

**Office of  
The City Attorney  
City of San Diego**

**MEMORANDUM  
MS 59**

**(619) 533-5800**

**DATE:** December 21, 2023  
**TO:** Honorable Mayor and Councilmembers  
**FROM:** City Attorney  
**SUBJECT:** Legal Update: New Teleconference Amendments to the Ralph M. Brown Act

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**INTRODUCTION**

As the new year approaches, the Office of the City Attorney would like to alert you to important amendments to the Ralph M. Brown Act (Brown Act) that will take effect January 1, 2024. The amendments impact teleconferenced meetings for the Council of the City of San Diego (Council) and the City of San Diego's (City) boards and commissions.

On October 8, 2023, Governor Gavin Newsom signed Assembly Bill 557 (A.B. 557) into law. A.B. 557 amends the Brown Act to continue to allow teleconferenced meetings during a proclaimed state of emergency. The amendments also add as a just cause reason for allowing a member of a legislative body to appear via teleconference at a public meeting when that member has an immunocompromised family member.

**BACKGROUND**

The California state legislature adopted the Brown Act in 1953 to "aid in the conduct of the people's business" by requiring that legislative bodies' "actions be taken openly and that their deliberations be conducted openly." Cal. Gov't Code § 54950. Meetings of a legislative body must be "open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency" unless the Brown Act provides otherwise. Cal. Gov't Code § 54953(a).

The Brown Act allows members of the legislative body to participate in meetings by teleconference provided that certain requirements are met. In 2021, Governor Newsom signed Assembly Bill 361 (A.B. 361) into law. A.B. 361 amended the Brown Act to provide a mechanism for local public agencies to conduct teleconferenced meetings during a proclaimed state of emergency related to Covid-19. Some of these provisions are set to expire on January 1, 2024.<sup>1</sup>

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<sup>1</sup> City Attorney Miscellaneous Memorandum MS 2021-18 (Sept. 28, 2021), which is attached as Attachment A, further explains A.B. 361's amendments to the Brown Act.

In 2022, Governor Newsom signed Assembly Bill 2449 (A.B. 2449) into law. A.B. 2449 amended the Brown Act to provide a separate process for local legislative bodies to hold “hybrid” teleconferenced meetings in the absence of a proclaimed state of emergency. Under A.B. 2449, “hybrid” teleconferenced meetings may be held when a limited number of legislative members appear at a public meeting remotely due to “emergency circumstances” or when “just cause” exists. The meetings are “hybrid” because at least a quorum of members must participate in person from the same publicly accessible physical location situated within the territorial boundaries of the agency’s jurisdiction while one or more members of the body participate remotely.<sup>2</sup>

### ANALYSIS

A.B. 557 extends certain of A.B. 361’s amendments to the Brown Act through January 1, 2026. Specifically, A.B. 557 extends the authority for a legislative body to hold a teleconferenced meeting without complying with the provisions set forth in California Government Code section 54953(b)<sup>3</sup> in the following circumstances:

- (1) “[t]he legislative body holds a meeting during a proclaimed state of emergency<sup>4</sup> for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees;”  
or
- (2) “[t]he legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote . . . that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.” Cal. Gov’t Code § 54953(e)(1)(A)-(B).<sup>5</sup>

If a legislative body chooses to hold teleconferenced meetings during a proclaimed state of emergency, then within 45 days after the first teleconferenced meeting, the legislative body must reconsider the circumstances of the state of emergency and find that the state of emergency continues to directly impact the ability of members to meet safely in person. Cal. Gov’t Code § 54953(e)(3).<sup>6</sup> The legislative body must continue to make these findings within every 45 days thereafter. *Id.* Here, the Council would adopt the required findings via a resolution.

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<sup>2</sup> City Attorney Miscellaneous Memorandum MS 2022-10 (Dec. 20, 2022), which is attached as Attachment B, further explains A.B. 2449’s amendments to the Brown Act.

