

# Agenda Report

November 21, 2022

**TO:** Honorable Mayor and City Council

**FROM:** Department of Information Technology

**SUBJECT: PROVIDE DIRECTION FOR RETURNING TO IN-PERSON PUBLIC MEETINGS OF CITY LEGISLATIVE BODIES**

## **RECOMMENDATION:**

It is recommended that the City Council:

1. Find that the proposed action in the agenda report is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA guidelines Section 15061(b)(3) (Common Sense Exemption); and
2. Provide direction to staff for returning to in-person meetings.

## **BACKGROUND:**

As a result of the COVID-19 pandemic, temporary changes to the Brown Act that governs public meetings were enacted to allow for remote meetings of all City legislative bodies. Many government agencies are now returning to in-person meetings; a subset are continuing some level of remote participation. As the Council considers returning to in-person meetings, multiple factors should be taken into consideration, including but not limited to:

- Effective engagement and deliberations of Council and other legislative City bodies;
- Robust local public participation from throughout the community; and
- Complexity of meeting management due to process and technology requirements.

The remainder of this report, collaboratively worked on with input from City Attorney, City Clerk, City Manager, and other departments, describes the changes to the Brown Act provisions that were enacted over the course of the COVID-19 pandemic, current efforts to support remote meetings, and factors to consider on returning to in-person meetings for Council to discuss.

Staff is primarily seeking direction from Council on handling public comment at the City Council, Council Committees and all other legislative bodies for when meetings resume in-person. Various considerations are outlined in this report for Council discussion.

In a separate agenda item, the Council will consider the date for all legislative bodies to return to in-person meetings, which will automatically occur if an Assembly Bill 361 compliant resolution is not adopted, and automatically when/if the Governor ends the COVID-19 State of Emergency.

## **1. Legal Background**

California's open meeting law for local governments, the Brown Act, was enacted in 1953 to guarantee the public's right to attend and participate in meetings of local legislative bodies, and as a response to then-growing concerns about local government officials' practice of holding secret meetings that were not in compliance with advance public notice requirements. The Brown Act governs local agencies, legislative bodies of local government agencies created by state or federal law, and any standing committee of a covered board or legislative body, and governing bodies of non-profit corporations formed by a public agency.

## **2. Pre-Pandemic Brown Act Rules - Allowing Remote Meeting by Legislative Body**

The Legislature amended the Brown Act in the 1990's, allowing local legislative bodies to take advantage of information age technologies for the conduct of public meetings, with the following conditions:

- a. There must be a quorum of the legislative body participating from locations within the jurisdiction;
- b. Each remote meeting location must be identified in the meeting agenda;
- c. Meeting agendas must be posted at all teleconference locations;
- d. Each remote meeting location must be made "accessible" to the public, presumably including making the location accessible to members of the public with disabilities;
- e. The agenda must allow for public comment at each remote meeting location; and
- f. All votes in remote meetings must be taken by roll call.

## **3. March 2020 Suspension, in Part, of Brown Act Remote Meeting Requirements**

A portion of the Brown Act's remote meeting requirements (summarized in subdivisions (a) through (e), above) were suspended at the outset of the COVID-19 pandemic by the Governor's Executive Orders N-25-20 (March 12, 2020) and N-29-20 (March 17, 2020).

#### **4. AB 361 - Superseding Executive Order re: Remote Meetings During Pandemic**

Executive Order N-29-20 was due to expire on September 30, 2021. However, on September 16, 2021, the Governor signed AB 361, an urgency bill effective immediately, which amends the Brown Act, and now supersedes the Executive Order for purposes of remote meeting rules. AB 361 sunsets on January 1, 2024, but may become inapplicable earlier, if the Governor terminates the COVID-19 state of emergency at an earlier date, as discussed below. AB 361 permits legislative bodies to continue to meet remotely, during a proclaimed state of emergency proclaimed by the Governor, without having to meet the quorum, posting, access and other requirements of traditional remote meetings under the Brown Act. In order for a city to take advantage of the relaxed remote meeting rules under AB 361, every 30 days, the City Council must make findings, by majority vote, that the state of emergency (proclaimed by the Governor) still exists and continues to directly impact the ability of the members to meet safely in person, or that officials continue to impose or recommend measures to promote social distancing. On October 17, 2022, the Governor announced the COVID-19 state of emergency would end on February 28, 2023. As such, assuming the Governor terminates the state of emergency as announced, AB 361 would not apply following that date.

Cities that take advantage of the relaxed remote meeting rules of AB 361 (a) must allow public comment period where the public can address the legislative body directly (i.e., in "real time"); and (b) cannot limit public comments to only comments submitted in advance. Cities have satisfied the "real time" public comment requirement by allowing public comment through Zoom (video) links and/or dial-up (audio) telephone numbers. AB 361 further provides that if technical problems arise that result in the public's access to the meeting being disrupted, the body may not take any vote or other official action until the technical disruption is corrected, and public access is restored.

