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## MEMO

To: Mayor and Members of the City Council

From: Michael Roush, Legal Counsel

Date: January 6, 2023

Subject: **Conduct of Meetings Through February 28, 2023 and Thereafter; New Brown Act Provisions Allowing Remote Meeting Attendance**

In the wake of the COVID-19 pandemic in March 2020, Governor Newsom issued an Executive Order permitting local legislative bodies, which includes the City Council, to meet remotely, via video and teleconference provided the City had the technological capacity to provide interactive video and teleconference. The City purchased the required technological capacity.

In September 2021, Newsom signed Assembly Bill 361 into law, which amended the Brown Act to permit legislative bodies to continue to hold public meetings via video and teleconference under specified circumstances, including that remote meetings may only be held during a declared state of emergency. The City Council, its Commissions and Committees, have met “remotely” under the Brown Act exemption since AB 361 took effect.

Governor Newsom has announced that he intends to lift the proclaimed COVID-19 statewide state of emergency effective February 28, 2023 and the City, therefore, intends to return to primarily in person meetings at that time. This memo addresses how meetings will be conducted through February 28, 2023 and thereafter, and provides information about new Brown Act provisions that, under limited circumstances, may permit a Council, Commission or Committee member to attend a meeting remotely.

### **Meetings Through February 28, 2023**

Beginning with meetings on or after January 12, 2023, through February 28, 2023, the Council, its Commissions and Committees will conduct their meetings remotely or in a “hybrid” fashion. That is, Council, Commission and Committee members, and members of the public, may attend meetings either remotely (*e.g.*, via videoconference) or in person.

## Meetings after February 28, 2023

After February 28, 2023, Council, Commission and Committee members will need to attend meetings in person. Members of the public may attend meetings either in person or remotely, so long as there is City technology that will allow members of the public to observe and participate in the meeting in essentially the same fashion as if they were in person. The City has the required technology.

### Methods for Members to Participate Remotely.

Aside from the provisions above that will expire February 28, 2023, under the Brown Act, local legislative body members are permitted to attend a meeting remotely if certain requirements of the Brown Act are followed. These requirements include that a quorum of the legislative body must be within the jurisdiction of the local agency, the agenda must reflect where any “remote” Councilmember will actually be (*e.g.*, the address of a hotel), the member must post the agenda at that location (*e.g.*, on the door of the hotel room), the location must be accessible by the public, and all votes must be done by roll call. Councilmembers have used these procedures from time-to-time, for example when attending out of town conferences or when on vacation.

A new law, Senate Bill 2449, that takes effect January 1, 2023, amends the Brown Act to provide additional procedures that will allow members of legislative bodies to attend meetings remotely under limited circumstances. Specifically, so long as a quorum of the legislative body participates in person from a physical location open to the public, other members may participate in the meeting remotely under specified conditions if they have either just cause or there are emergency circumstances.

#### Just Cause

Just cause is defined as any one of the following: child care or caregiving of a child, parent, grandchild, grandparent, sibling, spouse or domestic partner; a contagious illness; a need related to physical or mental disability; or travel on business of the local agency. The member must notify the legislative body at the earliest opportunity and provide a general description of the circumstances above. Significantly, a member may only participate remotely under the just cause provisions twice per calendar year. (Of course, the other provisions of the Brown Act remain applicable.)

#### Emergency Circumstances

Emergency circumstances means a physical or family medical emergency that prevents a member from attending a meeting in person. To utilize this provision, the member must request (not just notify) the legislative body as soon as possible and the legislative body must consider the request at the earliest possible time and must approve the request if the member is to be allowed to participate remotely. If the member has not already done so, the legislative body must request a general description of the emergency circumstances but the description need not be more than 20 words and need not disclose any private personal or medical information.

#### Additional Requirements

For a member to participate remotely under the just cause or emergency circumstances provisions, the following, among other requirements, must also be met:

1. The public must be able, remotely, to hear, visually observe, and address the legislative body (e.g., via in a two-way audiovisual platform).
2. There must be a notice of how the public may access the meeting and offer comments.
3. The agenda must provide information as to how the public may attend and address the legislative body, whether through call in, internet based service, or in person.
4. If there is a disruption of the meeting broadcast or in the ability to take public comment, no further action on the item may be taken until the issue is resolved.

### **Conclusion**

As of March 1, 2023, the general rule is that public meetings will be conducted as they were prior to March 2020, with the notable exception that members of the public may continue to attend remotely. Although the Brown Act will allow remote attendance without otherwise complying with the technological requirements of the Act as described above, given the limitations and other requirements, Council, Commission and Committee members' attending meetings remotely will not be a common occurrence. The City Clerk and the City Attorney/Legal Counsel will work with any Council, Commission or Committee member who wishes to avail him/herself of these new provisions. In the interim, if there are questions about the conduct of meetings in the new year or about the new Brown Act provisions, please let us know.

cc: All Commissions and Committees