<sup>3</sup> Government Code section 54953(b) generally requires that when a legislative body has a teleconferenced meeting, the meeting agenda is posted at all meeting locations, and that members of the public are allowed to participate in the meeting at all locations, including teleconferenced locations. Section 54953(b)’s provisions remain in effect and provide an alternate means for members to participate in teleconferenced meetings.

<sup>4</sup> Government Code section 54953(i) defines “state of emergency” as a state of emergency proclaimed under section 8625 of the California Emergency Services Act. That section authorizes the Governor to declare a state of emergency under certain circumstances. Therefore, A.B. 557 does not apply to locally declared emergencies.

<sup>5</sup> A.B. 557 removes social distancing as a basis for holding teleconferenced meetings under these provisions.

<sup>6</sup> Under A.B. 361, a legislative body had to make these findings every 30 days. A.B. 557 extends that time to 45 days.

A.B. 557 also amends the Brown Act to add to the list of just cause reasons allowing a member of a legislative body to appear via teleconference at a public meeting if that member has “an immunocompromised child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely.” Cal. Gov’t Code § 54953(j)(2). The ability for a member of a legislative body to appear remotely under either “just cause” reasons or “emergency circumstances” was also extended and now expires on January 1, 2026. Cal. Gov’t Code § 54953(k). The Brown Act continues to limit the use of just cause for remote participation to two meetings per calendar year. Cal. Gov’t Code § 54953(f)(2)(A)(i). A member requesting remote appearance must follow the same process that currently exists and must participate through both audio and visual technology, i.e. having their cameras on during the entire meeting. Cal. Gov’t Code § 54953(f)(2); *see also* City Att’y MS 2022-10 (Dec. 10, 2022) at pp. 4-5. Members of the public must also be allowed to participate in the meeting and offer public comment remotely. Cal. Gov’t Code § 54953(f)(1)(A); City Att’y MS 2022-10, at p. 4.

### CONCLUSION

These Brown Act amendments allow the Council or the City’s boards and commissions to hold teleconferenced meetings during a proclaimed state of emergency, such as wildfires or flooding, when meeting in person would present imminent risks to the health or safety of attendees. If the state of emergency is prolonged, the Council must make the required findings by adopting a resolution at a publicly noticed meeting every 45 days to allow for continued teleconferenced meetings. Additionally, A.B. 557 adds a just cause reason for remote participation by a member of a legislative body who has an immunocompromised family member. These added provisions expire on January 1, 2026.

As always, please do not hesitate to contact this Office if you have questions about the new laws or require training.

MARA W. ELLIOTT, CITY ATTORNEY

By     /s/Kathy J. Steinman      
Kathy J. Steinman  
Deputy City Attorney

KJS:jvg

MS-2023-13

Doc. No. 3512140

Attachments:

A. City Attorney Miscellaneous Memorandum No. MS 2021-18 (Sept. 28, 2021)

B. City Attorney Miscellaneous Memorandum No. MS 2022-10 (Dec. 20, 2022)

cc: Diana J.S. Fuentes, City Clerk

Charles Modica, Independent Budget Analyst

Eric Dargan, Chief Operating Officer

Chida Warren-Darby, Director of Office of Boards and Commissions

**Office of  
The City Attorney  
City of San Diego**

**MEMORANDUM  
MS 59**

**(619) 533-5800**

**DATE:** September 28, 2021  
**TO:** Honorable Mayor and Councilmembers  
**FROM:** City Attorney  
**SUBJECT:** Legal Update: Assembly Bill 361 amending the Ralph M. Brown Act

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**INTRODUCTION**

In March 2020, in response to the public health threat caused by the novel coronavirus, Covid-19, Governor Gavin Newsom issued Executive Orders N-25-20 and N-29-20 (Executive Orders) suspending provisions of the Ralph M. Brown Act (Brown Act). The Executive Orders allowed local jurisdictions to hold teleconferenced public meetings and for members of the public to observe and address the legislative bodies during teleconferenced meetings. The Executive Orders expire September 30, 2021.

