



San Diego County
Local Agency Formation Commission
 Regional Service Planning | Subdivision of the State of California

7C

AGENDA REPORT
 Business | Discussion

November 7, 2022

TO: Commissioners

FROM: Keene Simonds, Executive Officer
 Holly O. Whatley, Commission Counsel

**SUBJECT: Senate Bill 2449 |
 Brown Act Procedures for Videoconference Attendance**

SUMMARY

The San Diego County Local Agency Formation Commission (LAFCO) will receive a memorandum from Commission Counsel on approved amendments to the Brown Act and allowances therein to accommodate videoconference attendance beginning January 1, 2023. The item is being presented to the Commission for review and discussion with the opportunity to provide feedback on related implementation measures.

BACKGROUND

Assembly Bill 361
Existing Teleconference Allowances

Assembly Bill (AB) 361 allows all public agencies to hold meetings by teleconference so long as certain findings are made by the governing boards in 30-day intervals while a proclaimed state of emergency exists. AB 361 will sunset at the end of the current calendar year.

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DISCUSSION

This item is for San Diego LAFCO to review a memorandum from Commission Counsel on Senate Bill (SB) 2449 and its allowances in accommodating videoconference attendance for public meetings starting in January 2023. The item follows an earlier request by the Commission and is for information and discussion – including the opportunity to provide direction to LAFCO staff on implementing measures.

ANALYSIS

See attached memorandum.

RECOMMENDATION

It is recommended San Diego LAFCO review and discuss Commission Counsel’s memorandum on SB 2449 and related preferences with respect to accommodating videoconference attendance for public meetings starting in January 2023.

ALTERNATIVES FOR ACTION

The item is being presented to San Diego LAFCO for discussion and feedback only.

PROCEDURES FOR CONSIDERATION

This item has been placed on San Diego LAFCO’s agenda for action as part of the business calendar. The following procedures are recommended in the consideration of this item:

- 1) Receive verbal presentation from staff unless waived.
- 2) Invite comments from interested audience members.
- 3) Discuss item and provide any related feedback.

Respectfully,



Keene Simonds
Executive Officer

Attachment:

- 1) Commission Counsel Memorandum on SB 2449

C O N F I D E N T I A L

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4. "At least a quorum of members of the legislative body shall participate from locations within the boundaries of the ... jurisdiction."¹

At the outbreak of the Covid-19 Pandemic, Governor Newsom issued Executive Order N-29-20 in March 2020, waiving the conditions above to encourage teleconferencing to stem the rate of transmission.² Governor Newsom signed AB 361, effective September 2021, adding subdivision (e) to Government Code section 54953 ("Subdivision E") and codifying the waiver, but only during a proclaimed state of emergency.³ Under Subdivision E, the Commission must make specified findings every 30 days to continue teleconferencing.⁴ Subdivision E expires on January 1, 2024.⁵

ANALYSIS OF AB 2449

- a. Teleconferencing Under the Default Rules v. Subdivision E v. Subdivision F

AB 2449 amends the teleconferencing provisions of the Brown Act and adds subdivision (f) to Government Code section 54953 ("Subdivision F"). Important differences between the default teleconferencing rules and the special rules under Subdivision E and Subdivision F are summarized below:

	Default Rules	Subdivision E	Subdivision F
In-person Participation of Quorum of Commissioner	Required	Not Required	Required
Method of Commission Commissioner's Participation in Teleconferenced Meeting	Audio or Audio-Visual	Audio or Audio-Visual	Audio-Visual only
Required Opportunities for Public Participation	Only In-Person Required	Call-In or Internet-Based	Call-In or Internet-based & In-Person

¹ Gov. Code, § 54953, subd. (b)(3).

² Exec. Order No. N-29-20 (March 4, 2020).

³ Gov. Code, § 54953, subd. (e)(1).

⁴ Gov. Code, § 54953, subd. (e)(3).

⁵ Gov. Code, § 54953, subd. (f).

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Required course of action if disruption prevents broadcast of meeting or public's ability to comment	Meeting Proceeds	No Further Action Taken	No Further Action Taken
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For an agency to invoke the procedures under AB 2449, there must at least be a quorum of the Commissioners participating in person from a singular, physical location identified on the agenda; the location is accessible to the public; and the meeting location is within the local agency's jurisdiction.⁶ Local agencies must provide at least one of the following to facilitate a public meeting that equally allows remote participants to interact:

- A two-way audiovisual platform (defined to mean an online platform that provides participants with the ability to participate in a meeting through an interactive video conference and a two-way telephonic function); and/or
- A two-way telephonic service and a live webcasting of the meeting (defined to mean a telephone service that does not require internet access, is not provided as part of a two-way audiovisual platform and allows participants to dial a telephone number to listen and verbally participate).⁷

When participating remotely, Commissioners shall participate through both audio and visual technology.⁸ Before any official action is taken, the Commissioner must publicly disclose whether any other individuals 18 years or older are in the room at the remote location with the Commissioner, and what the individual's relationship is to the Commissioner.⁹

If a disruption occurs that prevents the Commission from convening the meeting both remotely and in person, the Commission will take no further action on the meeting agenda until public access to the meeting has been restored.¹⁰ This includes situations where the online platform for remote participation has been disrupted and the public

⁶ Gov. Code, §§ 54953, subd. (d)(1)-(2) and (e)(1).

⁷ Gov. Code, § 54953, subd. (f)(1)(A).

⁸ Gov. Code, § 54953, subd. (f)(2)(C).

