

# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Toni J. Taber, City Clerk

**SUBJECT: UPDATED AB 2449 (JUST CAUSE  
& EMERGENCY) REQUIREMENTS  
FOR MEMBERS' REMOTE  
PARTICIPATION IN PUBLIC  
MEETINGS**

**DATE:** August 9, 2023

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## **REVISED INFORMATION MEMORANDUM**

### **REASON FOR UPDATE**

Since returning to in-person meetings on March 1, 2023, the City has had the opportunity to review AB 2449's Just Cause and Emergency exceptions in practice. This memorandum incorporates additional guidance, specifically that:

- 1) AB 2449's Just Cause and Emergency exceptions may be used for regular meetings, special meetings, study sessions, Public Hearings, and any other meetings that are noticed as Brown Act meetings; and
- 2) The verbal disclosure that others over the age of 18 years old are present in the room is required only once, at the beginning of the meeting, and can be verbally updated during the meeting if someone over the age of 18 years old enters the room.

### **SUMMARY**

Under governing state law (the Ralph M. Brown Act), members of all City legislative bodies, which include the City Council, Council Committees, City Decision-Making Bodies, City Boards, City Committees, City Commissions, Task Forces, City Other Advisory Entities subject to the Brown Act, Joint Power Authority legislative bodies for which the City serves as lead staffing agency ("Brown Act Bodies), returned to in-person public meetings effective March 1, 2023. These Brown Act Bodies have utilized the hybrid model for all meetings for which the public is entitled to attend, by providing the public with an option to attend meetings virtually. All other community meetings of bodies that do not need to follow the Brown Act, are strongly recommended to use hybrid or virtual meetings.

## **AB 2449 JUST CAUSE AND EMERGENCY EXCEPTIONS**

Due to the end of the Governor’s declared COVID-19 State of Emergency, beginning March 1, 2023, all members of Brown Act Bodies must attend public meetings in person, subject to two limited exceptions under AB 2449, as described below.

Importantly, AB 2449 does not require that members of a Brown Act Body be allowed to utilize these exceptions. Indeed, these bodies could be required to return to fully in-person meetings with no online component; however, the City of San Jose recognizes the public benefit of both having meetings in person and providing the ability for members—under limited instances—and the public to attend virtually.

Effective January 1, 2023, AB 2449, provides two limited exceptions in which a requesting member of the Brown Act Body can attend meetings remotely without posting their remote location on the agenda and without having that remote location be accessible to the public:

1. **Just Cause**: the requesting member notifies their legislative body at the beginning or prior to the meeting of the need to participate remotely due to Just Cause, including a general description of the circumstances relating to their need to appear remotely at the given meeting. Just Cause is defined as childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse or domestic partner that requires them to participate remotely; a contagious illness that prevents them from attending in person; a need related to a physical or mental disability as defined in Government Code Sections 12926 and 12926.1, or official travel of the legislative body or another state or local agency. The Just Cause exception is limited to a maximum of 2 meetings per calendar year per member of the legislative body; OR
2. **Emergency**: the requesting member needs to request remote participation due to a physical or family medical emergency that prevents attending in person, with a general description of the circumstances relating to their need to appear remotely, and the legislative body needs to take action to approve the request. If the request does not allow sufficient time to place the proposed action on the posted agenda for which the request is made, the legislative body may take action at the beginning of the meeting to approve the request by a majority vote.

These exceptions can be used for regular meetings, special meetings, study sessions, Public Hearings, and any other meetings that are noticed as Brown Act meetings.

A member of the legislative body is limited to using the Just Cause and Emergency exceptions for a combined period of less than 3 consecutive months or 20% of the regular meetings per calendar year, or a combined maximum of 2 meetings per calendar year if the legislative body

meets less than 10 times per calendar year. These maximum limits apply per legislative body, not per type of meeting.<sup>1</sup>

If the Just Cause or Emergency exceptions are used for a member of the legislative body to participate remotely, the following additional requirements apply:

1. At least a quorum of the legislative body must participate in person from a single physical location clearly identified on the agenda, which location shall be open to the public, and situated within the City of San José.
2. Prior to any action being taken, once at the beginning of the meeting, the remote member needs to publicly disclose whether others over 18 years of age are present in the room and the general nature of their relationship to such individuals;<sup>2</sup>
3. The remote member must participate by both audio and video, and the video must be on;
4. The meeting must allow the public to hear and watch the meeting via a) two-way audio-visual platform, or b) two-way telephone + live webcasting;
5. The posted meeting agenda must give notice of how the public may access the meeting and offer public comment in real time via a call-in option, via an internet-based service option, and at the in-person meeting location; and
6. If there is broadcast disruption of the call-in or internet-based service, or other disruption that prevents members of the public from offering public comment using the call-in or internet-based service option, the meeting needs to be stopped until the broadcast is restored.

The Secretary for each Brown Act Body must agendize the request at least 72 hours in advance if possible, and track usage of the Just Cause and Emergency exceptions by its members. The City Clerk has created [forms](#) located on the internet for Councilmembers to submit to the Clerk to provide notice to the Council and the Public for both types of exemptions.

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<sup>1</sup> For example, a councilmember who is a member of the Rules and Open Government Committee and the Transportation and Environment Committee could use up their two Just Cause exceptions by remotely attending two City Council meetings remotely in 2023, by remotely attending two Rules and Open Government Committee meetings in 2023, and by remotely attending two Transportation and Environment Committee meetings in 2023. The two City Council meetings could be any combination of different types of City Council meetings; for example, the councilmember could use up their two Just Cause exceptions in 2023 to remotely attend one regular City Council meeting in 2023, and to remotely attend one special City Council meeting in 2023.

<sup>2</sup> This can be verbally updated during the meeting if someone over the age of 18 years old enters the room.

## **TRADITIONAL TELECONFERENCING RULES**

If the AB 2449 Just Cause and Emergency Exceptions cannot be utilized, the traditional Brown Act Teleconferencing Rules may still be utilized by members of the legislative body to attend remotely via teleconference or video teleconference as follows:

- At least a quorum must participate from locations within the City of San José;
- The remote location must be listed on the agenda;
- The agenda must be posted at the remote location for 72 hours prior to the meeting;
- The remote location must be accessible to the public;
- Members of the public must be allowed to attend and speak at the remote location; and
- All votes during the meeting must be by roll call.

The City Clerk has prepared an [Affidavit of Posting](#) to be completed and signed by the member of the legislative body and submitted to the secretary of the body. For the City Council, this would be the City Clerk. For Boards and Commissions it would be the department staff person who provides secretarial support.

## **HYBRID MEETINGS FOR PUBLIC TO ATTEND REMOTELY**

City Brown Act Bodies will be required to continue holding hybrid meetings which allow the public to attend remotely beginning March 1, 2023, unless there is a compelling reason that body should not or cannot. The City has equipped several Zoom Rooms in City Hall Tower conference rooms to enable hybrid meetings. Additionally, the Council Chambers and the full Committee Wing Room (W118-120) can be used for virtual/hybrid meetings. The City Clerk's Office hosted a training for Commission secretaries on February 21, 2023 to demonstrate the use of a zoom room; however, technical support for the use of the room equipment and software will continue to be managed by the Information and Technology Department (IT). Brown Act Body and department staff should contact the IT department for training in the use of these rooms, if needed.

For meetings held off-site or in the individual Committee Wing Rooms (W-118, W-119, W-120), departments have many options to provide a hybrid experience for the public. For example, the use of a laptop, projector, screen, or and external camera/speaker unit is one solution. An external monitor with HDMI or wireless connection to a laptop is another alternative in lieu of a projector and screen. Departments should procure these items if they are not already available and train their teams on their use. The City Clerk's Office provided a demonstration of this set up on February 21, 2023, and additional demonstrations may be scheduled as needed.

Importantly, the agenda for any meeting using the hybrid model should include both the physical location and the virtual location (zoom address). The use of Zoom webinar is still recommended for meetings at which the public attends and participates. This will allow better security as members of the public can only participate when given individual permission, which prevents an attendee taking over the screen to share inappropriate material.

Remote Member Participation in Public Meetings  
August 9, 2023

Under limited circumstances, a meeting of a Brown Act Body may be held without the virtual component if a compelling reason is given and is approved by the Rules and Open Government Committee.

**COORDINATION**

This memo has been coordinated with the City Attorney's Office and the City Manager's Office.

A handwritten signature in blue ink, appearing to read "Toni J. Taber". The signature is stylized and cursive, with a horizontal line extending from the end.

TONI J. TABER, CMC  
City Clerk

For more information, contact Toni J. Taber, City Clerk, at 408-535-1260.