On September 16, 2021, the Governor signed Assembly Bill 361 (A.B. 361) into law. A.B. 361 amends the Brown Act to codify the temporary rules established by the Executive Orders and provide a mechanism for the Council of the City of San Diego (Council) and City boards and commissions to continue teleconferencing during a proclaimed state of emergency related to Covid-19.<sup>1</sup>

**BACKGROUND**

The California State legislature adopted the Brown Act in 1953 to “aid in the conduct of the people’s business” by requiring that legislative bodies’ “actions be taken openly and that their deliberations be conducted openly.” Cal. Gov’t Code § 54950. Meetings of a legislative body must be “open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency” unless the Brown Act provides otherwise. Cal. Gov’t Code § 54953(a).

The Brown Act allows members of the legislative body to participate in meetings by teleconference provided that certain requirements as set forth in California Government Code section 54953(b) are met. In the absence of the Executive Orders and A.B. 361, the legislative

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<sup>1</sup> The teleconferencing option in A.B. 361 applies to all legislative bodies in the City, defined in the Brown Act as including the City Council and commissions, committees, boards and other bodies, “whether permanent or temporary, decision making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body.” Cal. Gov’t Code § 54952.

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body must provide notice of, and post the meeting agenda, at each teleconference location, which must be accessible to the public and allow members of the public to address the legislative body. Cal. Gov't Code § 54953(b)(3). The Executive Orders suspended these requirements and waived the requirement that at least a quorum of the members of the legislative body participate from locations within the boundaries of the body's jurisdiction. *Id.*

### ANALYSIS

A.B. 361 adds new language to the Brown Act that creates a process for local agencies to use teleconferencing during a proclaimed state of emergency without complying with the Brown Act's requirement to provide notice and public access to each teleconference location.<sup>2</sup> For A.B. 361 to apply, the Governor must proclaim a state of emergency pursuant to California Government Code section 8625. Cal. Gov't Code § 54953(e)(4). It is not sufficient for the local agency to rely on a locally declared state of emergency. The legislative body may use teleconferencing during a proclaimed state of emergency if: (i) state or local officials have imposed or recommended measures to promote social distancing; or (ii) the legislative body determines, by majority vote, that "as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees."<sup>3</sup> Cal. Gov't Code § 54953(e)(1).

During any teleconferenced meeting authorized by A.B. 361, the legislative body must allow members of the public to access the meeting and provide them an opportunity to address the legislative body directly. Cal. Gov't Code § 54953(e)(2)(B). Members of the public must be given a real-time opportunity for public attendance by a call-in or internet-based service option. Cal. Gov't Code § 54953(e)(2)(B). The legislative body is not required to provide a physical location for public attendance or comment during a teleconference meeting authorized by A.B. 361.<sup>4</sup> Cal. Gov't Code § 54953(e)(2)(B) and (E). The meeting agenda and notice must include the method for members of the public to access the meeting and offer public comment.<sup>5</sup> Cal. Gov't Code § 54953(e)(2)(B). The legislative body may not require public comments to be submitted in advance of the meeting. Cal. Gov't Code § 54953(e)(2)(E).

While teleconferencing pursuant to A.B. 361, the legislative body may not take action during a technology disruption that prevents broadcasting to the public through the provided call-in option or internet-based service option or during a disruption within the local agency's control that

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<sup>2</sup> A.B. 361 remains in effect through January 1, 2024 when it automatically repealed.

<sup>3</sup> The legislative body also may use teleconferencing during a state of emergency to meet to determine whether meeting in person would "present imminent risks to the health or safety of attendees." Cal. Gov't Code § 54953(e)(1)(B). A.B. 361 does not specify whether this determination must be made by each board or commission or by the City Council for all City boards and commissions.

<sup>4</sup> This Office is monitoring Assembly Bill 339 (A.B. 339), which was adopted by the State Legislature in September 2021 and is currently pending the Governor's signature. If adopted, it requires all open and public meetings of a city council governing a jurisdiction of at least 250,000 people to include an in-person public comment opportunity unless there are any laws that prohibit in-person government meetings during a declared state of emergency. We will provide additional legal guidance if the state of emergency is still in effect if A.B. 339 goes into effect on January 1, 2022.

