

TO: Andrew P. Powers, City Manager

FROM: Laura B. Maguire, City Clerk

DATE: October 10, 2023

SUBJECT: Updated Public Meeting Teleconference Guidelines

RECOMMENDATION:

1. Option 1: Implement the provisions of Assembly Bill (AB) 2449 and adopt resolution authorizing updated teleconference rules for meetings of City Council and Planning Commission in specified cases as outlined by the Brown Act pursuant to AB 2449 (amended Government Code Sections 54953 and 54954.2).
2. Option 2: Maintain teleconference participation for City Council and Planning Commission under traditional Brown Act requirements.
3. Find that this action is not a project under the California Environmental Quality Act.

FINANCIAL IMPACT:

No Additional Funding Requested. Staff time involved with the preparation of this report and resolution is included in the Adopted FY 2023-24 General Fund Budget.

BACKGROUND:

The Ralph M. Brown Act (Brown Act) (Gov. Code, § 549501 *et seq.*) governs meetings conducted by local legislative bodies, such as boards of supervisors, city councils, and school boards. The Brown Act imposes an “open meeting” requirement on local legislative bodies. Allowing members to participate remotely via teleconference is permitted as part of an open meeting. Traditional teleconferencing under the Brown Act is permitted for all purposes during any meeting so long as the following are met:

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1. A quorum of the legislative body participates from locations within the local agency's jurisdiction;
2. The meeting notice and agenda identify the teleconference location, including a full address and room number, as applicable;
3. The agenda is posted at each teleconference location 72 hours before the regular meeting, even if a hotel room or residence;
4. The public has access to each teleconference location and there is proper technology for public participation;
5. The agenda outlines the process for the public to address the legislative body directly at each teleconference location;
6. The legislative body provides the opportunity for the public to address the legislative body directly at each teleconference location; and
7. The legislative body must vote by roll call.

During the COVID-19 pandemic, the Governor issued an Executive Order suspending certain Brown Act constraints and allowing for teleconference meetings without following procedural requirements that otherwise would have been in effect. The California State Assembly and Senate subsequently passed AB 361 aimed at addressing Brown Act teleconferencing requirements after the expiration of the Executive Order, but while still under the declared state of emergency.

The City used the provisions of AB 361 for several months during the pandemic. This allowed the continued use of teleconferencing for public meetings without requiring that the physical teleconference location be accessible to the public or that a quorum of the members of the legislative body of the agency participate from locations within the boundaries of the agency's jurisdiction.

On September 13, 2022, Governor Newsom signed AB 2449, effective as of January 1, 2023. This new legislation allows teleconference participation with requirements that fall between the traditional Brown Act and AB 361 teleconferencing requirements. AB 2449 allows for more flexibility but only within narrowly defined circumstances.

DISCUSSION/ANALYSIS:

AB 2449 permits a non-majority number of legislative body members to utilize teleconferencing participation for meetings without complying with traditional Brown Act requirements, based on specific circumstances. To use the teleconferencing rules established under AB 2449, a public agency must comply with the following meeting requirements:

1. A quorum of the members of the agency's legislative body must participate in person from a singular physical location within the jurisdiction and identified on the agenda;
2. The legislative body must provide either (i) a two-way audiovisual platform, such as Zoom, which allows the meeting to be viewed and heard from a remote location, or (ii) a two-way telephonic service and a live webcasting of the meeting, which may be satisfied with any combination of platforms that allows the meeting to be viewed and heard from a remote location;
3. The agenda must give notice of the means by which members of the public may access the meeting and offer public comment via call-in option, via internet option, or in person;
4. The meeting must be paused if the broadcasting platform, either audio or visual, is interrupted and no action may be taken until the disruption is resolved; and
5. The meeting must offer public comment in real-time (no registration cut-off time).

If a member of a legislative body wishes to participate remotely under the new procedures, all of the following requirements must apply:

1. The request to remotely participate must be on the basis of a circumstance that qualifies as a "just cause" or an "emergency" circumstance as defined by AB 2449;
2. The member must publicly disclose at the meeting before any action is taken whether any other individuals 18 years of age or older 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; and
3. The member must participate through both audio and visual technology.

