

LIVERMORE AMADOR VALLEY TRANSIT AUTHORITY

S T A F F R E P O R T

SUBJECT: Brown Act Remote Meeting Guidance

FROM: Christy Wegener, Executive Director
Michael Conneran, Legal Counsel

DATE: February 6, 2023

Action Requested

Discuss (i) the remote meeting exceptions to the Ralph M. Brown Act (the Brown Act) in light of Assembly Bill (AB) 2449 and Governor Newsom's anticipated withdrawal of the COVID-19 State of Emergency, and (ii) options for future in-person meetings.

Background

The Brown Act was enacted in 1953 to guarantee the public's right to attend and participate in meetings of legislative bodies of "local agencies."¹ As "legislative bodies," a quorum of the Authority Board and any standing committees may only discuss matters within the body's subject matter jurisdiction when doing so in compliance with the many requirements set forth in the Brown Act, including that the meetings must be open and accessible to the public, that agendas describing all planned actions and discussions must be published at least 24 hours in advance of any Special Meeting or 72 hours in advance of any Regular Meeting, and that the Board and committees may only meet in Closed Session for specific reasons delineated in the law.

For many years, the Brown Act has permitted members of local legislative bodies to participate in public meetings via teleconference only when:

1. each remote location is open and accessible to the public, and connected to the main meeting location by telephone, video, or both;
2. the notice and agenda of the meeting identify the address of each remote location;
3. the agenda is posted at each remote location;
4. all votes are taken by roll call;
5. the public is given an opportunity to address the legislative body and otherwise participate at each remote location; and
6. at least a quorum of the legislative body participate from locations within the Authority's jurisdiction (but other members may participate from outside the jurisdiction).²

¹ Cal. Gov't. Code § 54950 *et seq.*

² Cal. Gov't. Code § 54953(b).

Meetings During the COVID-19 State of Emergency

During the early months of the COVID-19 pandemic, Governor Newsom issued multiple Executive Orders that suspended certain portions of the Brown Act to enable fully remote meetings of local legislative bodies, without requiring compliance with certain aspects of the Brown Act teleconference rules enumerated above. These Executive Orders were later replaced by AB 361, enacted in 2021, which amended the Brown Act to permit local agencies, including cities, to meet remotely during a proclaimed State of Emergency without having to notice the remote locations from which members participate, or make those locations accessible to the public, provided the legislative bodies make certain findings regarding public health and safety.³

On October 17, 2022, the Governor announced his intent to withdraw the COVID-19 State of Emergency on February 28, 2023. After the Governor withdraws the State of Emergency, the teleconference exceptions afforded by AB 361 will no longer be available to the Board and its committees.⁴

Meetings After the COVID-19 State of Emergency

Once the flexibility provided under AB 361 is no longer available to local legislative bodies, the traditional teleconferencing rules under the Brown Act will again become the primary method of remote participation by Board and committee members who are unable – or choose not – to attend meetings in person.

However, in addition to the traditional teleconference rules, AB 2449 amended the Brown Act effective January 1, 2023 to provide an alternative way for members of local legislative bodies to participate in meetings remotely, even when there is no State of Emergency, until January 1, 2026. Under AB 2449, Board and standing committee members may participate in meetings without identifying the member's location on the agenda or making the location accessible to the public if:

- a. a quorum of members participate in the meeting in person from a singular physical location that is clearly identified on the agenda, open to the public, and situated within the Authority's jurisdiction;
- b. the public can remotely hear, visually observe, and address the body at the meeting through (i) audio-video teleconference or (ii) a combination of audio teleconference and live-streaming video technology;
- c. the agenda must provide notice of the means by which members of the public may access the meeting and offer public comment, and identify and include an opportunity for all persons to attend and address the legislative body;
- d. the member participating remotely under AB 2449 has:
 - i. notified the legislative body of their intent to participate remotely for "just

³ Codified at Cal. Gov't Code § 54953(e)(3) until January 1, 2024, at which point the subsection will be repealed.

⁴ If the Governor opts to continue the State of Emergency, or declares a subsequent State of Emergency, the teleconference exceptions afforded by AB 361 will remain available, or again become available, until as late as January 1, 2024. Absent further legislative action, teleconference exceptions created by AB 361 will be repealed by operation of law on January 1, 2024.

- cause," and provided a description of the reason; or
- ii. made a request to participate remotely due to "emergency circumstances" and the legislative body takes action to approve the request; and
 - e. the member participating remotely under AB 2449 uses both audio and visual technology to allow members of the public to see and hear them, and publicly discloses whether any other individual over the age of 18 is present at their remote location.

Just Cause

AB 2449 defines "just cause" as one or more of the following: (i) a childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires a member to participate remotely; (ii) a contagious illness that prevents a member from attending in person; (iii) a need related to a physical or mental disability, as defined by statute; or (iv) travel while on official business of the legislative body or another state or local agency.

Emergency Circumstances

"Emergency circumstances" is defined as physical or family medical emergencies that prevent members from attending in person.

Limitations

A member may rely upon the "just cause" exception no more than two times per calendar year. When combining the "just cause" and "emergency circumstances" exceptions, no member may participate remotely under AB 2449 for more than (a) three consecutive months, (b) 20% of the regular meetings in a calendar year (i.e., no more than 4 of 24 regular meetings per year), or (c) two meetings in a calendar year if the legislative body has fewer than 10 regular meetings in that year.⁵

Absent additional legislative action at the State level, the remote meeting alternative created through AB 2449 will be repealed as of January 1, 2026.