<sup>5</sup> A.B. 361 also establishes requirements for legislative bodies that provide timed public comment. See Cal. Gov't Code § 54953(e)(2)(G).

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prevents members of the public from offering public comments. Cal. Gov't Code § 54953(e)(2)(D). When an internet-based service option, such as Zoom or Teams, or the call-in connection is disrupted, the legislative body must stop the meeting until connectivity and real-time public participation is restored.<sup>6</sup> *Id.*

If the legislative body chooses teleconferencing pursuant to A.B. 361, the legislative body must reconsider the circumstances of the emergency every 30 days after teleconferencing for the first time. Cal. Gov't Code § 54953(e)(3). During such reconsideration, the legislative body must make findings that either: (i) the state of emergency continues to “directly impact the ability of members to meet safely in person”; or (ii) state or local officials continue to impose or recommend measures to promote social distancing. *Id.* A finding that the state of emergency continues to directly impact members’ ability to meet safely could be made based on Covid-19 hospitalizations, transmission rates, or the like. Social distancing measures could include guidance from state or county officials that require or recommend the City promote social distancing.

### CONCLUSION

For the duration of the Governor’s declared state of emergency related to the Covid-19 pandemic, the Council and the City’s boards and commissions may use teleconferencing in compliance with A.B. 361 if social distancing recommendations are in effect or if the Council adopts a resolution determining that meeting in person would present imminent risks to the health or safety of attendees.

Options for the Council’s consideration include:

- Since A.B. 361 does not require the use of teleconferencing, Council may resume in-person meetings with in-person attendance by the public. Council could work with the Mayor’s Office to enforce social distancing recommendations already in place for City employees or require proof of vaccination for members of the public, with appropriate exemptions in compliance with state law. We suggest announcing social distancing and/or vaccination requirements with sufficient lead time so that impacted City staff and contractors, like third-party security guards, may prepare.
- Council may rely on the Governor’s state of emergency and the State’s recommended measures to promote social distancing to hold teleconferenced or hybrid meetings for 30 days. Hybrid meetings could include some Councilmembers attending in-person and others attending using teleconferencing. Hybrid meetings could include Councilmembers all attend in-person and members of the public join by

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<sup>6</sup> The legislative body is not required to stop the meeting in the event a televised broadcast is disrupted as long as the call-in service or internet-based service option are still functioning. If possible, this Office recommends the broadcast direct viewers to join the meeting through the available call-in or internet-based service options during broadcast disruptions.

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teleconferencing. The Council must reconsider the circumstances of the state of emergency within 30 days of the first teleconference meeting pursuant to A.B. 361.

- Council may take action to determine whether meeting in person would present “imminent risks to the health or safety of attendees.” This option would be the best mechanism to establish hybrid meetings with some or all Councilmembers present and members of the public teleconferencing because it would include findings to support teleconferenced public attendance. For example, Council could determine whether there is an imminent risk to the health or safety of attendees if the public participates in-person if the intent is to maintain social distancing among the Councilmembers and City staff participants. If Council chooses this option, this Office recommends the Council consider whether to apply that determination to meetings of other City boards and commissions for consistency and clarity.

If Council chooses to teleconference in compliance with A.B. 361, the Council must reconsider that decision and the circumstances of the state of emergency every 30 days. This Office is available to assist Council with taking any of the necessary steps to resume in-person meetings or continue teleconferencing in compliance with A.B. 361.

MARA W. ELLIOTT, CITY ATTORNEY

By /s/ Heather M. Ferbert

Heather M. Ferbert  
Chief Deputy City Attorney

HMF:sc

MS-2021-18

Doc. No.: 2771408

cc: Elizabeth Maland, City Clerk  
Andrea Tevlin, Independent Budget Analyst  
Mathew Gordon, Director of Appointments, Office of the Mayor

**Office of  
The City Attorney  
City of San Diego**

**MEMORANDUM  
MS 59**

**(619) 236-6220**

**DATE:** December 20, 2022

**TO:** Honorable Mayor and Councilmembers

**FROM:** City Attorney

**SUBJECT:** Legal Update: New Meeting Disruption and Teleconference Amendments to the Ralph M. Brown Act

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**INTRODUCTION**

As the new year approaches, the Office of the City Attorney would like to bring to your attention two important Ralph M. Brown Act (Brown Act) amendments that take effect January 1, 2023. These amendments will impact San Diego City Council (Council) operations as well as those for City boards and commissions.

