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Date: May 4, 2023
To: Staff to Advisory Bodies
From: Thomas L. Geiger, County Counsel 
Re: **Teleconferencing Guidance**

This memo provides guidance for advisory body members on how to participate in meetings remotely under traditional Brown Act teleconferencing rules and under new Brown Act teleconferencing rules established by Assembly Bill 2449. The new AB 2449 rules allow advisory body members to participate in meetings remotely for “just cause” reasons or under “emergency circumstances.” This memo also describes the different quorum requirements for the two types of teleconferencing, and provides examples of when advisory body members may and may not use the new AB 2449 rules at a meeting that is being conducted under traditional Brown Act teleconferencing rules.

A chart showing the rules for each teleconferencing method is attached. Please refer to the February 23, 2023, memo from the Clerk of the Board to advisory body staff for more information on teleconferencing and hybrid meetings.

In addition, some advisory board members have asked whether they may request and receive a reasonable accommodation that would allow them to participate remotely in an advisory board meeting from a non-publicly posted location, like their home. This memo explains that the County is not required to provide that accommodation, based on an opinion issued by the California Attorney General.

1. Teleconferencing Under Traditional Brown Act Rules

Advisory body members may participate in meetings remotely under the traditional Brown Act teleconferencing rules. Under these rules:

- The meeting agenda must be posted at all teleconference locations.
- Each teleconference location must be shown on the meeting agenda.
- Each teleconference location must be open and accessible to the public.
- The agenda must provide an opportunity for public comment at each teleconference location.

Quorum requirement for traditional Brown Act teleconferencing: At least a quorum of the Board must participate from locations in the County.

2. Teleconferencing Under AB 2449 Rules

“Just Cause.” If a member needs to attend a meeting remotely for a “just cause” reason:

- The member must notify the body at the earliest possible 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 at least one of the following “just cause” circumstances necessitating the remote appearance:
 - (1) A childcare or caregiving need for a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires remote participation.
 - (2) A contagious illness that prevents the member from attending in person.
 - (3) A need related to a physical or mental disability that is not otherwise accommodated for.
 - (4) Travel while on official business of the legislative body or another state or local agency.
- A member may not use a “just cause” reason to appear remotely for more than two meetings per calendar year.
- The advisory body does not need to take any action to allow the member to attend virtually for “just cause.”

“Emergency Circumstances.” If a member needs to attend a meeting remotely due to an emergency circumstance:

- The member must make the request to participate remotely as soon as possible and must make a separate request for each meeting for which remote participation under the emergency circumstance option is requested.
- The member who requests to attend remotely under an emergency circumstance must provide a general description of the need to appear remotely. The description need not exceed 20 words and need not include any personal medical information.
- The body must take action on the request at a public meeting. If there is insufficient time to include the item on a posted agenda, the body may take action on the request at the beginning of the meeting and approval must be by majority vote. The member requesting the remote appearance should not vote on the item.
- The “emergency circumstances” option may not be used by a member for more than three consecutive months or more than 20 percent of the advisory body’s regular meetings per calendar year. If the body regularly meets less than 10 times a year, a member may not participate remotely for more than two meetings under AB 2449.
- “Emergency circumstances” means a “physical or family medical emergency that prevents a member from attending in person.”

Quorum Requirement for AB 2449 Teleconferencing: A teleconference meeting may be conducted with a member or members participating under an AB 2449 option as long as:

- (1) A quorum of the members of the body participates in person, and
- (2) The quorum meets in a single, physical location clearly identified on the agenda that is open to the public and situated in the County.

In addition, if a member is participating remotely under an AB 2449 option, the body must ensure that members of the public may remotely hear and visually observe the meeting, and remotely address the legislative body.

Examples of when advisory body members may and may not use the new AB 2449 rules at a meeting that is being conducted under traditional Brown Act teleconferencing rules:

FIVE-MEMBER BODY, QUORUM IS THREE MEMBERS

Example #1: Three members attend the meeting, with each member attending at a different location within the County. Each location is listed on the meeting agenda and is open and accessible to the public.

- Is this a valid meeting under the Brown Act?