The City Council last adopted an AB 361-compliant resolution on October 24, 2022. However, if the Council were to decline to adopt an AB 361 resolution to continue to utilize the relaxed remote meeting rules, the current (and non-AB 361) rules of the Brown Act would apply. Of note, the remote meeting rules originally placed in the Brown Act the 1990's would now apply, once again. For Councilmembers choosing to meet remotely (instead of attend in person), that would mean that a quorum of the Council would need to participate from within the City for a Council meeting to go forward, Councilmembers' remote meeting location(s) would need to be publicly posted, Councilmembers would need to post meeting agendas at their remote meeting locations, the remote locations must be accessible to the public, and Councilmembers must allow public comment at their remote locations.

#### **5. AB 2449 - Changing Remote Meeting Rules**

On September 13, 2022, the Governor signed AB 2449, which goes into effect on January 1, 2023, and sunsets on January 1, 2026. AB 2449 specifies certain requirements and procedures for remote meetings.

To proceed with a remote meeting under AB 2449, a quorum of the body must participate from a single physical, public location identified on the agenda and within the body's jurisdiction. Unless there is a physical quorum of members present, the body may not utilize AB 2449. Where a physical quorum is met, AB 2449 permits a member of the body who is not physically present to request to remotely attend (a) for "just cause" (childcare or caregiving need, contagious illness, defined physical or mental disability not otherwise accommodated, or traveling on official business of the body or another state or local agency), and (b) where approved by the body, due to "emergency circumstances" ("physical or family medical emergency that prevents a member from attending the meeting in person," although confidential personal medical information is not required to be disclosed).

There are additional requirements for remote appearances under AB 2449: (a) the member of the body attending remotely must publicly disclose (before any action is taken at the meeting) whether anyone over 18 years old is in the room at the remote location, and the member's relationship with that person; (b) the member must participate using both audio and video means; and (c) the member cannot participate remotely for more than three consecutive months or 20 percent of the regular meetings in a calendar year, and if the body meets fewer than 10 times per calendar year, the member's remote participation cannot be for more than two (2) meetings. There are also annual limits on the use of the "just cause" circumstance.

AB 2449 also sets forth certain technology requirements for posting of agendas and the conduct of remote meetings under this law, including requiring that public comment be allowed by calling in, internet-based (Zoom, etc.), and at the in-person location of the meeting.

## **6. Overlapping Periods of Different Rules on Remote Access**

Based on the foregoing, the following Brown Act remote meeting rules over the next several years will apply:

- 1. Until January 1, 2023**
  - a. Pre-Pandemic Brown Act Rules
  - b. AB 361 (resolution required)
- 2. January 1, 2023 to January 1, 2024**
  - a. Pre-Pandemic Brown Act Rules
  - b. AB 361 (resolution required; will be inapplicable when/if Governor terminates COVID-19 state of emergency)
  - c. AB 2449 (just cause or emergency circumstances required)
- 3. January 1, 2024 to January 1, 2026**
  - a. Pre-Pandemic Brown Act Rules
  - b. AB 2449 (just cause or emergency circumstances required)
- 4. January 1, 2026 and going forward**
  - a. Pre-Pandemic Brown Act Rules only



## 7. Brief Summary of Brown Act Rules for Remote Meeting

	<b>Brown Act (Pre-Pandemic)</b>	<b>AB 361</b>	<b>AB 2449 – NEW Effective 1/1/2023</b>
<b>Member Remote Rules</b>	<ul style="list-style-type: none"> <li>Physical location of remote member noted on meeting agenda</li> <li>Remote location must be made accessible to the public</li> <li>Public comment must be allowed from remote location</li> <li>Meeting agendas must be posted at remote location</li> </ul>	<ul style="list-style-type: none"> <li>None - Brown Act rules for member remote participation suspended</li> </ul>	<ul style="list-style-type: none"> <li>Two circumstances allow a remote member to not follow Brown Act (Pre-Pandemic) remote meeting rules, subject to additional requirements and limitations:               <ol style="list-style-type: none"> <li>Just cause - Defined as caregiving, contagious illness, disability, or travel for state/local agency business</li> <li>Emergency circumstances</li> </ol> </li> <li>Use of “emergency circumstances” requires member to make request and the legislative body to take action to approve the request</li> <li>Remote member must participate using both audio and video</li> <li>Before any action taken, remote member must publicly disclose whether anyone over 18 years old is in the room and relationship with that person</li> </ul>
<b>Other Requirements</b>	<ul style="list-style-type: none"> <li>Quorum of body must participate from within City limits</li> </ul>	<ul style="list-style-type: none"> <li>Council must adopt an AB 361 compliant resolution every 30 days</li> <li>Public comment must be allowed remotely</li> </ul>	<ul style="list-style-type: none"> <li>Quorum of members must be physically present in a singular location</li> <li>Public comment must be allowed remotely</li> </ul>
<b>Limitations</b>		<ul style="list-style-type: none"> <li>AB 361 sunsets 1/1/2024, or when Governor ends COVID-19 State of Emergency</li> </ul>	<ul style="list-style-type: none"> <li>“Just cause” limit of two occasions per year</li> <li>“Emergency circumstances” limit of three consecutive months or 20% of regular meetings</li> <li>AB 2449 sunsets 1/1/2026</li> </ul>
<b>Other Impacts</b>		<ul style="list-style-type: none"> <li>The legislative body cannot take any action if remote public participation is interrupted, e.g. technology issue</li> </ul>	<ul style="list-style-type: none"> <li>The legislative body cannot take any action if remote public participation is interrupted, e.g. technology issue</li> </ul>