On August 22, 2022, Governor Newsom signed Senate Bill 1100 (S.B. 1100) into law adding California Government Code section 54957.95. Under this new section, a presiding member of a legislative body is authorized to remove, or cause the removal of, individuals who disrupt open meetings. The bill also identifies the types of behaviors which may be characterized as “disrupting” under the statute.

The Governor also signed Assembly Bill 2449 (A.B. 2449) into law on September 13, 2022. A.B. 2449 revises and recasts the teleconference provisions found in California Government Code sections 54953 and 54954.2.<sup>1</sup> These newly revised sections will take on additional importance if the Governor’s proclaimed COVID-19 State of Emergency ends in February 2023.<sup>2</sup> In the absence of a proclaimed state of emergency, A.B. 2449 will provide a separate process for local legislative bodies to hold remote “hybrid” meetings.

**BACKGROUND**

The California State Legislature adopted the Brown Act in 1953 with the express intent that “public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people’s business” and “their actions be taken openly and . . . their deliberations be conducted openly.” Cal.- Gov’t Code § 54950. All meetings of a local

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<sup>1</sup> A.B. 2449 will remain in effect through January 1, 2026, when it will be automatically repealed and the pre-COVID version of Section 54953 will remain.

<sup>2</sup> Governor Newsom announced in October 2022 that the COVID-19 State of Emergency is expected to end on February 28, 2023.



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legislative body, therefore, “shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body” unless the Brown Act provides otherwise.<sup>3</sup> Cal. Gov’t Code § 54953(a).

Local legislative bodies may adopt reasonable regulations to ensure public participation in the legislative process, “including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.” Cal. Gov’t Code § 54954.3(b)(1).<sup>4</sup> Such regulations do not trump an individual’s free speech rights under the United States Constitution. Accordingly, local legislative bodies may not “prohibit public criticism of the policies, procedures, programs, or services of the agency, or the acts or omissions of the legislative body.” Cal. Gov’t Code § 54954.3(c).

## ANALYSIS

### I. Senate Bill 1100 – Orderly Conduct at Open Meetings

Under current law, if a public meeting is willfully interrupted by “a group or groups of persons” that renders the orderly conduct of a meeting unfeasible and order cannot be restored by the removal of the individuals who are interrupting the meeting, members of the legislative body may order the room cleared and the meeting continued outside of the public’s presence.<sup>5</sup> Cal. Gov’t Code § 54957.9. Representatives of the press or other news media must be allowed to remain provided they are not participating in the disturbance. *Id.*

S.B. 1100 adds section 54957.95 to the California Government Code, which allows the presiding member of the legislative body or their designee to remove, or cause the removal of, individuals who disrupt public meetings. “Disrupting” is defined to mean engaging in behavior during a meeting of the legislative body that “actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, . . . [a] failure to comply with reasonable and lawful regulations adopted by the legislative body.” Cal. Gov’t Code § 54957.95(b)(1)(A). Before removal, the presiding member must warn the offending individual that “their behavior is disrupting the meeting and that the failure to cease their behavior may

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<sup>3</sup> As used in the Brown Act, a “legislative body” includes the governing body of a local agency and any boards, commissions, committees, or other bodies of a local agency that are created by charter, ordinance, resolution, or formal action of a legislative body. *See* Cal. Gov’t Code § 54952(a), (b).

<sup>4</sup> Under this section and relevant to meeting disruptions subject to S.B. 1100, the Council adopted former Rule 2.13 of the Rules of Council (recently renumbered as Rule 2.14) which provides that the Council President may order the removal of any person whose conduct disrupts or impedes the conduct of a Council meeting if the person refuses to conform to the rules of conduct after being ordered to do so. *See* San Diego Municipal Code § 22.0101.

