



Tulare County Transportation Authority

210 N. Church Street, Suite B  
Visalia, California 93291  
Phone (559) 623-0450  
Fax (559) 733-6720  
www.tularecog.org

Tulare County Transportation Authority	Date: <b>Monday, December 12, 2022</b> Time: <b>1:00 PM</b> Place: Tulare Ag Auditorium 4437 S. Laspina Tulare, CA 93274
Technical Advisory Committee	Date: <b>Thursday, December 8, 2022</b> Time: <b>1:30 PM</b> Place: Tulare County Association of Governments 210 N. Church Street, Suite B (Sequoia Conference Room) Visalia, CA 93291

NOTE: This meeting will allow Board Members and the public to participate in the meeting via Teleconference, pursuant to Assembly Bill 361, available at [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB361](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB361)

**Zoom Meeting | Direct Link:** <https://bit.ly/2Zt4BQY>  
**Toll Free Call in:** 1(888) 475-4499 | **Meeting ID:** 744 710 0343 | **Passcode:** 82243742  
**Call in only instructions:**  
Enter your meeting ID followed by #, Enter # for participant ID, Enter the passcode followed by #.

In compliance with the Americans with Disabilities Act and the California Ralph M. Brown Act, if you need special assistance to participate in this meeting, including auxiliary aids, translation requests, or other accommodations, or to be able to access this agenda and documents in the agenda packet, please contact the TCAG office at 559-623-0450 at least 3 days prior to the meeting. If information is needed in another language, contact (559) 623-0450. Si se necesita esta información en español, llame (559) 623-0450. Kung ang kailangang impormasyon ay sa Tagalog, tawagan ang (559) 623-0450

Any staff reports and supporting materials provided to the Board after the distribution of the agenda packet are available for public inspection at the TCAG office.

- I. CALL TO ORDER & WELCOME
- II. PUBLIC COMMENTS-TIMED ITEM

**NOTICE TO THE PUBLIC  
PUBLIC COMMENT PERIOD**

At this time, members of the public may comment on any item of interest to the public and within the subject matter jurisdiction of TCAG but not appearing on this agenda. Under state law, matters presented under this item cannot be discussed or acted upon by the Board at this time. For items appearing on the agenda, the public is invited to make comments at the time the item comes up for Board consideration. Any person addressing the Board will be limited to a maximum of three (3) minutes so that all interested parties have an opportunity to speak with a total of fifteen (15) minutes allotted for the Public Comment Period. Speakers are requested to state their name(s) and address(es) for the record.

**Convene as the Tulare County Transportation Authority**

**All items on the Consent Agenda are considered to be routine and non-controversial by Authority staff and will be approved by one motion if no member of the Authority Board or public wishes to comment or ask questions. Items pulled from the Calendar will be considered separately.**

### III. AUTHORITY CONSENT CALENDAR – ACTION AND INFORMATION ITEMS

#### Request approval of the Authority Consent Calendar Action Items III-A through III-D.

- A. Action: Reaffirm Conditions of State Assembly Bill 361 to Continue Remote Attendance at Public Meetings (Pages 01 - 02)
- B. Action: Minutes of October 17, 2022 Transportation Authority Meeting (Pages 03 - 04)
- C. Action: Minutes of October 13, 2022 Technical Advisory Committee Meeting (Pages 05 - 06)
- D. Action: Approve the 2023 Tulare County Transportation Authority (TCTA), and Technical Advisory Committee (TAC) Meeting Calendar and Reconfirm the Cancellation Policy (Pages 07 - 08)

### IV. AUTHORITY ACTION/DISCUSSION ITEMS

- A. Information: Effects of 2022 Amendment to Brown Act (Pages 09 - 18)
- B. Information: Measure R Revenues Update (Pages 19 - 20)

### V. OTHER BUSINESS

- A. Information: Item from Staff
- B. Information: Item from Board Members
- C. Request from Board Members for Future Agenda Items

### VI. ADJOURN

The next scheduled Tulare County Transportation Authority (TCTA) Board meeting will be held on **Monday, January 23, 2023 at 1:00 p.m.** at a location to be determined. The Technical Advisory Committee will meet on **Thursday, January 19, 2023 at 1:30 p.m.** at the **Tulare County Association of Governments (TCAG), 210 N. Church Street, Suite B, Sequoia Conference Room, Visalia, CA 93291.**

TULARE COUNTY TRANSPORTATION AUTHORITY

<b>BOARD OF GOVERNORS</b>	<b>AGENCY</b>	<b>ALTERNATE</b>
Larry Micari	Tulare County-District 1	*
Pete Vander Poel	Tulare County-District 2	*
Amy Shuklian - Chair	Tulare County-District 3	*
Eddie Valero	Tulare County-District 4	*
Dennis Townsend	Tulare County-District 5	*
Maribel Reynosa	City of Dinuba	Linda Launer
Frankie Alves	City of Exeter	Steve Garver
Paul Boyer	City of Farmersville	Ruben Macareno
Ramona Caudillo	City of Lindsay	Ramiro Serna
Martha A. Flores – Vice-Chair	City of Porterville	Milt Stowe
Terry Sayre	City of Tulare	Jose Sigala
Brian Poochigian	City of Visalia	Brett Taylor
Rudy Mendoza	City of Woodlake	Jose Martinez