## **Discussion**

### **A. Supporting Remote Meetings During COVID-19 Pandemic**

Prior to the COVID-19 pandemic, all City legislative bodies, including the City Council, Council committees, board and commission meetings were held in-person only. On occasion, Councilmembers participated remotely – but only after following the Brown Act's legal requirements for remote meetings.

Hosting meetings remotely required staff to acquire new technology, skills and capabilities. The Department of Information Technology (DoIT) provided tools, training, and meeting support. Over time, department staff adopted the new meeting formats effectively. While the remote meetings appear to the public as seamless and easy to manage, in practice, there are many challenges. Some of the issues that are not visible to the public include being responsible for protections and security to preserve the integrity of the meeting, live language translation, closed captioning, recording, presentation management, and supporting members of the body and the public in real-time with varying technical capabilities, personal equipment challenges, and internet connectivity issues.

The City departments with the largest impacts to support City Council and Council Committees are the Office of the City Clerk and DoIT. As an example, to handle a remote meeting of the City Council, the City Clerk assigns two staff with increased responsibilities, who work behind the scenes leading up to, and during City Council meetings. These staff (a) interact with the public to help ensure attendees can remotely connect to the meeting broadcast (on Zoom) to provide public comment; and (b) distribute written public comment to the Council during the meetings. The City Clerk's office also coordinates live language translation services during City Council meetings.

DoIT added two staff to support every Council and Council Committee meeting to manage the virtual meeting technology, presentations, public comment queues, and any technical issues that impeded the Council or the public's ability to participate effectively in the meeting. Pasadena Media also assigns staff to Council and Council Committees meetings to support live video feeds from within the Chamber, the broadcast on KPAS (the City's government access channel, Channel 3 on Spectrum, Channel 99/Pasadena on AT&T U-Verse), and online streaming.

For all the boards and commissions other than City Council and Council Committees, DoIT provides laptops, cameras, microphones, headsets, training, and in-person technical support when needed.

Overall, since moving to a remote meeting format, including live public comment for all bodies, staff estimates the increased direct costs to provide the service on an annual basis is in excess of \$200,000 per year.

## **B. Returning to In-Person Public Meetings**

As staff prepares to resume in-person public meetings, there are policy suggestions for the City Council to consider, including potential increased costs to support both in-person and remote meeting technology simultaneously. The use of remote meeting technology, such as Zoom, could be used, subject to the remote meeting provisions of the Brown Act and the availability of the requisite staffing and technology infrastructure available in the designated meeting location.

Unless the City Council adopts an AB 361-compliant resolution, as described earlier in this report, all bodies must return to in-person meetings subject to the pre-COVID Brown Act rules.

The Council could consider directing staff to consider one or more of the following options, or any variation on the below suggestions, as well:

- 1) Return to all in-person meetings (following Pre-Pandemic Brown Act rules)
  - Public comment available in-person only and through written correspondence;
  - Councilmembers may still participate remotely using Zoom or with similar virtual meeting technologies by following the Brown Act provisions for remote meeting; and
  - City Council meetings broadcast live through KPAS and online streaming only.
- 2) Allow remote public comment at City Council meetings, in addition to #1 above.
  - City Council meetings broadcast live through Zoom, or similar virtual meeting technology (in addition to KPAS and online streaming).
- 3) Allow remote public comment at Council Committees, in addition to #2 above.
  - Council Committee meetings broadcast live through Zoom, or similar virtual meeting technology (in addition to KPAS and online streaming).
- 4) Allow remote public comment at all boards and commissions, in addition to #3 above.
  - Boards and commission meetings broadcast live through Zoom, or similar virtual meeting technology.

