teleconferencing and adhering to the requirements of subdivision (b) of California Government Code section 54953), or
- Must be conducted under the substantive and procedural requirements of AB 361 to conduct a remote teleconference meeting without adhering to the requirements of paragraph (3) of subdivision (b) of California Government Code section 54953.

To exercise the flexibility provided under AB 361, a local legislative body meeting during a proclaimed state of emergency must determine 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. On October 21, 2021, the District Governing Board adopted Resolution 21-10-4 directing the District to conduct remote teleconference meeting under the substantive and procedural requirements of AB 361. Consistent with AB 361, the Governing Board has reviewed this determination every 30 days. Most recently, on August 18, 2022, the Governing Board affirmed that the prerequisite AB 361 conditions were still in place and adopted Resolution 22-08-17 which extended the direction to conduct remote teleconference meetings under AB 361 requirements. Resolution 22-08-17 is set to expire September 17, 2022, and consistent with the requirements of AB 361 the Board must reconsider and reaffirm that the prerequisite conditions continue to be met in order to continue to meet remotely in accordance with the video teleconference requirements of AB 361.

Due to the continued State of Emergency, the current Center for Disease Control and Prevention COVID-19 Community Levels for the Valley counties, the continued social distancing recommendations of local officials, and the District's interest in protecting the health, safety, and welfare of those who participate in meetings of the District's various legislative bodies subject to the Brown Act, staff recommends, that for the time being, the Governing Board and all District subsidiary bodies continue to meet via video teleconference due to the risks to the health and safety of attendees.

FISCAL IMPACT:

None.

Attachment: Resolution 22-09-18 (5 of pages)

San Joaquin Valley Unified Air Pollution Control District
Meeting of the Governing Board
September 15, 2022

**AB 361 AND DISTRICT REMOTE TELECONFRENCING
UPDATE**

Attachment:

Resolution
(5 PAGES)

BEFORE THE GOVERNING BOARD OF THE
SAN JOAQUIN VALLEY UNIFIED
AIR POLLUTION CONTROL DISTRICT

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2
3 FINDING THAT AS A RESULT OF THE) RESOLUTION NO. 22-09-18
4 CONTINUING COVID-19 PANDEMIC STATE }
5 OF EMERGENCY DECLARED BY }
6 GOVERNOR NEWSOME, MEETING IN }
7 PERSON WOULD PRESENT IMMINENT }
8 RISKS TO THE HEALTH OR SAFETY OF }
9 ATTENDEES }

10 **WHEREAS**, on March 4, 2020, Governor Newsom issued a Proclamation of State
11 of Emergency in response to the COVID-19 pandemic; and,

12 **WHEREAS**, the proclaimed state of emergency remains in effect; and,

13 **WHEREAS**, on March 17, 2020, Governor Newsom issued Executive Order N-
14 29-20 that suspended the teleconferencing rules set forth in the California Open Meeting
15 law, Government Code section 54950 et seq. (the "Brown Act"), provided certain
16 requirements were met and followed; and,

17 **WHEREAS**, on June 11, 2021, Governor Newsom issued Executive Order N-08-
18 21 that clarified the suspension of the teleconferencing rules set forth in the Brown Act,
19 and further provided that those provisions would remain suspended through September
20 30, 2021; and,

21 **WHEREAS**, on September 16, 2021, Governor Newsom signed AB 361, which
22 took effect immediately, that provides that a legislative body subject to the Brown Act
23 may continue to meet using teleconferencing in accordance with the teleconference
24 requirements of AB 361 instead of following the normal teleconferencing rules in the
25 Brown Act, provided that the legislative body is meeting during the proclaimed state of
26 emergency and the legislative body determines that meeting in person would present
27 imminent risks to the health or safety of attendees; and,

28 -1- **FINDING THAT AS A RESULT OF THE
CONTINUING COVID-19 PANDEMIC STATE OF
EMERGENCY DECLARED BY GOVERNOR
NEWSOME, MEETING IN PERSON WOULD
PRESENT IMMINENT RISKS TO THE HEALTH
OR SAFETY OF ATTENDEES**

1 solely via video teleconference or via a combination of physical location and video
2 teleconference, with such determination to be reconsidered thereafter in accordance with
3 AB 361;

4 **NOW, THEREFORE, BE IT RESOLVED, by the Governing Board of the San**
5 **Joaquin Valley Unified Air Pollution Control District as follows:**

6 1. The recitals set forth above are true and correct.

7 2. The Governing Board finds that as a result of the continuing COVID-19
8 pandemic state of emergency declared by Governor Newsom, holding meetings of the
9 Governing Board and all District subsidiary bodies in person would present imminent
10 risks to the health or safety of attendees.

11 3. No later than thirty (30) days after the date of this resolution, staff is
12 directed to put an item on the Board's agenda to reconsider the circumstances of the
13 state of emergency and consider making the findings required by AB 361 in order to
14 continue to allow District legislative body meetings via video teleconference under its
15 provisions, or a special meeting shall be called for that purpose if necessary.

16 4. The Air Pollution Control Officer and District Counsel are authorized and
17 directed to take such other necessary or appropriate actions to implement the intent and
18 purposes of this resolution.

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-4- **FINDING THAT AS A RESULT OF THE
CONTINUING COVID-19 PANDEMIC STATE OF
EMERGENCY DECLARED BY GOVERNOR
NEWSOME, MEETING IN PERSON WOULD
PRESENT IMMINENT RISKS TO THE HEALTH
OR SAFETY OF ATTENDEES**

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THE FOREGOING was passed and adopted by the following vote of the
Governing Board of the San Joaquin Valley Unified Air Pollution Control District this 15th
day of September 2022, to wit:

AYES:

NOES:

ABSENT:

SAN JOAQUIN VALLEY UNIFIED
AIR POLLUTION CONTROL DISTRICT

By _____
Vito Chiesa, Chair
Governing Board

ATTEST:

By _____
Adriana Myovich
Interim Deputy Clerk to the Governing Board