**\*No Alternate (Required to be an elected official)**

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**TCAG STAFF**

Ted Smalley, Executive Director  
Ben Kimball, Deputy Executive Director  
Ben Giuliani, Executive Officer- LAFCO  
Leslie Davis, Finance Director  
Roberto Brady, Principal Regional Planner  
Derek Winning, Principal Regional Planner  
Gabriel Gutierrez, Senior Regional Planner  
Kasia Poleszczuk, Senior Regional Planner  
Steven Ingoldsby, Senior Regional Planner  
Giancarlo Bruno, Regional Planner  
Sheela Bhongir, Regional Planner  
Gail Miller, Associate Regional Planner-EH  
Maria Garza, Associate Regional Planner-EH  
Jennifer Miller, Associate Regional Planner-EH  
Michele Boling, TCAG Accountant III  
Brideget Moore, TCAG Staff Services Analyst III  
Servando Quintanilla, TCAG Analyst  
Amie Kane, TCAG Administrative Clerk II  
Holly Gallo, Office Assistant III

**Office Address**

Tulare County Association of Governments  
210 N. Church, Suite B  
Visalia, CA 93291  
P: (559) 623-0450  
F: (559) 733-6720  
[www.tularecog.org](http://www.tularecog.org)  
[www.tcmeasurer.com](http://www.tcmeasurer.com)

**TCRTA STAFF**

Richard Tree, Executive Director - TCRTA

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Tulare County Association of Governments  
Sitting as the Tulare County Transportation Authority

**AGENDA ITEM III-A**

**December 12, 2022**

**Prepared by Jeff Kuhn, Chief Deputy County Counsel**

**SUBJECT:**

**Action:** Reaffirm Conditions of State Assembly Bill 361 to Continue Remote Attendance at Public Meetings

**BACKGROUND:**

In response to the COVID-19 pandemic, the Governor suspended part of the Brown Act concerning the requirements for allowing Governing Board members to remotely participate in Board meetings. The suspended provisions require that (1) Governing Board meeting agendas allowing remote Board Member participation list each of the specific locations from which Board members will be remotely participating, (2) such agendas be posted at each such location, and (3) members of the general public must be allowed to remotely participate in the meeting from each of the listed locations. The suspension was done to promote social distancing and so to help limit the spread of COVID-19.

**DISCUSSION:**

The Governor's suspension of these Brown Act provisions expired as of September 30 and was replaced by new AB 361, an urgency statute that became effective as of September 30. Under AB 361, Governing Boards can continue to allow remote Board members participation in Brown Act public meetings if several conditions are met:

1. The meeting is held during a declared State of Emergency (Like the Governor's COVID-19 pandemic State of Emergency that's still in effect in California);
2. The Governing Board adopts findings to the effect that allowing remote meeting participation by Governing Board members promotes social distancing, which in turn helps prevent the spread of COVID-19;
3. The Governing Board confirms these conditions continue to be met every 30 days.

The Tulare County Association of Governments Board of Governors passed a resolution adopting a policy of remote attendance pursuant to AB 361 on October 18, 2021.

**RECOMMENDATION:**

Reaffirm the decision to continue allowing the option to participate in its governing board meetings remotely through the use of the teleconferencing provisions of AB 361.

**FISCAL IMPACT:**

None

**ATTACHMENT:**

None

Work Element 601.02 TCAG Administration

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**AGENDA ITEM: III-B**  
**TULARE COUNTY ASSOCIATION OF GOVERNMENTS**  
**TULARE COUNTY TRANSPORTATION AUTHORITY**

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**Executive Minutes October 17, 2022**

Board Members	Alternates	Member/Alternate	Agency
Larry Micari	*	M	Tulare County-Dist. 1
Pete Vander Poel, Chair	*	-	Tulare County-Dist. 2
Amy Shuklian	*	M	Tulare County-Dist. 3
Eddie Valero	*	M	Tulare County-Dist. 4
Dennis Townsend	*	M	Tulare County-Dist. 5
Maribel Reynosa	Linda Launer	-	City of Dinuba
Frankie Alves	Dave Hails	M	City of Exeter
Paul Boyer	Ruben Macareno	A	City of Farmersville
Ramona Caudillo	Ramiro Serna	A	City of Lindsay
Martha A. Flores, Vice-Chair	Milt Stowe	M	City of Porterville
Terry Sayre	Jose Sigala	M	City of Tulare
Brian Poochigian	<i>Vacant</i>	M	City of Visalia
Rudy Mendoza	Jose Martinez	M	City of Woodlake

**Counsel and TCAG Staff Present (X)**

- |   |  |
|---|--|
| <p><u>X</u> Jeff Kuhn, Tulare Co. Deputy Counsel</p> <p><u>X</u> Ted Smalley, Executive Director</p> <p><u>    </u> Benjamin Kimball, Deputy Executive Director</p> <p><u>X</u> Benjamin Giuliani, Executive Officer-LAFCO</p> <p><u>X</u> Leslie Davis, Finance Director</p> <p><u>X</u> Roberto Brady, Principal Regional Planner</p> <p><u>X</u> Derek Winning, Senior Regional Planner</p> <p><u>X</u> Gabriel Gutierrez, Senior Regional Planner</p> <p><u>X</u> Kasia Poleszczuk, Associate Regional Planner</p> <p><u>X</u> Steven Ingoldsby, Associate Regional Planner</p> | <p><u>X</u> Giancarlo Bruno, Regional Planner</p> <p><u>X</u> Sheela Bhongir, Regional Planner</p> <p><u>X</u> Gail Miller, Associate Regional Planner/EH</p> <p><u>    </u> Maria Garza, Associate Regional Planner/EH</p> <p><u>    </u> Jennie Miller, Associate Regional Planner EH</p> <p><u>    </u> Michele Boling, Accountant III</p> <p><u>X</u> Brideget Moore, Staff Services Analyst III</p> <p><u>    </u> Amie Kane, TCAG Administrative Clerk II</p> <p><u>X</u> Servando Quintanilla, TCAG Administrative Clerk II</p> <p><u>X</u> Holly Gallo, Office Assistant III</p> |
|---|--|