Discussion

The purpose of this informational item is to solicit the Board's feedback and comments on the remote meeting rules. A summary sheet "Brown Act Meeting Guidance" is attached for your convenience. Once the State of Emergency ends, the Board will need to return to public meetings, although some members may participate remotely in compliance with the long-standing teleconference rules or through the new rules implemented by AB 2449.

Fiscal Impact

There is no fiscal impact associated with this item.

Recommendation

No specific action is proposed for this Board meeting.

⁵ These limitations will be applied separately for each legislative body.

Attachments:

1. Brown Act Remote Meeting Guidance

Approved: _____

Brown Act Meeting Guidance

In response to the COVID-19 pandemic, the California Legislature provided local agencies flexibility to conduct virtual Board meetings under Assembly Bill 361 (AB 361). AB 361 allows legislative bodies of local agencies to use abbreviated teleconference procedures when there is a declared State of Emergency and either state or local officials have imposed or recommended measures to promote social distancing, or whether as a result of the emergency, meeting in person would present imminent risks to the health and safety of attendees.

In October 2022, Governor Newsom announced that the COVID State of Emergency would end on February 28, 2023. A governor-declared State of Emergency is a necessary predicate for remote meetings under AB 361. As such, beginning March 2023, Board and committee meetings must be in person.

Absent the State of Emergency, individual Board members sitting on a legislative body of a local agency will have two choices if they want to participate remotely: (1) use the traditional Brown Act teleconference rules, or (2) use newly enacted alternate rules established by AB 2449.

Local agencies may also hold "hybrid" meetings in which members of the public and staff participate remotely, and Board members—and anyone else—participate in person. Similarly, local agencies may continue to livestream/broadcast (i.e., one-way transmission rather than two-way "zoom") meetings to the public for convenience. However, many members of the public have become accustomed to participating remotely and may wish the Board to continue to offer that service.

"Traditional" Teleconference Rules

Under traditional Brown Act rules, the following rules and restrictions apply to members of the Board and committees who participate in Board or committee meetings subject to the Brown Act by teleconference:

- A quorum of the members of the legislative body must be within the boundaries of the agency.
- The agenda must identify the teleconference location.
- The agenda must be posted at the teleconference location.
- The teleconference location must be accessible to the public.
- The public must be allowed to participate in the meeting from the teleconference location.

New Teleconference Alternatives for 2023

In September 2022, the Governor signed AB 2449, which provided for new teleconference alternatives that go into effect January 1, 2023. These new rules are in addition to, not instead of, traditional Brown Act teleconference rules. However, these new provisions are so onerous that it is not likely that this law will be a practical alternative for Board members to meet virtually as a matter of practice. Nonetheless, there now exists an alternative to the traditional Brown Act teleconference rules.

Teleconference for "Just Cause"

A member of the Board or committee subject to the Brown Act can participate in noticed meetings by teleconference for "just cause," subject to the following rules and restrictions:

- The member of the Board or committee notifies the Agency via the Board Secretary of their intent to participate remotely for "just cause," and provides a brief description of the reason.
 - "Just cause" means one or more of the following: (i) a childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires a member to participate remotely; (ii) a contagious illness that prevents a member from attending in person; (iii) a need related to a physical or mental disability, as defined by statute; or (iv) travel while on official business of the Board committee, or another state or local agency.
- A quorum of the members of the Board or committee participate in the meeting in person from a singular physical location that is clearly identified on the agenda, open to the public, and situated within the agency's jurisdiction.
- The public can remotely hear, visually observe, and address the Board or committee at the meeting through (i) audio-video teleconference, or (ii) a combination of audio teleconference and live-streaming video technology.
- The agenda must provide notice of the means by which members of the public may access the meeting and offer public comment, and identify and include an opportunity for all persons to attend and address the Board or committee.
- The member participating remotely uses both audio and visual technology to allow members of the public to see and hear them, and publicly discloses whether any other individual over the age of 18 is present at their remote location.
- This exception is limited to no more than two times per calendar year.

Teleconference due to "Emergency Circumstances"

A member of the Board or committee subject to the Brown Act can participate in noticed meetings by teleconference due to "emergency circumstances," subject to the following rules and restrictions:

- The member of the Board or committee makes a request to participate remotely due to "emergency circumstances," and the Board or committee takes action to approve the request.
 - "Emergency circumstances" means physical or family medical emergencies that prevent members from attending in person.
- A quorum of the members of Board or committee participate in the meeting in person from a singular physical location that is clearly identified on the agenda, open to the public, and situated within the Agency's jurisdiction.
- The public can remotely hear, visually observe, and address the Board or committee at the meeting through (i) audio-video teleconference, or (ii) a combination of audio teleconference and live-streaming video technology.
- The agenda must provide notice of the means by which members of the public may access the meeting and offer public comment, and identify and include an opportunity for all persons to attend and address the Board or committee.
- The member participating remotely uses both audio and visual technology to allow members of the public to see and hear them, and publicly discloses whether any other individual over the age of 18 is present at their remote location.
- When combining the "just cause" and "emergency circumstances" exceptions, no member of Board or committee may participate remotely under AB 2449 for more than

(a) three consecutive months, (b) 20% of the regular meetings in a calendar year (i.e., no more than 4 of 24 regular meetings per year), or (c) two meetings in a calendar year if the legislative body has fewer than 10 regular meetings in that year.