YES, because a quorum is meeting at noticed locations within the County.

- Are the other two members of the body allowed to participate remotely using a “just cause” or “emergency circumstance” exception?

NO, because a quorum is not meeting at one location in the County.

Example #2: Three members attend the meeting in person at a single location within the County. The location is listed on the meeting agenda and is open and accessible to the public.

- Is this a valid meeting under the Brown Act?

YES, because a quorum is meeting at a noticed location within the County.

- Are the other two members of the body allowed to participate remotely using a “just cause” or “emergency circumstance” exception?

YES, because a quorum is meeting at one location in the County, as long as the two members have not already used the AB 2449 option the maximum number of times.

NINE-MEMBER BODY, QUORUM IS FIVE MEMBERS

Example #3: Five members attend the meeting in person at three separate locations within the County. Of these five members, two members attend at one location, two members attend at a second location, and one member attends at a third location. Each location is listed on the meeting agenda and is open and accessible to the public.

- Is this a valid meeting under the Brown Act?

YES, because a quorum is meeting at noticed locations within the County.

- Are the other four members of the body allowed to participate remotely using a “just cause” or “emergency circumstance” exception?

NO, because a quorum is not meeting at one location in the County.

Example #4: Seven members attend the meeting in person at two separate locations within the County. Each location is listed on the meeting agenda and is open and accessible to the public.

- Is this a valid meeting under the Brown Act?

YES, because a quorum is meeting at noticed locations within the County.

- Are the other two members of the body allowed to participate remotely using a “just cause” or “emergency circumstance” exception?

YES, if at least five members meeting in person are at one location, because a quorum is meeting at one location in the County.

NO, if four members meeting in person are at one location and three members meeting in person are at the other location, because a quorum is not meeting at one location in the County.

3. Reasonable Accommodation Requests from Advisory Body Members

Some advisory body members have asked whether they may request and receive a reasonable accommodation that would allow them to participate remotely in an advisory body meeting from a non-publicly posted location, like their home, when an AB 2449 option is not available to them. Based on an opinion issued by the California Attorney General, the County is not required to provide that accommodation. (84 Ops.Cal.Atty.Gen. 181 (2001).) The Attorney General concluded that counties and cities are not required to provide, as an accommodation for a disabled advisory body member who is unable to attend a regularly scheduled meeting, a teleconferencing connection at the member’s place of residence where members of the public would not be permitted to be present. Allowing an advisory body member to participate remotely in a public meeting from a location not open to the public would result in a meeting held in violation of the Brown Act.

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Advisory body members are encouraged to contact staff for assistance in finding meeting locations where members may attend remotely in compliance with the Brown Act. The Clerk of the Board's February 23, 2023, memo to advisory body staff has a list of hybrid ready meeting locations with scheduling contacts.

TLG:

Attachment: Teleconference Meeting Options Comparison Chart

cc: Board of Supervisors
Monica Nino, County Administrator
Jami Morritt, Chief Assistant Clerk of the Board

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	Traditional Teleconferencing (Gov. Code, § 54953(b).)	AB 2449 Teleconferencing (Gov. Code, § 54953(f); becomes (e) on 1/1/24.)
Applicable Timeframe	<ul style="list-style-type: none"> ▪ Available anytime. 	<ul style="list-style-type: none"> ▪ Available between <u>January 1, 2023</u> and <u>January 1, 2026</u>.
Who May Appear Remotely and Quorum Requirements	<ul style="list-style-type: none"> ▪ Individual board members, if at least a quorum of the members of the body participate from locations within the jurisdictional boundaries of the body. 	<ul style="list-style-type: none"> ▪ Individual board members if: <ol style="list-style-type: none"> (1) a quorum of the members of the body participates in person; and (2) the quorum meets in a single, physical location clearly identified on the agenda that is open to the public and situated within the agency’s jurisdiction.
Bases for Remote Appearance	<ul style="list-style-type: none"> ▪ Applies when a board member is unable to attend in person. 	<ul style="list-style-type: none"> ▪ A member may appear remotely for “Just Cause” or “Emergency Circumstances”: <ul style="list-style-type: none"> ▶ “Just cause” is any of the following: <ol style="list-style-type: none"> (1) A need to care for a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner; (2) A contagious illness that prevents a member from attending in person; (3) A need related to a physical or mental disability that is not otherwise accommodated for; or (4) Travel while on official business of the body or another state or local agency. ▶ “Emergency circumstances” is a physical or family medical emergency that prevents a member from attending in person.
Notification and Approval Requirements	<ul style="list-style-type: none"> ▪ No additional requirements. 	<ul style="list-style-type: none"> ▪ To attend remotely for: <ul style="list-style-type: none"> ▶ “Just Cause” <ul style="list-style-type: none"> ▪ The member must notify the body at the earliest possible opportunity, including at the start of a regular meeting, of the need to participate remotely. ▪ The member must provide a general description of the circumstances necessitating the remote appearance.