**I. CALL TO ORDER & WELCOME**

The Tulare County Transportation Authority was called to order by Shuklian at 2:09 p.m. on October 17, 2022 at the Porterville Fire Department Training Facility, 500 N. Newcomb Street, Porterville, CA 93257.

**II. PUBLIC COMMENTS**

Public comments opened/closed at 2:07 p.m. No public comments received

**III. AUTHORITY CONSENT CALENDAR – ACTION/INFORMATION ITEMS**

Request approval of the Authority Consent Calendar Action Items III-A through III-F.

**A. Action: Reaffirm Conditions of State Assembly Bill 361 to Continue Remote Attendance at Public Meetings**

**B. Action: Minutes of September 19, 2022 Transit Authority Meeting**

**C. Action: Minutes of September 15, 2022 Technical Advisory Committee Meeting**

**D. Action: Cancel the November and Reschedule the December 2022 Tulare County Transportation Authority (TCTA) and the Technical Advisory Committee (TAC) Meetings**

**E. Action: Adoption of Resolution: 2020 Measure R Strategic Work Plan – Amendment No. 7**

**F. Action: Adoption of Resolution: Measure R Arbitrage Rebate Consultant Services**  
Upon a motion by Member Flores, and second by Member Townsend, the Tulare County Transportation Authority unanimously approved the Authority Consent Calendar Action Items III-A through III-F. Absent: Vander Poel, and Reynosa.

**IV. AUTHORITY ACTION/DISCUSSION ITEMS**

**A. Information: Measure R Revenues for September 2022**

Ms. Davis shared that the Measure R revenues for September were \$3,839,825. The 22/23 fiscal year to date amount was \$13,383,675 compared to \$12,533,760 for the same period last year representing a 6.8% increase.

**V. OTHER BUSINESS**

**A. Information: Items from Staff**

**B. Information: Items from Board Members**

**C. Request from Board Members for Future Agenda Items**

There were no items reported or comments noted for Other Business Items V-A through V-C.

**VI. ADJOURN**

The Tulare County Transportation Authority adjourned at 2:11 p.m.

**Item III-C**  
**TCTA Technical Advisory Committee Meeting**  
**Tulare County Association of Governments - 210 N. Church Street, Suite B, Visalia, CA 93291**  
**October 13, 2022 – Summary Meeting Minutes**

City of Dinuba	George Avila
City of Exeter	Eddie Wendt
City of Farmersville	<i>Absent</i>
City of Lindsay	<i>Absent</i>
County of Tulare	Karla Arteaga
City of Porterville	Javier Sanchez
City of Tulare	Michael Miller
City of Woodlake	<i>Absent</i>
City of Visalia	Dolores Verduzco
Tule River Indian Reservation	<i>Absent</i>
TCAG	Ted Smalley
Caltrans	Lorena Mendibles

**Others Present:**

**TCAG Staff Present:** Giancarlo Bruno, Derek Winning, Benjamin Giuliani, Roberto Brady, Leslie Davis, Sheela Bhongir, Brideget Moore and Servando Quintanilla Jr Recording.

**SUMMARY MEETING MINUTES**

(Minutes reflect agenda items discussed only)

- I. CALL TO ORDER:** The meeting convened as the Tulare County Transportation Authority Meeting and was called to order by Mr. Smalley at 1:47 p.m. All action and informational documents were distributed for review and discussion. All actionable items would be voted on at the next Tulare County Transportation Authority (TCTA) Board meeting, scheduled for October 17, 2022.
- III. AUTHORITY CONSENT CALENDAR – ACTION AND INFORMATION ITEMS**  
**Request approval of the Authority Consent Calendar Action Items.**
- D. Action: Adoption of Resolution: 2020 Measure R Strategic Work Plan – Amendment No. 7**  
Ms. Davis stated that Self-Help Enterprises, City of Farmersville, and TCAG had partnered and were awarded an Affordable Housing Sustainable Communities (AHSC) Grant for affordable housing, transit center, and bike/pedestrian facilities and the total construction cost for the Farmersville Multi-modal Hub was an estimated \$2,544,930 and AHSC funds would contribute \$1,634,930 and Measure R funds would contribute \$910,000 and Measure R regional project funding generally worked on a reimbursement basis and an agency with good audit status, may request an advance to reduce a potential cash flow issue to their respective agency and Farmersville had requested an advance for this project.
- E. Action: Adoption of Resolution: Measure R Arbitrage Rebate Consultant Services**  
Ms. Davis discussed the selection of an Arbitrage Rebate Consultant Service to do one of the arbitrage audits for the 2020 bond.
- IV. AUTHORITY ACTION/DISCUSSION ITEMS**  
**A. Information: Measure R Revenues for September 2022**  
Ms. Davis gave an update on Fiscal Year 2021-2022 Measure R allocations, sharing that they had been received, payment request and distribution made through September 2022. The allocation for the month of September was \$3,839,825. The 22/23 fiscal year to date amount was \$13,383,675 compared to \$12,533,760 for this same period last year representing a 6.8 % increase and the City of Visalia was requesting a reallocation of bike funding from the “K” Road project to the Packwood Creek Trail in the amount of \$70,000.

