



AGENDA REPORT

Department: City Clerk's Office
Prepared by: Shelley Chapel, MMC, Deputy City Clerk
Meeting Date: Tuesday, November 15, 2022
Approved by: Brad Raulston, City Manager

SUBJECT:

Update on Legislation regarding Public Meetings: AB 361 and AB 2449

RECOMMENDATION:

Receive, file and provide staff direction if needed.

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

Not Applicable.

EXPLANATION:

Beginning March 2020, Governor Newsom signed several Executive Orders N-25-20, N-29-20, N-35-20, N-08-21 suspending the Ralph M. Brown Act's requirements for teleconferencing and allowing public meetings to take place virtually, and in the interest of public health and safety to mitigate the spread and effects of the COVID-19 pandemic.

Executive Order N-08-21 was set to expire on September 30, 2021, consequently, on September 16, 2021, Governor Newsom signed AB 361 further extending the authorization of a local agency to use teleconferencing without complying with the teleconferencing requirements imposed by the Ralph M. Brown Act and could continue to hold virtual meetings as long as the legislative body (including City Council and its appointed Boards, Commission and Committee members) could continue to make the findings.

Those findings are:

- Local Agency holds a meeting during a declared state of emergency.
- State or local Officials have imposed or recommended measures to promote social distancing.
- Legislative bodies declare the need to meet remotely due to present imminent risks to the health and safety of attendees.
- The Legislative body cannot take further action on agenda items when there is a disruption which prevents the public agency from broadcasting the meeting, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments, until public access is restored.
- Prohibiting the Legislative Body from requiring public comments to be submitted in advance of the meeting and would specify that the legislative body must provide an opportunity for the public to address the legislative body and offer comment in real time. An individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log into a teleconference may be required to register as required by the third-party internet website or online platform to participate.

On October 17, 2022, it was reported from the Office of Governor Newsom that the COVID-19 State of Emergency will end on February 29, 2023. This timeline allows for any potential surge that may occur after the holidays in January and February, in addition to providing local agencies time to phase-out any practices put in place during the pandemic for social distancing.

In the meantime, California State Legislation has taken on the complex and restrictive teleconferencing rules under the traditional Ralph M. Brown Act and on September 13, 2022, Governor Newsom signed into law Assembly Bill (AB) 2449.

This new amendment to the Brown Act goes into effect on January 1, 2023. AB 2449 provides alternative teleconference procedures, but has set rules for Legislative Body remote participation, yet still allows Zoom meetings at which the public participates remotely.

Rules to participate via teleconference are as follows:

- At least a quorum of the legislative body must participate in person from a singular physical location identified on the agenda, which is also open to the public and within the boundaries of the local agency.
- The legislative body must also provide either a two-way audiovisual platform or two-way telephonic service and a live webcasting of the meeting to allow the public to remotely hear and visually observe the meeting, and remotely address the legislative body. The agenda must identify and include an opportunity for all persons to attend via a call-in option, internet-based service option, and at the in-person location of the meeting.

In addition to the above requirements, AB 2449 also contains a number of requirements that only allow a member of the legislative body to participate remotely if one of the following are met:

1. The member notifies the legislative body at the earliest opportunity possible, including at the start of a regular meeting, of their need to participate remotely for “*just cause*” (as defined by AB 2449), including a general description of the circumstances relating to their need to appear remotely at the given meeting; or
2. The member requires the legislative body to allow them to participate in the meeting remotely due to the “*emergency circumstances*” and the legislative body takes action to approve the request. The legislative body requires a general description (generally not exceeding 20 words) of the circumstances relating to the member’s need to appear remotely at the given meeting, this shall not require a member to disclose any medical diagnosis or disability, or any personal medical information that is already exempt under existing law.

Definitions per AB 2449:

Just Cause – is limited to one or more of the following:

- a) a childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires a member to participate remotely;
- b) a contagious illness that prevents a member from attending in person;
- c) a need related to a physical or mental disability as defined by statute; or
- d) travel while on official business of the legislative body or another state or local agency.

Emergency Circumstances – means a physical or family medical emergency that prevents a member from attending in person.

In addition to these practical implications, the member is also limited to how frequently a member can teleconference under this statute.

AB 2449's teleconference procedures may not be used by a member of the legislative body to teleconference for a period of more than three (3) consecutive months or 20% of the regular meetings within a calendar year, or more than two meetings if the body meets fewer than 10 times per calendar year.

The City of National City schedules 22 Regular Meetings per calendar year, allowing a member to utilize only four (4) meetings per calendar year for the teleconferencing based on the "just cause" allowance under AB 2449 and must meet the additional requirements as defined.

Members participating remotely must do so through both audio and visual technology and must publicly disclose whether any individual over the age of 18 is present at the remote location with the member and the general nature of the member's relationship with the individual.

AB 2449 does not amend the Brown Act's emergency teleconference procedures. It offers an alternative teleconferencing option that allows a legislative body to use teleconferencing without complying with the traditional teleconference agenda requirements of noticing home address and posting location requirements.

Since the Governor has lifted the proclaimed State of Emergency due to COVID-19 pandemic, AB 361 provisions will expire on February 29, 2023, and AB 2449's rules remain in effect through 2026 unless further legislation is adopted.

Requirements of the Legislative Body if a member seeks to participate due to a specified "just cause" or "emergency circumstance" must be stated and recorded at the beginning of each public meeting before any actions are taken. If a member seeks to participate due to a specified "emergency circumstance" and the legislative body votes not to accept the basis for virtual attendance under AB 2449, then that member may only participate as a general member of the public and cannot vote on any action item.

Minutes of the meeting must reflect the following under AB 2449's procedures:

- a) which member appeared remotely under AB 2449's procedures;
- b) how many times each member has appeared remotely under its terms;
- c) the reason for appearing remotely; and,
- d) any action taken by the legislative body, such as not accepting the circumstance.

Currently the City Council has voted to continue teleconferencing under the AB 361 rules if the findings remain until December of 2022. The City Council may want to allow the AB 361 provisions to be considered until they expire February 29, 2023, providing staff direction.

FINANCIAL STATEMENT:

None.

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Communication and Outreach

ENVIRONMENTAL REVIEW:

This is not a project under CEQA and is therefore not subject to environmental review.CCR15378; PRC 21065.

PUBLIC NOTIFICATION:

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

ORDINANCE:

Not Applicable

EXHIBIT:

Exhibit A – Assembly Bill 2449