Just Cause Circumstance

At the earliest opportunity possible (including at the start of a regular meeting), the requesting member must notify the legislative body in writing that they have a “just cause” reason for participating remotely. The requesting member must generally describe the specific circumstances that prevent in-person participation. Under AB 2449, “just cause” is specifically defined to mean any of the following circumstances:

- a. A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely;
- b. A contagious illness that prevents a member from attending in person;
- c. A need related to certain statutorily defined forms of physical or mental disability; or
- d. Travel while on official business of the public agency or for another state or local agency.

Members are limited to a maximum of two times per calendar year to invoke the “just cause” exception to in-person participation.

Emergency Circumstance

An “emergency circumstance” is defined as a “physical or family medical emergency that prevents a member from attending a meeting in person.” To invoke the “emergency circumstance” exception, the member/legislative body must take the following actions as soon as possible:

- a. The member must request in writing that the legislative body allow them to participate remotely due to some specified “emergency circumstance.”
- b. The legislative body shall request a general description (not exceeding 20 words) that describes the circumstances relating to the requesting member’s “emergency.” The requesting member is not, however, required to disclose any medical diagnosis or disability, or any personal medical information that is already exempt under existing law.
- c. The legislative body must take action to approve the member’s request at the earliest opportunity and may take action at the beginning of the

meeting in accordance with Government Code Section 54954.2(b)(4), even if there was not sufficient time to place the request formally on the agenda.

- d. The member must also make a separate request for each meeting for which they seek to participate remotely under the “emergency” exception.

A member’s remote participation may not exceed (i) three consecutive months, or (ii) 20 percent of a legislative body’s regular meetings within a single calendar year. Also, if the legislative body regularly meets fewer than 10 times per calendar year, a member’s participation from a remote location cannot be for more than two meetings total. As noted above, only two meetings per calendar year are allowed under Just Cause circumstance. Participation via teleconference under the Emergency circumstance exception does not count toward the two-meeting limitation applicable to the Just Cause exception.

AB 2449 also imposes requirements relating to accommodation requests made under the Americans with Disabilities Act. Legislative bodies must implement procedures for receiving and swiftly resolving requests for reasonable accommodations for individuals with disabilities, consistent with applicable civil rights and nondiscrimination laws. Further, no action can be taken if a disruption event prevents the legislative body from broadcasting the meeting. Lastly, a legislative body may take action on items of business not appearing on the posted agenda if the request to consider action was for a member to participate in a meeting remotely due to emergency circumstances and the request does not allow sufficient time to place the proposed action on the posted agenda for the meeting for which the request is made. The legislative body may approve such a request by a majority vote.

The City Clerk inquired with local agencies regarding the use of AB 2449. The following local cities currently allow under teleconferencing under AB 2449 as needed: Agoura Hills, Calabasas, Camarillo, Moorpark, Ojai, Port Hueneme, and Ventura.

In summary, AB 2449 offers an alternative remote participation option that allows a legislative body to use teleconferencing without complying with the traditional Brown Act teleconference requirements in certain circumstances. These new procedures apply to specific events as described above and may not be used to remotely participate in meetings during other situations such as family vacations, long commutes, or travel for personal business.

There are a few issues to consider before implementing AB 2449:

1. Depending on the usage of AB 2449's teleconferencing guidelines, given the complexity of the requirements, it may require additional staff time to administer, manage, and track.
2. Due to issues of maintaining a quorum of the body physically located within the boundaries of the jurisdiction, there is no guarantee that requests shall or can always be approved if there are multiple last-minute requests and/or other known/planned absences.
3. Currently, AB 2449 has a sunset date of January 1, 2026, unless extended by law before that date.

If City Council directs staff to implement the provisions of AB 2449, staff recommends adoption of the attached resolution (Attachment #1) to memorialize the decision.

COUNCIL GOAL COMPLIANCE:

Meets the following City Council goal:

B. Provide municipal government leadership which is open and responsive to residents, and is characterized by ethical behavior, stability, promoting public trust, transparency, confidence in the future, and cooperative interaction among civic leaders, residents, business representatives, and staff, while recognizing and respecting legitimate differences of opinion on critical issues facing the City

Attachment:

Attachment #1 – Resolution