	Traditional Teleconferencing (Gov. Code, § 54953(b).)	AB 2449 Teleconferencing (Gov. Code, § 54953(f); becomes (e) on 1/1/24.)
		<ul style="list-style-type: none"> ▪ The body need not take action in response. <li style="padding-left: 20px;">▶ “Emergency Circumstances” ▪ The member’s request to appear remotely must include a general description of the need to appear remotely, which need not exceed 20 words, and need not include any personal medical information. ▪ The member must make the request to participate remotely as soon as possible and must make a separate request for each meeting. ▪ The body must take action on the request at a public meeting. ▪ If there is insufficient time to include the item on a posted agenda, the body may take action at the beginning of the meeting. ▪ Approval must be by majority vote.
Agenda and Public Access and Comment Requirements	<ul style="list-style-type: none"> ▪ The teleconference location must be open to the public. ▪ The agenda must be posted at all meeting locations, including the teleconference location. ▪ The agenda must identify all meeting locations, including the teleconference location. ▪ The agenda must provide for public comment at all meeting locations, including the teleconference location. 	<ul style="list-style-type: none"> ▪ 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 body via a call-in option, an internet-based service option, and at the in-person location. ▪ The law 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 and must allow the public to address the body and comment in real time.

	Traditional Teleconferencing (Gov. Code, § 54953(b).)	AB 2449 Teleconferencing (Gov. Code, § 54953(f); becomes (e) on 1/1/24.)
		<ul style="list-style-type: none"> ▪ An individual may be required to register for public comment before being allowed to comment, where the body uses a third-party platform (like Zoom) for the meeting.
Voting Requirements	<ul style="list-style-type: none"> ▪ Members must vote by rollcall. 	<ul style="list-style-type: none"> ▪ Members must vote by rollcall.
Technological Requirements		<ul style="list-style-type: none"> ▪ The public must be able to remotely hear and visually observe the meeting, and remotely address the body. Thus, the body must provide either: <ol style="list-style-type: none"> (1) a two-way audiovisual platform; or (2) a two-way telephonic service and a live webcasting of the meeting.
Other Requirements		<ul style="list-style-type: none"> ▪ If a member participates remotely, the member must also: <ol style="list-style-type: none"> (1) Publicly disclose at the meeting before any action is taken, whether any other individuals 18 years or older are in the room at the remote location with the member and the general nature of the member’s relationship with such individuals; and (2) Participate through both audio and visual technology. ▪ 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 body shall 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 body from broadcasting the meeting may be challenged pursuant to Section 54960.1.

	Traditional Teleconferencing (Gov. Code, § 54953(b).)	AB 2449 Teleconferencing (Gov. Code, § 54953(f); becomes (e) on 1/1/24.)
		<ul style="list-style-type: none"> ▪ The body must have and implement a procedure for receiving and quickly resolving reasonable accommodation requests for individuals with disabilities. Any doubt should be resolved in favor of accessibility.
Limitations on Frequency of Remote Appearances	<ul style="list-style-type: none"> ▪ None. 	<ul style="list-style-type: none"> ▪ A member may participate remotely for “just cause” no more than two times per calendar year. ▪ A member may not participate remotely for more than three consecutive months or 20 percent of the regular meetings for the local agency within the calendar year, or more than two meetings if the body regularly meets less than 10 times per year.