⁹ Gov. Code, § 54953, subd. (f)(2)(B).

¹⁰ Gov. Code, § 54953, subd. (f)(1)(D).

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may no longer access the meeting remotely. Actions taken during disruption may be challenged.¹¹

b. Teleconferencing for “Just Cause” v. “Emergency Circumstances”

Unlike Subdivision E, which only applies during a proclaimed state of emergency, Subdivision F applies when a Commissioner can demonstrate “just cause” or an “emergency circumstance.”¹² “Just cause” means any of the following:

- A 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 a Commissioner from attending in person;
- A need related to a physical or mental disability; or
- Travel while on official business of the Commission or another state or local agency.¹³

“Emergency circumstance” means a physical or family medical emergency that prevents a Commissioner from attending in person.¹⁴

The procedures for invoking “just cause” or an “emergency circumstance” are different:

	Just Cause	Emergency Circumstance
Reason must be disclosed to the Board	Yes	Yes
Reason for teleconferencing needs to be approved by the Board	No	Yes
When such request must be made	At the earliest opportunity	As soon as possible. If there is insufficient time to make the request before the posting of the public

¹¹ *Id.*

¹² Gov. Code, § 54953, subd. (f)(2).

¹³ Gov. Code, § 54953, subd. (j)(2).

¹⁴ Gov. Code, § 54953, subd. (j)(1).

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	Just Cause	Emergency Circumstance
		agenda, then it may be made at the beginning of the meeting.
Annual limit on use	No more than two meetings per calendar year	None
	Board Members may not use a combination of “just cause” and “emergency circumstances” to participate remotely for more than three months or 20 percent of the regular meetings of the calendar year. If the legislative body convenes fewer than 10 times a year, they cannot participate remotely in more than two regular meetings. ¹⁵	

c. Process for seeking to participate remotely for “just cause”

- Board Member provides a general description of the just cause at the earliest opportunity possible, including before the agenda publication deadline or at the start of the meeting.¹⁶
- Board Member has not requested more than two just cause teleconferencing appearances; more than three months of consecutive teleconferencing appearances under just cause or emergency circumstances or requests have not been made for more than 20 percent of meetings;¹⁷
- Clerk publishes the agenda listing the means by which public may access the meeting and offer public comment.¹⁸
- A quorum of the Board is physically present within the agency’s territorial jurisdiction.
- Teleconferencing Board Member turns on his or her audio and video (calling in by phone is not permitted).¹⁹

¹⁵ Gov. Code, § 54953, subd. (f)(3).

¹⁶ Gov. Code, § 54953, subd. (f)(2)(A)(i).

¹⁷ Gov. Code, §§ 54953, subd. (f)(2)(A)(i) and (f)(3).

¹⁸ Gov. Code, § 549542.2, subd. (a)(1).

¹⁹ Gov. Code, § 54953, subd. (f)(2)(C).

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- Board Member discloses at the start of the meeting whether any other individuals 18 years of age or older are present in the room at the remote location with the Board Member, and the Board Member’s relationship with the individual.²⁰
- All votes are taken by roll call.²¹
 - d. Process for seeking to participate remotely for “emergency circumstances”
- Board Member provides a general description of the emergency circumstance at the earliest opportunity possible; if there is insufficient time to place it on the posted agenda, then at the beginning of the meeting. The 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 that is already exempt under existing law.²²
- Board Member has not requested more than three months of consecutive or more than 20 percent of meeting within a calendar year of teleconferencing appearances under just cause or emergency circumstances; or has not requested more than two teleconference appearances if the Board regularly meets for less than 10 meetings per calendar year.²³
- Clerk of the Board publishes the agenda listing means by which the public may access the meeting and offer public comment;
- A quorum of the Board is physically present within the agency’s territorial jurisdiction;
- The Board votes to approve teleconference participation due to emergency circumstance;
- Teleconferencing Board Member turns on his or her audio and video (calling in by phone is not permitted).²⁴
- Board Member discloses at the start of the meeting whether any other individuals 18 years of age or older are present in the room at the remote location

²⁰ Gov. Code, § 54953, subd. (f)(2)(B).

²¹ Gov. Code, §§ 54953, subd. (b)(2)(A).

²² Gov. Code, § 54953, subd. (f)(2)(A)(ii).

²³ Gov. Code, § 54953, subd. (f)(3).

²⁴ Gov. Code, § 54953, subd. (f)(2)(C).

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with the Board Member, and the Board Member's relationship with the individual.²⁵

- Clerk of the Board ensures all votes are taken by roll call.²⁶

Further, AB 2449 requires the Commission to "implement a procedure for receiving and swiftly resolving requests for reasonable accommodations for individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990... ." ²⁷ Our office is happy to draft such a policy if the Commission needs one.

CONCLUSION

Beginning January 1, 2023, AB 2449 will provide agencies with an additional method to organize teleconferenced meetings. Commissioners, the Board and the Clerk of the Commission should familiarize themselves with these Brown Act provisions to make use of them when appropriate.

If you would like more information regarding the issues discussed in this memo, please do not hesitate to contact Holly Whatley at (213) 542-5703 or HWhatley@chwlaw.us, or Aleks Giragosian at (213) 542-5734 or AGiragosian@chwlaw.us.

²⁵ Gov. Code, § 54953, subd. (f)(2)(B).

²⁶ Gov. Code, §§ 54953, subd. (b)(2)(A).

²⁷ Gov. Code, § 54953, subd. (f).

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