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Date: February 1, 2023

To: Board of Supervisors

From: Thomas L. Geiger, Chief Assistant County Counsel 

Re: **Teleconferencing Options Under the Brown Act for Members of County Boards, Commissions, and Committees**

SUMMARY

Members of the Board of Supervisors may continue attending meetings remotely until the current statewide state of emergency ends on February 28, 2023. Once the state of emergency ends, Board members may participate in meetings remotely under new Brown Act teleconferencing rules that allow Board members to attend remotely for limited reasons and a limited number of times per year. Specifically, these new rules allow individual members of the Board to participate in Board meetings by teleconference for “just cause” reasons or due to “emergency circumstances” when certain legal requirements are met. Board members may also participate in meetings remotely under the traditional Brown Act teleconference option. This option allows individual Board members to participate in meetings by teleconference if the location from where they are participating is listed on the agenda and other legal requirements are met.

In addition to applying to the Board of Supervisors, the new teleconferencing rules and the traditional teleconferencing option apply to all County boards, commissions, and committees that are subject to the Brown Act. These County boards, commissions, and committees are considered “legislative bodies” under the Brown Act and include, in addition to the Board of Supervisors: (1) committees created by statute; (2) committees created by formal action of the Board of Supervisors, whether composed of lay persons or a combination of lay persons and Board members; (3) standing committees, composed solely of members of the Board, that have a continuing subject matter jurisdiction (for example, the Board’s Internal Operations committee); and (4) standing committees created by a Board-appointed committee and composed solely of members of that body (for example, a subcommittee of the Mental Health Commission). Once the state of emergency ends on February 28, all members of County legislative bodies will be required to meet in person unless they attend remotely under the new or traditional Brown Act teleconferencing rules.

The Board of Supervisors previously directed that meetings of County legislative bodies provide for remote attendance by the public. These “hybrid” meetings, which allow in-person and remote attendance, may continue unless the Board of Supervisors directs otherwise, but as discussed below, some form of remote public participation must be in place for members of legislative bodies to use the new “just cause” or “emergency circumstances” options.

TELECONFERENCING OPTIONS AVAILABLE TO ALL COUNTY BOARDS, COMMISSIONS, AND COMMITTEES

1. Teleconferencing Is Allowed Under the Brown Act for “Just Cause” Reasons or Under “Emergency Circumstances”

Assembly Bill 2449 amended the Brown Act (Government Code sections 54950-54963) to provide an alternative to the traditional Brown Act teleconferencing rules. Specifically, AB 2449 amended Government Code section 54953 to permit individual members of a County legislative body to participate in meetings by teleconference for “just cause” or due to “emergency circumstances” when certain legal requirements are met. (Gov. Code, § 53953(f).)

Teleconference Participation for Just Cause. If a member of a County legislative body wishes to attend a meeting remotely for “just cause,” the member must notify the County legislative body at the earliest opportunity, up to and including the start of a regular meeting, of the need to participate remotely. The member must provide a general description of one of the following “just cause” circumstances:

- There is a childcare or caregiving need for a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner.
- A contagious illness that prevents the member from attending in person.
- A need related to a physical or mental disability that is not otherwise accommodated for.
- Travel while on official business of the County legislative body or another state or local agency.

Teleconference Participation for Emergency Circumstances. If a member of a County legislative body wishes to attend a meeting remotely due to “emergency circumstances,” the member must provide a general description of the need to appear remotely, which need not exceed 20 words or include any personal medical information. The member must make the request to participate remotely as soon as possible. “Emergency circumstances” means a physical or family medical emergency that prevents a member from attending in person.

Legislative Body Action Requirements. The County legislative body need not take action to allow a member to attend remotely for “just cause.” To allow a member to attend remotely for “emergency circumstances,” the County legislative body must take action on the request at the meeting. If there is insufficient time to include the item on a posted agenda, the County legislative body may take action on the request at the beginning of the meeting. Approval for the member to participate remotely based on the “emergency circumstances” exception must be by majority vote. The member requesting the remote appearance may not vote on the request or be counted as part of the quorum until the legislative body approved the “emergency circumstances” exception.

Participation Requirements. A member appearing by teleconference under one of the AB 2449 options must participate in the meeting through both audio and visual technology.

Disclosure Requirements. A member appearing by teleconference under an AB 2449 option must publicly disclose at the meeting whether any other individuals 18 years or older are in the room at the remote location with the member and must publicly disclose the general nature

of the member's relationship with these individuals. This disclosure must occur before any action is taken.

Quorum Required. If a teleconference meeting is conducted with a member participating under an AB 2449 option, at least a quorum of the County legislative body must participate in person, and the quorum must meet in a single, physical location identified on the agenda that is open to the public and situated within the County.

Limitations on Number of Remote Appearances. A member may not use a "just cause" reason to appear remotely for more than two meetings per calendar year. In total, a member may not participate remotely under an AB 2449 option for more than three consecutive months or 20 percent of the regular meetings of the County legislative body within the calendar year, or for more than two meetings if the body regularly meets less than 10 times per year.

Roll Call. All votes taken during a teleconference meeting conducted under this option must be by roll call.

Technological and Access Requirements. If a member participates remotely under an AB 2449 option, the County legislative body must also provide either a two-way audiovisual platform, or a two-way telephonic service and a live webcasting of the meeting, so that the public may remotely hear and visually observe the meeting, and remotely address the legislative body.

The body must provide notice and post agendas as otherwise required under the Brown Act and must indicate on the notice how the public may access the meeting and offer comment. The agenda must include an opportunity for all persons to attend and address the legislative body via a call-in option, via an internet-based service option, and at the in-person location of the meeting.

If the broadcasting of the meeting to the public by phone or internet service is disrupted, or a disruption within the local agency's control prevents members of the public from commenting using the phone or internet service, the legislative body may not take any action at the meeting until public access to the meeting via the phone option or the internet service option is restored. Actions taken on agenda items during a disruption that prevents the legislative body from broadcasting the meeting may be subject to legal challenge.

When a member appears remotely for a just cause or emergency circumstances reason, the Brown Act does not require that the agency post an agenda at the remote location, include the address of the remote location, or provide for public access to the remote location.

The body may not require public comments to be submitted in advance of the meeting and must allow the public to address the body and comment in real time.

An individual may be required to register for public comment before being allowed to provide comment, where the body uses a third-party platform (like Zoom) for the meeting.

The Brown Act rules allowing "just cause" or "emergency circumstances" participation remain in effect through 2025. Beginning January 1, 2026, only the traditional Brown Act teleconference rules will be available (unless further legislation is adopted in the meantime).

2. Teleconferencing Under Traditional Brown Act Rules

Members of County legislative bodies also may continue to participate remotely under the traditional Brown Act teleconferencing rules in Government Code section 54953(b). Under these rules:

- At least a quorum of the legislative body must participate from locations in the County.
- Each telephone conference location and the meeting location must be shown on the agenda for the meeting. In addition, the agenda must provide an opportunity for members of the public to give public comment from each teleconference location.
- In addition to the usual agenda-posting agenda locations and the County website, an agenda must be posted at each teleconference location at least 96 hours in advance of the meeting under the County's Better Government Ordinance, or at least 24 in advance for a special meeting.
- Each teleconference location must be open and accessible to members of the public.
- All votes taken during a teleconference meeting must be by roll call.

TLG: