

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Toni J. Taber, City Clerk

SUBJECT: SEE BELOW

DATE: February 21, 2023

INFORMATION

SUBJECT: March 1, 2023 Return to in person meetings for members of all City legislative bodies—AB 2449 and Post Covid Public Meetings

Outcome:

Under governing state law, members of City Council, Council Committees, City Decision-Making Bodies, City Boards, Committees and 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 and all City legislative bodies, are required to return to in person public meetings. The City of San José is requiring these bodies to utilize the hybrid model for all meetings for which the public is entitled to attend. All other community meetings of bodies that do not need to follow the Brown Act, are strongly recommended to use hybrid or virtual meetings.

Background:

Prior to the COVID-19 emergency, the Brown Act required that all members of a Brown Act body (City Council, Council Committees, City Decision-Making Bodies, City Boards, Committees and Commissions, City Other Advisory Entities subject to the Brown Act, Joint Power Authority legislative bodies for which the City serves as lead staffing agency and all City legislative bodies) attend meetings in person. Teleconferencing and Video teleconferencing were allowed, provided:

- The remote location was accessible to the public;
- The remote location was listed on the agenda;
- The agenda was posted at the remote location for 72 hours prior to the meeting;
- Members of the public were allowed to attend and speak at the remote location; and
- At least a quorum attended the meeting in person.

During the COVID-19 emergency, these rules were temporarily suspended by the Governor's declaration of a COVID-19 State of Emergency. This suspension allowed members of the Brown Act Bodies to attend via video teleconference from remote locations without noticing that remote

location on the agenda, without allowing the public to attend and speak from that remote location, and without having a quorum of the Brown Act body attend in person. Additionally, members of the public were able to attend via video teleconference. The Governor declared COVID-19 State of Emergency is expiring on February 28, 2023. Due to this, beginning March 1, 2023, all members of Brown Act Bodies must attend public meetings in person, subject to two limited exceptions, as described below.

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 the remote location on the agenda and without having the teleconference location to be accessible to the public:

1. *Just Cause: the requesting member needs to notify their legislative body at the beginning or prior to the meeting that they 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 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.*

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.

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 Jose.*
2. *Before each vote or action: teleconferencing member needs to publicly disclose whether anyone over 18 years of age is present in their room and the general nature of their relationship to such individuals;*

3. *Must participate by both audio and video: video must be on;*
4. *Must allow public to hear and watch 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 location of the meeting*
6. *If 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, need to stop meeting until broadcast 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.

Importantly, AB 2449 does not require that members of a Brown Act body be allowed to utilize the above noted 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.

HYBRID MEETINGS FOR PUBLIC TO ATTEND REMOTELY:

City of San José City Council, Council Committees, City Decision-Making Bodies, City Boards, Committees and 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 and all City legislative bodies will be required to hold 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 conference rooms throughout the Tower to enable hybrid meetings. Additionally, the Council Chambers and the full Committee Wing Room (W118-120) can be used for virtual/hybrid meetings (the Wing Committee rooms are currently under renovation and will not be available until mid-2023). To support this imminent shift to 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 ahead of their first meeting, if needed.

For meetings held off site or held 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. It is recommended that departments procure these items as soon as possible if they are not already available and train their teams on their use. The City Clerk's Office also provided a demonstration of this set up on February 21, 2023. Additional demonstrations may be scheduled as needed.

Hybrid Meetings
February 21, 2023

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.

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 Office of the City Attorney and the City Manager's Office.

A handwritten signature in blue ink, appearing to read 'Toni J. Taber', with a stylized flourish extending to the right.

TONI J. TABER, CMC
City Clerk

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