**VI. ADJOURN**

The TCTA Technical Advisory Committee adjourned at 1:51 p.m.

The next scheduled Tulare County Association of Governments (TCAG) Board meeting will be held on **Monday, December 12, 2022, at 1:00 p.m. at the Tulare Ag Auditorium 4437 S. Laspina, Tulare, CA 93274.** The Technical Advisory Committee will meet on **Thursday, December 8, 2022, at 1:30 p.m. at the Tulare County Association of Governments (TCAG), 210 N. Church Street, Suite B, Sequoia Conference Room, Visalia, CA 93291.**

DRAFT

Tulare County Association of Governments  
Sitting as the Tulare County Transportation Authority

**AGENDA ITEM III-D**

**December 12, 2022**

**Prepared by Amie Kane, TCAG Staff**

**SUBJECT:**

**Action:** Approve the 2023 Tulare County Association of Governments (TCAG), and Technical Advisory Committee (TAC) Meeting Calendar and Reconfirm Cancellation Policy

**BACKGROUND:**

Tulare County Association of Governments (TCAG) does not have its own facility to accommodate Board meetings. Past TCAG Chairs and member agencies have requested that the location for the TCAG and TCTA Board meetings rotate throughout the county. In some instances, where more space is needed for hearings or workshops or if a facility is not available, TCAG reserves the Tulare Ag Commission Auditorium at 4437 S. Laspina St., Tulare, CA 93274.

The Technical Advisory Committee (TAC) meeting locations are held at the TCAG office at 210 North Church Street, Suite B, Visalia, CA 93291.

**DISCUSSION:**

The 2023 Tulare County Association of Governments (TCAG), Tulare County Transportation Authority (TCTA), and Technical Advisory Committee (TAC) meeting schedule is attached for the Governing Board's review and approval. Generally, the TCAG and TCTA Board meeting is held on the third Monday of each month, with a few exceptions. The TAC meeting is held the Thursday, prior to the TCAG Board meeting. Due to occasional conflicts, meetings are subject to change with notice. The Chair in consultation with the Executive Director may cancel or reschedule a meeting.

**RECOMMENDATIONS:**

Approve the 2023 TCAG, TCTA and TAC Meeting Calendar, including the provision allowing the Chair, in consultation with the Executive Director, to cancel or reschedule a meeting.

**ATTACHMENT:**

2023 TCAG, TCTA and TAC Meeting Calendar

## 2023 TCAG/TCTA and TAC Meeting Calendar with Meeting Locations

<u>TAC Meeting (Thursdays, 1:30 p.m.)</u>	<u>TCAG/TCTA Board Meeting (3<sup>rd</sup> Monday, 1:00 pm)</u>	<u>Location#</u>
January 19, 2023*	January 23, 2023*	Tulare County Human Resources & Development 2500 W. Burrel Avenue   Visalia, CA 93291
February 23, 2023*	February 27, 2023*	Tulare County Human Resources & Development 2500 W. Burrel Avenue   Visalia, CA 93291
March 16, 2023	^March 20, 2023	Dinuba Community Center 1390 E. Elizabeth Way   Dinuba, CA 93618
April 13, 2023*	^April 17, 2023*	Tulare Ag Auditorium 4437 S. Laspina   Tulare CA 93274
May 11, 2023	May 15, 2023	Farmersville Community Center 623 N. Avery Street   Farmersville, CA 93223
June 15, 2023	June 19, 2023	Exeter Veterans Memorial Building 324 N. Kaweah Ave.   Exeter, CA 93221
July 13, 2023*	July 17, 2023*	TBD
August 17, 2023	August 21, 2023	Woodlake Community Center 145 N. Magnolia Street   Woodlake, CA 93286
September 14, 2023	September 18, 2023	Lindsay Wellness Center 860 N. Sequoia   Lindsay, CA 93247
October 12, 2023	October 16, 2023	Porterville Fire Department Training Facility 500 N. Newcomb Street   Porterville, CA 93257
November 16, 2023*	November 20, 2023*	TBD
December 14, 2023*	^December 18, 2023*	Tulare Ag Auditorium 4437 S. Laspina   Tulare CA 93274

\* Exception to standard board meeting dates is due to Holidays or a meeting conflict.

^ Times may vary if a workshop precedes a meeting.

# Meeting locations are subject to change.

Tulare County Association of Governments  
Sitting as the Tulare County Transportation Authority

**AGENDA ITEM V-A**

**December 12, 2022**

**Prepared by Jeff Kuhn, Chief Deputy County Counsel**

**SUBJECT:**

**Information:** Effect of 2022 Amendments to Brown Act

**BACKGROUND:**

Three substantive bills signed into law by the Governor in 2022 will amend the Brown Act: AB 2449, regarding teleconferencing; AB 2647, regarding late-distributed documents; and SB 1100, regarding disruption of meetings. All three new laws will take effect on January 1, 2023.

We discuss each new law in detail below.

