

November 9, 2022

8b | Commission
Discussion

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Scott Smith
General Counsel

TO: Local Agency Formation Commission
of Orange County

FROM: General Counsel
Executive Officer

SUBJECT: Assembly Bill 2449 – Open Meetings and Teleconferencing
for State and Local Agencies

BACKGROUND

For a long time, the Brown Act has allowed limited “teleconference meetings” or remote meeting access with one or more Commissioners attending from a remote telephone or videoconference location. That remote participation required notice in the agenda and posting at the remote location, together with public access to that location.

Effective January 1, 2023, AB 2449 provides additional remote access opportunities for Commission meetings. Those opportunities are subject to different justifications and procedures and require a technological platform the Commission currently lacks. The three new avenues for virtual participation in meetings are: (1) meetings during a new state of emergency, (2) virtual participation due to “just cause” (personal reasons), and (3) virtual participation due to an “emergency circumstance” (a personal or family medical emergency). The American Disabilities Act still applies to Commission proceedings.

DISCUSSION

A. “Traditional Teleconferencing”

Government Code section 54953(b)(1) contains the long-standing opportunity for remote attendance at Commission meetings, subject to the following protocols:

- OC LAFCO’s agenda must identify each location from which a Commissioner will be calling in, even from the Commissioner’s home, business, or hotel room.
- An agenda must be posted at each remote location.
- Each teleconference location must be accessible to the public, and any members of the public who attend at the remote teleconference location must be allowed to address the Commission directly from that location.

- At least a quorum of the Commission must participate from locations within the Commission's jurisdiction.
- Traditional public participation rules apply at each location.
- All votes during the meeting must be taken by rollcall, and no secret ballots are permitted.
- The Commission must publicly report when an action is taken during the meeting, and how each Commissioner voted (or whether there were abstentions or absences) on that item.

B. Update Teleconferencing for States of Emergency

Under the new AB 2449 rules, if the Commission meets during a proclaimed state of emergency, or while state or local officials are recommending social distancing measures for public safety reasons, certain traditional teleconference rules are relaxed or waived. This set of rules mirrors the Governor's Orders and AB 361 as implemented in 2020 during the COVID-19 pandemic. AB 2449 codifies these rules for all states of emergency. They provide that a public body may continue meeting under the relaxed teleconference requirements as long as a state of emergency exists or while the body can continue to support findings that state or local officials are recommending social distancing measures for health and safety reasons.¹ To qualify for these relaxed rules, one of these situations must be present:

- The Commission is meeting during a state of emergency, and local officials are imposing or recommending social distancing measures.
- The Commission is meeting during a state of emergency for the express purpose of determining by a majority vote of the Commission whether meeting in person would present imminent risks to the health or safety of attendees.
- The Commission is meeting during a state of emergency and has determined, by majority vote, that meeting in person would present imminent risks to the health or safety of attendees.
- State or local officials continue to recommend or impose social distancing measures, and the Commission is willing to make findings that, based on those recommended measures, meeting in person would pose a health or safety risk to attendees.

If one of these criteria is present, Commissioners may attend virtually subject to these relaxed requirements:

- The Commission must comply with ordinary agenda-posting requirements (72 hours for a regular meeting, 24 hours for a special meeting), but the agenda need not identify

¹ For instance, Cal OSHA continues to recommend social distancing, which can support a finding of continued remote meetings, although these recommendations are also set to sunset Dec. 31, 2022. (<https://www.dir.ca.gov/dosh/coronavirus/Revisions-FAQ.html>). Orange County's website also still references social distancing as an appropriate way to slow the spread of COVID-19, but the Commission will have to assess whether it believes this is a sufficient basis upon which to rely to hold remote meetings once the state lifts its own social distancing requirements.

each teleconference location or be posted at each Commissioner's remote. Public access to remote location(s) is not required.

- The agenda must still provide the opportunity for public access and comment through some means – for instance, if the Commission will be meeting via Zoom, the agenda must provide a call-in number and video access link for the public. The Commission is not required to provide a physical location from which the public can attend or comment in person.
- The rights of the public attending the meeting must be protected, meaning the public must be allowed to “access” the meeting (including by telephone or internet) and make public comments (in real time) on matters before the Commission.
- If a disruption occurs that prevents the public from accessing the meeting (i.e., the Zoom link stops working, or the public cannot hear the audio of the meeting, or the internet goes out in general), the Commission may take no further action on agendized items until access to the meeting is restored.
- When hearing and acting on agendized items, the Commission must provide members of the public enough time to make comments (in practice, this means the Commission should wait a minute or so each time it calls for public comment, to make sure anyone who wants to comment has time to unmute themselves and do so).
- All votes must be by rollcall, and no secret ballots are permitted.
- The Commission must publicly report when an action is taken during the meeting, and how each Commissioner voted (or whether there were abstentions or absences) on that item.
- If the Commission wants to continue to meet remotely because the state of emergency remains ongoing or local/state officials continue to recommend social distancing measures, after the first meeting the Commission must make certain findings by majority vote every 30 days for the duration of using this teleconference exception (i.e., adopt a resolution at each meeting of the Commission to reconfirm that a state of emergency exists, or social distancing measures continue to be recommended, and so the Commission will continue to meet in person to protect the health and safety of attendees, as was the case for remote meetings during the COVID-19 pandemic).

