



REPORT to the MAYOR and MEMBERS of the CITY COUNCIL
From the CITY MANAGER

DATE: February 28, 2023

SUBJECT: ASSEMBLY BILL 2449 (AB 2449) - TELECONFERENCE
MEETINGS PURSUANT TO THE BROWN ACT AFTER
TERMINATION OF CALIFORNIA EMERGENCY
DECLARATION

ISSUING DEPARTMENT: CITY CLERK

SUMMARY:

Issues:

Should teleconference meeting accommodations continue for all or some of the legislative bodies pursuant to AB 2449 following the rescission of the statewide declaration of emergency?

Recommendation:

Receive a report on changes to state law regarding teleconference meetings and establish an ad hoc subcommittee for the purpose of reviewing AB 2449 and recommending teleconferencing policies and procedures for City Council and the City's Boards and Commissions following the termination of California's Emergency Declaration.

Fiscal Impact:

None.

City's Strategic Goals:

- Continue to improve high quality municipal services

BACKGROUND:

Since the beginning of the pandemic in March of 2020, the state's public meetings laws have been relaxed to allow for use of teleconferencing by members of legislative bodies without the strict noticing and public access requirements contained in the Brown Act. Initially, this was through an executive order and currently it is in statutory amendments (AB 361), which became effective September of 2021.

AB 361 allows legislative bodies to use abbreviated notice and public access requirements for teleconference meetings, as long as the Governor's State of Emergency remained in force and the legislative body made findings every thirty days that the State of Emergency continues to directly impact the ability of the members to meet in person. The Council has made findings to this effect since AB 361 came into force in 2021.

Governor Newsom has announced his intention to rescind the COVID-19 State of Emergency at the end of February of 2023. This means that the teleconference requirements of the Brown Act which were in place prior to the pandemic will come back into effect on March 1, 2023. In addition, new legislature (AB 2449) has made allowance for the sparing use of teleconferencing by members of legislative bodies in other limited circumstances, given just cause, as defined in the Brown Act.

Under the Brown Act, the City of La Mesa's legislative bodies include the City Council and all Commissions, Boards, and Committees.

It is important to note that the regulations regarding teleconference meetings only apply to members of the legislative bodies (Councilmembers, Commissioners, Board and/or Committee Members). The law does not restrict the ability of a legislative body to make teleconference participation available to members of the public, staff, and/or consultants to participate in meetings virtually if the legislative body so desires.

DISCUSSION:

With the rescission of the statewide declaration of emergency, legislative body members will now need to attend meetings in person or adhere to traditional Brown Act teleconference requirements. **Traditional teleconferencing under the Brown Act** is permitted for all purposes during any meeting so long as:

- A quorum of the legislative body participates from locations within the local agency's jurisdiction;

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- The meeting notice and agenda identify the teleconference location, including a full address and room number, as applicable;
- The agenda is posted at each teleconference location 72 hours before the regular meeting, even if a hotel room or residence;
- The public has access to each teleconference location and there is proper technology for public participation;
- The agenda outlines the process for the public to address the legislative body directly at each teleconference location;
- The legislative body provides the opportunity for the public to address the legislative body directly at each teleconference location; and
- The legislative body must vote by roll call.

On September 13, 2022, Governor Newsom signed AB 2449, effective as of January 1, 2023, which permits a non-majority number of legislative body members to utilize teleconferencing participation for meetings without complying to the traditional Brown Act requirements. To avail itself of 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 identified on the agenda;
- 2) The legislative body must provide either (i) a two-way audiovisual platform, such as Zoom or WebEx, 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, this requirement 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; and
- 4) The meeting must be paused (and no action may be taken), if the broadcasting platform, either audio or visual, is interrupted.

If a member of a legislative body wishes to participate remotely under the new procedures, all of the following requirements, (1) through (4), below, must apply:

1) The request to remotely participate must be on the basis of a circumstance that qualifies as a “**just cause**” or “**emergency**” circumstance within the meaning of AB 2449:

(i) Just Cause Circumstance: At the earliest opportunity possible (including at the start of a regular meeting), the requesting member must notify the legislative body that he/she has a “**just cause**” reason for participating remotely. The request 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.

It is important to note that under AB 2449, members are limited to a maximum of two (2) times per calendar year to invoke the “**just cause**” exception to in-person participation.

(ii) Emergency Circumstance: An “**emergency circumstance**” is defined to mean a “*physical or family medical emergency that prevents a member from attending a meeting in person.*” To invoke the “**emergency circumstance**” exception, the requesting member, as soon as possible, must request that the legislative body allow him/her to participate remotely due to some specified “**emergency circumstance.**” In turn, the member’s legislative body must take action to approve the request at the earliest opportunity. The legislative body shall also request a general description (not exceeding 20 words) that describes the circumstances relating to the requesting members “*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. The member must also make a separate request for each meeting in which he/she seeks to participate remotely under the “emergency” exception.

Participation via teleconference under the “emergency circumstance” exception *does not* count toward the two-meeting limitation applicable to the “just cause” exception.

- 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.
- 3) The member must participate through *both* audio and visual technology.
- 4) A member’s remote participation may not exceed (i) three consecutive months, or (ii) 20% of a legislative body’s regular meetings within a single calendar year (four meetings if the agency meets 24 times per 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.

Remote Participation by Community Members, Staff, and Consultants

The limitations on remote participation discussed above apply only to the members of the legislative body. Staff and/or members of the public may still appear in meetings remotely without any additional notice requirements. If the legislative body is meeting entirely in person, the public must be permitted to participate in person and may be permitted to participate remotely. If a teleconference option is used by a member of the body, the public must be permitted to participate both in person and remotely.

CONCLUSION:

Staff requests the City Council receive the report and establish an ad hoc subcommittee for the purpose of reviewing AB 2449 and recommending teleconferencing policies and procedures for City Council and the City’s Boards and Commissions following the termination of California’s Emergency Declaration.

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Reviewed by:



Greg Humora
City Manager

Respectfully submitted by:



Megan Wiegelman
City Clerk

Attachments: A. Assembly Bill 2449