**DISCUSSION:**

**Question Presented:**

What will be the practical impact on the Governing Boards of the 2022 amendments to the Brown Act regarding:

1. Remote attendance at Board meetings,
2. Late-distributed documents, and
3. Disruption at Board meetings?

**Brief Answer:**

1. Board members may attend and participate in a Board meeting remotely under the pandemic rules probably only until February 28, 2023, then under the slightly more relaxed rules until January 1, 2026, and under the basic rules at any time.
2. Routine open session documents to be distributed after the 72-hour deadline for a regular meeting will still generally be only allowed to be distributed to the Board members if the documents can also be distributed to the public in hard copy at the same time, which generally means only during the Clerk's office hours. The allowance to distribute such documents to the public electronically, with a hard copy being made available later, will be restricted to documents that meet certain criteria.
3. A new section of the Brown Act will provide some useful guidance for the Board Chairs in helping determine when an individual member of the public should be threatened with removal from the meeting due to disruptive actions.

This item will be discussed by Counsel at the board meeting and any questions regarding this item can be addressed.

**RECOMMENDATION:**

No action needed at this time.

**FISCAL IMPACT:**

None

**ATTACHMENT:**

Effect of 2022 Amendments to Brown Act

**OFFICE MEMORANDUM \* TULARE COUNTY \* COUNTY COUNSEL**  
**(559) 636-4950**  
**Fax # (559) 737-4319**

**CONFIDENTIAL: ATTORNEY-CLIENT PRIVILEGE<sup>1</sup>**

To: Members of the Governing Boards  
Tulare County Association of Governments  
Tulare County Transportation Authority

Date: November 28, 2022

Ted Smalley, Executive Director

From: Jeffrey L. Kuhn, Chief Deputy County Counsel



Subject: Effect of 2022 Amendments to Brown Act  
(Our Matter No. 20221203)

**Question Presented:**

What will be the practical impact on the Governing Boards of the 2022 amendments to the Brown Act regarding:

1. Remote attendance at Board meetings,
2. Late-distributed documents, and
3. Disruption at Board meetings?

**Brief Answer:**

1. Board members may attend and participate in a Board meeting remotely under the pandemic rules probably only until February 28, 2023, then under the slightly more relaxed rules until January 1, 2026, and under the basic rules at any time.
2. Routine open session documents to be distributed after the 72-hour deadline for a regular meeting will still generally be only allowed to be distributed to the Board members if the documents can also be distributed to the public in hard copy at the same time, which generally means only during the Clerk's office hours. The allowance to distribute such

documents to the public electronically, with a hard copy being made available later, will be restricted to documents that meet certain criteria.

3. A new section of the Brown Act will provide some useful guidance for the Board Chairs in helping determine when an individual member of the public should be threatened with removal from the meeting due to disruptive actions.

**Background:**

Three substantive bills signed into law by the Governor in 2022 will amend the Brown Act: AB 2449, regarding teleconferencing; AB 2647, regarding late-distributed documents; and SB 1100, regarding disruption of meetings. All three new laws will take effect on January 1, 2023.

We discuss each new law in detail below.

**Discussion:**

1. Changes to teleconferencing rules

AB 2449<sup>i</sup> will extend, until January 1, 2026, the temporary authority for members of a legislative body of a local agency to use teleconferencing without complying with the usual requirements that each teleconference location be identified on the agenda and be made accessible to the public. Two versions of the temporary procedures are included in the new statute.

- a. Short-term extension of pandemic rules

For 2023 only, the Brown Act will continue to allow the entire Board to meet remotely under the pandemic rules.<sup>ii</sup> You have become familiar with these rules, which are as follows.

First, a state of emergency must have been proclaimed. The definition of “state of emergency” will continue to be limited to a particular state statute which requires the Governor to formally declare the emergency (which can be at the request of local authorities).<sup>iii</sup> As you know, the Governor has announced that the declared COVID-19 state of emergency will end on February 28, 2023.<sup>iv</sup> Accordingly, absent a COVID surge or another emergency which causes the Governor to issue another emergency declaration, the authority to meet entirely remotely will end on that date.

Second, state or local officials must have imposed or recommended measures to promote social distancing.

Finally, the legislative body 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 meeting attendees.

If these conditions are met, then all members of the legislative body may attend and participate in the Board meeting remotely. The agenda must include notice of the means by which members of the public may access the meeting and offer public comment and must include an opportunity for all persons to attend via call-in or internet-based options. If public access through the remote options is disrupted, then the legislative body may not take any further action until service is restored. Live public comment must be allowed – a legislative body may not restrict public comments to those submitted in advance.

The legislative body must re-adopt the three findings listed above at least every 30 days. The findings must indicate that the legislative body has reconsidered the circumstances of the state of emergency and has concluded either that the emergency continues to directly impact the ability of the members to meet safely in person, and/or that state or local officials continue to impose or recommend measures to promote social distancing.

b. Short-term addition of slightly relaxed remote attendance rules (2023 – 2025)

Many boards have found that the pandemic allowance for all board members to attend remotely has been useful for reasons other than the pandemic. For example, it has been easier to get a quorum, and has allowed board members to avoid traveling to meetings in distant locations. Unfortunately, the Legislature apparently was not interested in allowing board members to continue attending remotely under more general remote attendance rules.

However, for 2023 through 2025, the Brown Act will include a temporary version of remote attendance which is slightly more relaxed than the usual requirements.<sup>v</sup> First, at least a quorum of the members of the legislative body must attend and participate in person from a single location that is open to the public and located within the jurisdiction of the agency. (For a 17-person board like TCAG, this means that at least 9 members must attend and participate in person, leaving the potential for up to 8 members to attend and participate remotely. For TCTA and its 13-person Board, at least 7 members must attend in person, leaving the potential for up to 6 members to attend remotely.)

