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Memorandum

To: City Council
From: City Attorney
Date: March 6, 2023
Re: Options for Conducting Virtual or “Hybrid” Meetings Following the Expiration of AB 361

Question Presented:

Can members of local legislative bodies continue to hold virtual or “hybrid” (i.e. partial teleconference, partial in-person) Board meetings in light of Assembly Bill (AB) 361’s expiration? What options are available to the Board if they wish to continue holding virtual and/or “hybrid” public meetings?

Conclusion:

In light of the Governor ending the State’s COVID-19 State of Emergency on February 28, 2023 and AB 361’s expiration on January 1, 2024, the legislature passed AB 2449, which provides for relaxed teleconferencing rules when a member of the local legislative body must attend a meeting remotely due to an emergency or other reasons supported by “just cause.”¹ Until AB 361 expires in 2024, members of local legislative bodies wishing to appear remotely can continue to do if they find remote meetings necessary pursuant to AB 361 during a declared state of emergency, adhere to the new rules set forth in AB 2449, or revert back to the Brown Act’s original teleconferencing rules.

Discussion:

I. Passage AB 361 and Its Approaching Expiration

In response to challenges faced by public agencies during the COVID-19 pandemic and in an effort to extend the relaxed requirements related to virtual public meetings as set forth by Governor Gavin Newsome in Executive Order N-29-20, the California legislature passed AB 361 in September 2021. AB 361 streamlined the requirements for teleconference/virtual meetings under the Brown Act during times of declared emergency. Prior to the passage AB 361, the Brown Act required the posting of each teleconference location and making each location open to the public, which proved extremely difficult at the height of the COVID-19 pandemic.

¹ As defined by California Government Code Section 54953(i)(2)

With both local legislative bodies and the general public adapting and becoming more comfortable with attending public meetings virtually, many local legislative bodies lobbied to get legislation passed that would extend AB 361's requirements past its expiration. In response, the California legislature passed AB 2449, which aimed to accomplish this goal. It is important to note that although AB 361 is still effective until January 1, 2024, its requirements can only be invoked during a state of emergency as declared by the Governor. The Governor has announced that the COVID-19 state of emergency will end on February 28, 2023. Consequentially, local legislative bodies may continue to make or renew remote meeting findings under AB 361 until January 2024, but only during a declared state of emergency.

II. **Current AB 361 Rules that are Re-Codified in AB 2449**

As mentioned in the section above, the objective of AB 361 was to streamline the requirements for teleconference/virtual meetings under the Brown Act during times of declared emergency. The secondary purpose of AB 2449 was to recodify the relaxed teleconferencing requirements set forth by AB 361 and extend AB 361's effective date until 2026. Pursuant to AB 361, when a state of emergency is declared, a local legislative body may hold teleconference meetings without meeting certain procedural requirements (post agendas at teleconference locations, identify teleconference locations in the agenda, make all teleconference locations open to the public) in the following circumstances:

- The meeting is held during a proclaimed state of emergency and state/local officials have imposed or recommended measures to promote social distancing (e.g. Cal-OSHA or other regulatory guidance requiring employees to be trained in social distancing to reduce exposure);
- The meeting is held during a proclaimed state of emergency for the purpose of determining whether meeting in person during the emergency would present imminent risks to the health or safety of attendees; and/or
- The meeting is held during a proclaimed state of emergency and the body has already determined that meeting in person during the emergency would present imminent risks to the health or safety of attendees.

If the body is relying on the above findings to justify meeting by teleconference, it must be sure to:

- Give the public notice of how to access the meeting and offer public comment;
- Ensure that if a disruption to the online meeting occurs, the body takes no further action on agenda items until public access is restored;
- Avoid requiring public comments to be submitted in advance, and provide a real-time option for the public to address the body at the meeting; and

- If the state of emergency remains active or social distancing measures continue to be imposed/recommended by state or local officials, continue to make findings supporting the teleconference meetings at least every 30 days.

III. **Passage of AB 2449 and Its Relaxing of Teleconferencing Rules**

Effective January 1, 2023, AB 2449 reiterates the standard Brown Act teleconference rules, recodifies the rules set forth in AB 361 during states of emergency, and provides relaxed teleconferencing rules when a member of a local legislative body must attend a meeting remotely due to an emergency or other reasons supported by “just cause.”

Pursuant to the new teleconference rules set forth in AB 2449, a local legislative body may hold a “hybrid” (i.e. partial teleconference, partial in-person) meeting without having to comply with certain procedural requirements previously required by the Brown Act (i.e. post agendas at teleconference locations, identify teleconference locations in the agenda, make all teleconference locations open to the public) in the following limited circumstances:

- In instances where one or more members of the local legislative body (but less than a quorum) have “just cause” for not attending the meeting in person (e.g. childcare or family caregiving need, contagious illness, physical or mental disability need, or travel while on official public business); or
- In instances where one or more members of the local legislative body (but less than a quorum) experience an “emergency circumstance”² (e.g. a physical or family medical emergency that prevents in-person attendance).

Before a member of a local legislative body can appear remotely pursuant to the circumstances listed above however, the member must meet one of the following requirements: 1.) the member seeking to appear remotely must notify the local legislative body at the earliest opportunity possible, including at the start of a regular meeting, of their need to participate remotely for “just cause” (as defined by AB 2449). This includes providing the local legislative body with a general description of the circumstances relating to their need to appear remotely at the given meeting; or 2.) the member requests that the local legislative body allow them to participate in the meeting remotely due to “emergency circumstances” and the local legislative body takes action to approve the request. The local legislative body must request a general description (generally not exceeding 20 words) of the circumstances relating to their need to appear remotely at the given meeting.

Additionally, it is important to note that AB 2449’s teleconference procedures may not be used by a member of the local legislative body for a period of more than three consecutive months or 20% of the regular meetings within a calendar year. In instances where the local legislative body meets less than ten (10) times per calendar year, a member of the local legislative body may not use AB 2449’s teleconference procedures for more than two meetings. Furthermore, although AB

²As defined by California Government Code Section 54953(i)(1)

2449 allows a member to participate in the meeting remotely, a quorum of the local legislative body must still meet in-person and comply with the following remote access rules:

- The body must provide either a two-way audio visual system or a two-way phone service in addition to live webcasting;
- The body must identify a call-in or internet-based access option on the agenda, in addition to the in-person meeting location;
- The body must ensure that if a disruption to the online meeting occurs, the body takes no further action on agenda items until public access is restored; and
- The body must avoid requiring public comments to be submitted in advance, and provide a real-time option for the public to address the body at the meeting.

IV. **The Original Brown Act Rules Still Remain Available**

Notwithstanding the requirements set forth by both AB 361 and AB 2449, local legislative bodies may always rely on the original Brown Act teleconferencing rules that continue to be in effect following the COVID-19 pandemic. According to the original Brown Act teleconferencing rules, local legislative bodies must comply with the following requirements:

- All votes must be by rollcall;
- The meeting must be conducted so as to protect the rights of the public appearing before the body or wishing to comment;
- All members of the public must be able to access the meeting and provide public comment;
- Teleconference locations must be identified in the agenda, copies of the agenda must be posted at all teleconference locations;
- Teleconference locations must be open to the public; and
- At least a quorum of the members of the local legislative body who are participating remotely must do so from locations within the agency's jurisdiction.