C. Virtual Participation for “Just Cause” or Emergency Circumstance

AB 2449 allows new virtual attendance for “just cause” or “emergency circumstance,” subject to the distinct findings, protocols, and technological platform discussed below. In these cases, the Commission may hold a “hybrid” (i.e., part teleconference, part in-person) meeting without having to post agendas at teleconference locations, identify the remote locations, or open them to the public. In all circumstances, a quorum must still be physically present at the in-person meeting. The general requirements that apply to both the “just cause” and “emergency circumstance” exceptions follow. OC LAFCO currently lacks the technological platform to make them available.

1. Just Cause

Commissioners may participate virtually with “just cause” by providing the Commission notice at the earliest opportunity possible, including the start of the meeting, and

providing a general description of the circumstances giving rise to their need to appear remotely.

- “Just cause” means childcare or family caregiving needs, contagious illness, physical or mental disability needs, or travel while on official public business.
- A Commissioner may rely on this remote attendance option for no more than two meetings per calendar year.

2. Emergency Circumstances

This virtual participation option is available by request to the Commission and must be approved by the Commission before activated. The request must be made as soon as possible, and a separate request must be made for each meeting.

- An “emergency” means a physical or family medical emergency that prevents in-person attendance.
- The request must be accompanied with a general description of approximately 20 words, but does not require the disclosure of a medical diagnosis or disability, or personal medical information already exempt under existing law.

The general requirements that apply to both the “just cause” and “emergency circumstance” exceptions follow. OC LAFCO currently lacks the technological platform to make them available.

- In all circumstances, a quorum must still be physically present at the in-person meeting.
- A Commissioner may utilize AB 2449 to attend a meeting remotely for no more than three consecutive months or two regular meetings in the calendar year, whichever comes first.
- If a Commissioner is attending remotely, they must do so with both audio and video enabled; it is not enough to call in on the phone, and Commissioners may not turn off or be out of frame of their cameras.
- If a Commissioner is attending remotely, and someone 18 or older is in the same room, the Commissioner must, before any action is taken, disclose this fact and their general relationship with such individual(s). Even if no such individual is present, the Commissioner must state that no other individual age 18 or older is present.
- In addition to the above, the Commission must ensure that during any hybrid meeting the public is provided with either (1) a two-way audiovisual platform or (2) a two-way telephonic service and live webcasting of the meeting. In either event, the public must be able to see and hear the meeting and remotely address the Commission. The Commission currently lacks this IT tool.
- The agenda must clearly identify the opportunity to attend via call-in, internet-based service, and in-person (i.e., it must provide the appropriate phone numbers, web addresses, and physical addresses to view/attend the meeting). Any further agenda posting or notice of the meeting must include this information.

- In the event of a disruption that interrupts the Commission’s public broadcast, or another disruption within the Commission’s control preventing the public from offering public comment, the Commission must take no further action until such service is restored. Any action taken in violation of this rule may be challenged.
- Comments may not be required to be submitted in advance; the opportunity to comment and address the Commission in real-time must be available to all participants, regardless of whether they are remote.

D. Disability Laws

AB 2449 contains some somewhat superfluous text suggesting that the protocols for virtual meetings should meet the needs of disabled participants in meetings. It provides no guidance on whether accommodation beyond its protocols should be made available to persons with disabilities. OC LAFCO general counsel believes that preemptive federal disability rights may require broader accommodation than the dictates of AB 2449. In those circumstances, which must be addressed on a case-by-case basis, the Commission would encourage Commissioners or participants who might have qualifying disabilities to petition for virtual access outside the parameters of AB 2449.

CONCLUSION

The Commission may opt to hold full or partial virtual meetings under any of the new AB 2449 opportunities described in this memorandum, but would need to add real time two-way public access on its virtual platform. The Commission may still use traditional remote access by providing staff notice of the need for that access, posting their remote location, including it in the agenda, and allowing the public to participate remotely with them at that location.

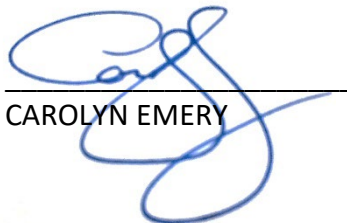
RECOMMENDED ACTIONS

1. Staff and general counsel recommend that the Commission receive and file this report.

Respectfully submitted,



SCOTT C. SMITH



CAROLYN EMERY