Second, the legislative body must provide public access through both audio and visual means. Options listed in the statute are a two-way audiovisual platform, or a two-way telephonic service combined with live webcasting. The same requirements listed above (notice of how members of the public may access the meeting and offer public comment, an opportunity to attend via call-in or internet-based options, stopping action if public access through the remote options is disrupted, and live public comment) will also apply to this type of remote attendance.

Third, a board member may attend and participate in the meeting remotely only if strict requirements are met: first, the board member either must have “just cause” (as defined below) for attending remotely, with that member limited to remote attendance at only two meetings per calendar year for “just cause,” or the member may request that the body allow the member to

participate remotely due to “emergency circumstances” (as defined below), and the legislative body takes action to approve the request. For both “just cause” and “emergency circumstances” remote participation, that member’s overall remote attendance may not exceed three consecutive months or 20 percent of the regular meetings of the board within a calendar year, or more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year.

A declaration of “just cause” does not require action by the legislative body. The board member must notify the legislative body of the need to participate remotely “at the earliest opportunity possible,” which may be as late as “the start of a regular meeting.”<sup>vi</sup>

The term “just cause” is limited to the following:

- A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner.
- A contagious illness.
- A need related to a physical or mental disability.
- Travel while on official business of the legislative body or another state or local agency.

The board member is only required to provide a general description of the circumstances which constitute “just cause.” The board member is not required to disclose any medical diagnosis or disability, or provide any personal medical information.

The procedures for a request to participate remotely due to “emergency circumstances” are slightly different. The board member must still make the request “as soon as possible,” but must make a separate request for each board meeting.<sup>vii</sup> In addition, the legislative body must take action to allow the remote participation due to the emergency circumstances.<sup>viii</sup> If the request was not submitted in time to be on the agenda, then the legislative body may take action anyway, under a new exception to the agenda rules for a regular meeting.<sup>ix</sup>

The term “emergency circumstances” is limited to “a physical or family medical emergency that prevents a member from attending in person.”<sup>x</sup> There is no information in the easily available legislative history explaining what the Legislature meant by this phrase.

Until there is clarification, we believe the Board can interpret this phrase as meaning a “physical ... emergency” or a “family medical emergency.” Thus, we believe the Board can approve remote attendance whenever a board member has an emergency which physically prevents the board member from attending in person – unsafe or impassible roads due to conditions such as fog, snow, flooding, or a traffic jam, the board member’s car breaking down on the way to the meeting, etc. For family, on the other hand, we believe the Board can approve remote attendance only due to a medical emergency – a family member’s car breaking down would not allow the Board to approve remote attendance.

As with the “just cause” allowance, the description of emergency circumstances can be general. The board member is not required to disclose any medical diagnosis or disability or provide any personal medical information.

Fourth, for both types of remote attendance, the board member must publicly disclose, before any action is taken at the meeting, whether any other adults are present in the room at the remote location with the member, and the general nature of the member’s relationship with any such individuals.

Finally, also for both types of remote attendance, the board member must participate through both audio and visual technology.

This version of the statute will be repealed effective January 1, 2026.

We will be working with the Executive Director on procedures to allow Board members to use the new remote attendance rules should they have a need to do so.

c. Basic rules for remote attendance

As described above, the pandemic rules will probably end on February 28, 2023, and the slightly more relaxed rules will be repealed as of January 1, 2026. The basic rules continue to be available now and will also be the sole option starting in 2026.<sup>xi</sup>

The main difference between the basic rules and the temporary rules is that under the basic rules the board member attending remotely can only do so if this is planned ahead of time. In particular, the board member may attend only from a location accessible to the public and which is listed on the agenda, the agenda must be publicly posted at the remote location, and at least a quorum of the board must participate from locations within the jurisdiction of the agency. In other ways, the basic rules are more generous than the temporary ones. The board member need not participate by both audio and visual technology, need not disclose who else is in the room, and need not explain why the board member is not attending in person, or have the legislative body formally approve the request to attend remotely.

2. Update to rules regarding late-distributed documents

As you may recall, a case last spring held that routine open session documents<sup>2</sup> distributed to Board members after the 72-hour deadline for a regular meeting had to be distributed to the public at the same time in hard copy.<sup>xii</sup> This essentially meant that such documents could be distributed to the Board members, even electronically, only during the Agency’s regular office hours.

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<sup>2</sup> In the remainder of this memo we use the term “documents” as a shorthand for “routine open session documents.”

AB 2647<sup>xiii</sup> will alleviate this requirement slightly, but not as much as we had hoped from an earlier version of the legislation. The new law will provide that in limited circumstances a document can be provided to the public only electronically at the same time it is distributed to the Board members, as long as it is made available to the public in hard copy later. These circumstances are as follows:

- The original agenda item materials must have been available in hard copy at least 72 hours before the meeting.
- The additional document is posted on the Agency's internet website in a manner which highlights its connection to the existing agenda item.
- Hard copies must be made available to the public during the Agency's business hours, no later than 24 hours before the beginning of the meeting in question.

TCAG/TCTA's existing practice of listing on every agenda the website address where members of the public can find all documents for upcoming meetings will be a legal requirement in order to take advantage of these new provisions.

Accordingly, the new law will only be of assistance in reducing the hard copy requirement when a document needs to be distributed which is similar to the proposed development agreement in the case from last spring: something that updates an existing agenda item significantly enough to be worth distributing over the weekend to both the Board members and the public. However, the hard copy will still need to be made available to the public at least 24 hours before the start of the meeting (therefore usually no later than 1:00 p.m. on Sunday before the Monday meetings).

We also note that the requirement under the Brown Act to list the location where members of the public may go to inspect such late-distributed hard copy documents remains in effect under the amendments. Accordingly, the Agency should continue the practice of listing this address on all agendas.

### 3. Disruption at board meetings

As you know, many boards have experienced an unusual level of disruption to meetings in recent years. While the First Amendment requires a board to accept speakers who make disruptive statements ("Give me liberty or give me death!" presumably caused a stir in the Second Virginia Convention in 1775), a board is not required to accept disruptive conduct. SB 1100<sup>xiv</sup> provides some helpful guidelines in this regard.

This law will add a new section to the Brown Act. In general, the new statute permits a presiding officer to order an individual removed from the meeting due to disrupting it. The presiding officer is usually required to warn the individual that their behavior is disrupting the meeting and that if they do not stop, they may be removed from the meeting. (Giving the warning should be

accompanied by a call to the Sheriff or local police department, if no officers are present at the meeting.)

The new statute limits the definition to serious disruptive behavior:

(1) “Disrupting” means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, one of the following:

(A) A failure to comply with reasonable and lawful regulations adopted by a legislative body pursuant to Section 54954.3 [permissible regulations for public to address legislative body, including time limit<sup>3</sup>] or any other law.

(B) Engaging in behavior that constitutes use of force or a true threat of force.

(2) “True threat of force” means a threat that has sufficient indicia of intent and seriousness, that a reasonable observer would perceive it to be an actual threat to use force by the person making the threat.<sup>xv</sup>

Accordingly, if someone at the meeting refuses to stop when their three minutes are up, or shouts from the audience so that speakers cannot be heard, or engages in other actions that disrupt the meeting, then the Board Chair should warn the disruptive speakers and ask for the Sheriff or police department to be called over to remove them from the meeting room.

Conclusion:

The 2022 amendments to the Brown Act will provide some limited assistance for remote attendance at meetings and for certain late-distributed documents. They will also provide some needed guidance for the Board Chairs in handling disruptive behavior at meetings.

We hope this information is helpful. Please let us know if you have questions or need anything else on this matter. Thank you.

JLK/BBG/11-28-22/TCAG-GENERAL/1888925.pdf

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<sup>i</sup> Stats. 2022, ch. 285, effective January 1, 2023.

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<sup>3</sup> At one time some public agencies felt that the personnel rules under the Brown Act required them to ask members of the public not to criticize employees at public board meetings. There are cases holding that such a rule is unconstitutional (see, e.g., *Baca v. Moreno Valley Unified School Dist.* (C.D. Cal. 1996) 936 F.Supp. 719), but the Brown Act still has no express provision in this regard. Section 54954.3 provides only, “The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body.” (Subd. (c).)

<sup>ii</sup> Stats. 2022, ch. 285, § 1, amending Gov. Code, § 54953, subd. (e), as added by Stats. 2021, ch. 165, § 3, to be repealed on January 1, 2024.

<sup>iii</sup> Stats. 2022, ch. 285, § 1, amending Gov. Code, § 54953, subd. (e), as added by Stats. 2021, ch. 165, § 3, to be repealed on January 1, 2024. The “state of emergency” statute is Gov. Code, § 8625, as cross-referenced in subd. (j)(5) of the 2023 version of § 54953.

<sup>iv</sup> See press release from Governor’s office, available online at <https://www.gov.ca.gov/2022/10/17/governor-newsom-to-end-the-covid-19-state-of-emergency/#:~:text=SACRAMENTO%20%E2%80%93%20Today%2C%20Governor%20Gavin%20Newsom,used%20to%20combat%20COVID%2D19> (viewed on Nov. 15, 2022).

<sup>v</sup> Stats. 2022, ch. 285, § 1, amending Gov. Code, § 54953, as added by Stats. 2021, ch. 165, § 3, to be repealed on January 1, 2024; and Stats. 2022, ch. 285, § 2, amending Gov. Code, § 54953, as added by Stats. 2021, ch. 165, § 4, operative Jan. 1, 2024, to be repealed on January 1, 2026. The remote attendance rules are in subd. (f) of the 2023 version, which, with the repeal of the pandemic rules at the end of 2023, will become subd. (e) of the 2024-2025 version.

<sup>vi</sup> Stats. 2022, ch. 285, § 1, amending Gov. Code, § 54953, as added by Stats. 2021, ch. 165, § 3, to be repealed on January 1, 2024; and § 2, amending Gov. Code, § 54953, as added by Stats. 2021, ch. 165, § 4, operative Jan. 1, 2024, to be repealed on January 1, 2026. The quoted language is from subd. (f)(2)(A)(i) of the 2023 version, and from subd. (e)(2)(A)(i) of the 2024-2025 version.

<sup>vii</sup> Stats. 2022, ch. 285, § 1, amending Gov. Code, § 54953, as added by Stats. 2021, ch. 165, § 3, to be repealed on January 1, 2024; and § 2, amending Gov. Code, § 54953, as added by Stats. 2021, ch. 165, § 4, operative Jan. 1, 2024, to be repealed on January 1, 2026. The quoted language is from subd. (f)(2)(A)(ii)(I) of the 2023 version, and from subd. (e)(2)(A)(ii)(I) of the 2024-2025 version.