<sup>5</sup> “Willfully” means to act voluntarily and intentionally, but not necessarily maliciously. *Black’s Law Dictionary* (11th ed. 2019).

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result in their removal.” Cal. Gov’t Code § 54957.95(a)(2). Warnings are not required if individuals are engaged in behavior that constitutes a use of force or a true threat of force.<sup>6</sup>

The Council also has codified Rules of Council in the San Diego Municipal Code that address meeting disruptions. Rule 2.14 allows the Council President to remove any person who disrupts, disturbs, or impedes the conduct of a Council meeting after a warning and being ruled out of order if the person refuses to comply with the rules of conduct. *See* San Diego Municipal Code § 22.0101. After January 1, 2023, the Council President may also rely on section 54957.95 to immediately remove individuals engaged in behavior that involves a use of force or true threat of force.

## **II. Assembly Bill 2449 – “Hybrid” Teleconferencing Allowed in Specified Circumstances**

The Brown Act permits the use of teleconferencing “for the benefit of the public and the legislative body” in connection with any meeting or proceeding authorized by law.<sup>7</sup> Cal. Gov’t Code § 54953(b)(1). The legislative body must post agendas at each teleconference location; identify those locations in both the meeting’s notice and agenda; and make each teleconference location accessible to the public. Cal. Gov’t Code § 54953(b)(3). In response to COVID-19, Governor Newsom issued certain executive orders suspending some of these Brown Act provisions (e.g., Cal. Gov’t Code § 54953(b)(3)) and establishing temporary teleconference rules. These temporary rules were later codified into law by Assembly Bill 361 (A.B. 361) in September 2021 and sunset on January 1, 2024.

Under A.B. 361, local agencies can teleconference without identifying each teleconference location and providing public access to those locations so long as the Governor has declared a state of emergency and if: (i) state or local officials have imposed or recommended measures to promote social distancing; or (ii) the legislative body determines, by majority vote, that “as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.” Cal. Gov’t Code § 54953(e)(1)(A)-(C).

A.B. 2449 addresses when a limited number of legislative members need to meet remotely due to emergency circumstances” or other situations supported by “just cause.”<sup>8</sup> Specifically, “hybrid” teleconference meetings are allowed without having to comply with the disclosure requirements found in California Government Code section 54953(b)(3). The meetings are “hybrid” because at least a quorum of legislative members must participate in person from a singular, clearly

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<sup>6</sup> “‘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.” Cal. Gov’t Code § 54957.95(b)(2).

<sup>7</sup> “Teleconference” means a meeting of the legislative body with members in different locations connected by electronic means, through audio or video, or both. Cal. Gov’t Code § 54953(b)(4).

<sup>8</sup> “Emergency circumstances” are defined as “a physical or family medical emergency that prevents a member from attending in person.” “Just cause” includes childcare or family caregiving needs, contagious illness, physical or mental disability need, or travel while on official business. Cal. Gov’t Code § 54953(j)(1), (j)(2)(A)-(D).

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identified, publicly accessible physical location situated within the territorial boundaries of the local agency's jurisdiction while one or more members of the legislative body (but less than a quorum) may request to participate remotely due to emergency circumstances (i.e., a physical or family medical emergency that prevents in-person attendance) or for just cause (i.e., childcare or family caregiving need, contagious illness, physical or mental disability need, or travel while on official public business).

Like A.B. 361, any teleconference authorized by A.B. 2449 must provide the public with the following:

- the means to remotely hear and visually observe the meeting, and to remotely address the legislative body (Cal. Gov't Code § 54953(f)(1)(A));<sup>9</sup>
- the opportunity to attend and address the legislative body directly via a call-in option, via an internet-based service option, and at the in-person location of the meeting (Cal. Gov't Code § 54953(f)(1)(C)); and
- the meeting agenda and notice that includes how members of public may access the meeting and offer public comment (Cal. Gov't Code § 54953(f)(1)(B)).