<sup>viii</sup> Stats. 2022, ch. 285, § 1, amending Gov. Code, § 54953, as added by Stats. 2021, ch. 165, § 3, to be repealed on January 1, 2024; and § 2, amending Gov. Code, § 54953, as added by Stats. 2021, ch. 165, § 4, operative Jan. 1, 2024, to be repealed on January 1, 2026. The quoted language is from subd. (f)(2)(A)(ii)(II) of the 2023 version, and from subd. (e)(2)(A)(ii)(II) of the 2024-2025 version.

<sup>ix</sup> Stats. 2022, ch. 285, § 4, amending Gov. Code, § 54954.2, effective January 1, 2023, to be repealed on January 1, 2026. See also Stats. 2022, ch. 285, § 1, amending Gov. Code, § 54953, as added by Stats. 2021, ch. 165, § 3, to be repealed on January 1, 2024; and § 2, amending Gov. Code, § 54953, as added by Stats. 2021, ch. 165, § 4, operative Jan. 1, 2024, to be repealed on January 1, 2026, adding a cross-reference to § 54954.2 to § 54953, in subd. (f)(2)(A)(ii)(II) of the 2023 version, and in subd. (e)(2)(A)(ii)(II) of the 2024-2025 version. Stats. 2022, ch. 285, § 5 adds a replacement version of Gov. Code, § 54954.2, which reverts to the pre-pandemic version of the statute, operative January 1, 2026.

<sup>x</sup> New subd. (j)(1) of Gov. Code, § 54953, as added by Stats. 2021, ch. 165, § 3, effective January 1, 2023, to be repealed on January 1, 2024. The same language will become subd. (i)(1) in Stats. 2022, ch. 285, § 2, amending Gov. Code, § 54953, as added by Stats. 2021, ch. 165, § 4, operative Jan. 1, 2024, to be repealed on January 1, 2026.

<sup>xi</sup> Stats. 2022, ch. 285, § 3, effective January 1, 2023, adding a replacement version of Gov. Code, § 54953 which reverts to the pre-pandemic version of the statute, operative January 1, 2026.

<sup>xii</sup> *Sierra Watch v. Placer County* (2021) 69 Cal.App.5th 1. (A separate CEQA case arising from the same facts and decided on the same date is *Sierra Watch v. County of Placer* (2021) 69 Cal.App.5th 86.)

<sup>xiii</sup> Stats. 2022, ch. 971, § 1, effective January 1, 2023, amending Gov. Code, § 54957.5, as amended by Stats. 2021, ch. 615, § 208.

<sup>xiv</sup> Stats. 2022, ch. 171, § 2, effective January 1, 2023, adding Gov. Code, § 54957.95.

<sup>xv</sup> New Gov. Code, § 54957.95, subd. (b), as added by Stats. 2022, ch. 171, § 2, effective January 1, 2023.

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Tulare County Association of Governments  
Sitting as the Tulare County Transportation Authority

**AGENDA ITEM IV-B**

**December 12, 2022**

**Prepared by Leslie Davis, TCAG Staff**

**SUBJECT:**

**Information:** Measure R Revenue Update

**BACKGROUND:**

On November 7, 2006, the voters of Tulare County approved Measure R, imposing a ½-cent sales tax for transportation within the incorporated and unincorporated area of Tulare County through 2037. The transportation sales tax funds are spent in accordance with the Expenditure Plan that resulted from a joint effort among all the cities and the County of Tulare. The Expenditure Plan reflects the transportation needs of the residents of Tulare County. The plan includes funding for Regional Projects, Local Programs, Transit/Bike/Environmental Programs and Administration. The funds are distributed as follows:

1. Regional Projects (50%)
2. Local Programs (35%)
3. Transit/Bike/Environmental (14%)
4. Administration and Planning Program (1%)

Measure R revenue collection began on April 1, 2007. Monthly Measure R advancements are received by TCAG from the State Board of Equalization followed by quarterly clean-up disbursements. In total, TCAG receives eight advancements and four clean-up disbursements throughout a fiscal year.

The Measure R 2020 Strategic Work Plan was approved by the Authority on October 19, 2020 with Resolution No. 2020-119, amended on December 14, 2020 with Resolution No. 2020-120, amended on April 19, 2021 with Resolution No. 2021-100, amended August 26, 2021 with Resolution No. 2021-106, amended September 20, 2021 with Resolution No. 2021-107, amended October 18, 2021 with Resolution No. 2021-112, amended February 28, 2022 with Resolution No. 2022-103 and amended October 17, 2022 with Resolution No. 2022-106.

**DISCUSSION**

**Status of Measure R Revenues**

Fiscal Year 2022/2023 Measure R allocations have been received, payment request and distribution made through October 2022. The allocation for the month of October is \$4,139,990. The 22/23 fiscal year to date amount is \$17,523,664 compared to \$16,976,353 for this same period last year which represents a 3.2 % increase.

See attached revenue chart covering fiscal years 2018/2019, 2019/2020, 2020/2021, 2021/2022 and 2022/2023 year to date.

**ATTACHMENT:**

Annual Revenue Comparison

Work Element: 700.01 Measure R Implementation

Attachment 1