The legislative body may not require the public to submit comments in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time. Cal. Gov't Code § 54953(f)(1)(E).

Members of a legislative body may not participate remotely based on a just cause for more than two meetings per calendar year. Cal. Gov't Code § 54953(f)(2)(A)(i). Members are also limited to the total number of times they may participate by teleconference within a calendar year to no more than three consecutive months or 20 percent of regular meetings.<sup>10</sup> Cal. Gov't Code § 54953(f)(3).

To participate remotely under A.B. 2449, a member of the legislative body must do the following:

- notify the legislative body at the earliest opportunity, including at the start of a regular meeting, of the need to participate remotely (Cal. Gov't Code § 54953(f)(2)(A)(i), (ii)(I));

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<sup>9</sup> The Brown Act only requires remote public access if meetings are held via teleconference under either A.B. 361 or A.B. 2449.

<sup>10</sup> If the legislative body meets fewer than 10 times per calendar year, remote participation under A.B. 2449 is limited to two meetings. Cal. Gov't Code § 54953(f)(3).

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- provide a general description, presumably into the record, of the circumstances relating to their need to appear remotely at a given meeting (Cal. Gov't Code § 54953(f)(2)(A)(i), (ii));<sup>11</sup>
- in emergency circumstances, members must request to participate remotely as soon as possible, and make separate requests for each meeting in which they seek to participate remotely (Cal. Gov't Code § 54953(f)(2)(A)(ii)(I));
- when participating remotely, a 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 with the member and the general nature of the member's relationship with any such individual (Cal. Gov't Code § 54953(f)(2)(B)); and.
- remote participation must be through both audio and visual technology (Cal. Gov't Code § 54953(f)(2)(C)).<sup>12</sup>

Lastly, the legislative body must approve a member's request to teleconference for emergency circumstances at the earliest opportunity.<sup>13</sup> Cal. Gov't Code § 54953(f)(2)(A)(ii)(II). If the member's request does not allow sufficient time to be placed on the meeting agenda for the meeting for which the request is made, the action may occur at the beginning of the meeting in accordance with California Government Code section 54954.2(b)(4). Cal. Gov't Code § 54953(f)(2)(A)(ii)(II).

The legislative body is also prohibited from taking any action while a disruption prevents the legislative body from broadcasting a hybrid meeting to members of the public using the call-in option or internet-based service option or prevents members of the public from offering public comments using the call-in option or internet-based service option. Cal. Gov't Code § 54953(f)(1)(D). The Council may wish to address how disruptions will be handled in its Rules or explain the process to the public at the start of each meeting, on the City Clerk's website, or the agenda itself. Any action taken during a disruption that prevents the legislative body from broadcasting the meeting may be challenged pursuant to California Government Code section 54960.1. *Id.*

## CONCLUSION

S.B. 1100 and A.B. 2449 allow the City to address disruptive behaviors at open meetings and continue modified, but limited, teleconference procedures after the Governor's proclaimed

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<sup>11</sup> A general description need not exceed 20 words and shall not require the member to disclose any medical diagnosis or disability, or any personal medical information already exempt under existing law.

<sup>12</sup> "Watching or listening to a meeting via webcasting or another similar electronic medium that does not permit members to interactively hear, discuss, or deliberate on matters, does not constitute remote participation." Cal. Gov't Code § 54953(j)(4).

<sup>13</sup> There is no similar approval requirement when remote participation is based on just cause. Rather, in these circumstances, a member need on notify the legislative body at the earliest opportunity.

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COVID-19 state of emergency ends. This Office is available to assist with the implementation of any new procedures developed in response to these amendments and to answer any questions.

MARA W. ELLIOTT, CITY ATTORNEY

By /s/ David J. Karlin  
David J. Karlin  
Senior Deputy City Attorney

DJK:cm:nja

MS-2022-10

Doc. No. 3172328

cc: Charles Modica, Independent Budget Analyst  
Eric Dargan, Chief Operating Officer  
Diana Fuentes, Assistant City Clerk