### Estimated Costs

Existing costs to provide remote meeting services are estimated at \$200,000, as described above. Both the estimated full costs to support remote meeting services and the Net incremental costs are shown in the following table:

1. Return to all in-person meetings	2. Remote public comment at City Council only	3. Remote public comment at City Council & Council Committees	4. Remote public comment for all bodies
Cost Reduction: \$200,000 Annually  Net Decrease: \$200,000	Estimated Cost: \$250,000 Annually  Net Increase: \$50,000	Estimated Cost: \$300,000 Annually  Net Increase: \$100,000	Estimated Cost: \$700,000 Annually  Net Increase: \$500,000  \$200,000 One-time Technology Upgrades
Ready to Implement	Ready to Implement	Ready to Implement	Available early CY 2023

### Cost Assumptions

1. DoIT Staff (Required for remote meetings using the Council Chamber & other meeting support as needed)
2. KPAS Staff (Required for live streaming and broadcast support from the Council Chamber)
3. Other Department Support Staff
4. Virtual Meeting Technology (e.g., Zoom and related equipment)
5. Audio Visual system upgrades to support remote meetings at other City locations

Staff also reviewed the amount of live public comment over the last six months for all bodies to consider the feasibility and value of continuing remote public comment. Below are the results for each body:

Body	Total # of Public Speakers					
	April 2022	May 2022	June 2022	July 2022	Aug 2022	Sept 2022
City Council	158	66	30	72	91	79
<i>Council Committees</i>						
EdTech	0	4	7	0	8	0
Finance	2	0	7	0	0	2
Legislative Policy	1	0	3	0	0	0
Municipal Services	1	3	0	6	5	29
Public Safety	0	20	2	7	7	3
<i>Commissions</i>						
Accessibility & Disability	0	0	0	0	1	0
Arts & Culture	0	0	0	0	0	3
Board of Zoning Appeals	0	0	0	0	0	0
Code Enforcement	0	0	0	0	0	0

Body	Total # of Public Speakers					
	April 2022	May 2022	June 2022	July 2022	Aug 2022	Sept 2022
Commission on the Status of Women	0	0	0	0	0	0
Community Police Oversight	8	13	3	1	0	8
Design	6	20	1	2	9	7
Environmental Advisory	0	9	0	1	0	0
Hearing Officer	0	1	0	1	36	0
Historic Preservation	0	11	3	7	0	6
Human Relations	0	0	0	0	0	0
Human Services	0	0	0	0	1	0
Library	0	0	0	0	0	1
Northwest	0	0	0	1	0	0
Planning	40	14	29	72	17	6
Old Pas Parking Meter Zone Advisory	0	0	0	0	0	0
Recreation & Parks	0	1	0	0	3	0
Senior	0	0	0	0	0	1
South Lake Parking Place	0	0	0	0	0	0
Transportation Advisory	3	0	14	5	22	5
Urban Forestry Advisory	0	0	2	2	0	5
<i>Committees &amp; Advisory Bodies</i>						
Deferred Compensation Committee	0	0	0	0	0	0
Early Childhood Development & Early Learning Task Force	0	0	0	0	0	0
Fire & Police Retirement	0	0	0	0	0	0
Hahamongna Watershed Park Advisory	0	1	0	0	0	3

Staff also obtained results from a survey prepared by the City of Calabasas on September 20, 2022 summarizing how other cities within Los Angeles County are handling public meetings. The full results are listed in Attachment A and summarized below:

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- 27 cities are conducting in-person meetings
- 24 cities are allowing a mix of in-person and remote options (labeled as hybrid)
- 6 cities are still fully remote

Of note, the City Council meetings for the cities of Los Angeles, Long Beach, and Santa Monica at the time of the City of Calabasas survey were reported as in-person only.

### Staff Recommendation

Of the options suggested, staff recommends options 1 through 4 in that order for a few reasons. First, it represents the options from least to most complex to implement and manage by staff. Secondly, it represents the options from lowest to highest cost to support. Thirdly, when looking at the full costs over a 10-year horizon, options 2 through 4 incur \$2.5-\$7 million dollars in that span, money that could be utilized in other service areas in the City. Lastly, whatever option Council decides to embark on, staff recommends revisiting it in the future to evaluate its impact, effectiveness, and cost so possible revisions thereto can be considered.

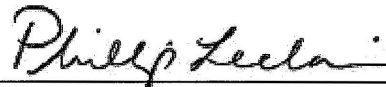
### ENVIRONMENTAL ANALYSIS:

This action is exempt from the CEQA pursuant to State CEQA Guidelines Section 15061 (b)(3), the Common Sense Exemption (formerly the general rule) that CEQA applies only to projects which have the potential for causing a significant effect on the environment.

### FISCAL IMPACT:

Returning to in-person meetings without remote public comment will reduce expenditures by approximately \$200,000 annually as the additional support staff will no longer be needed to manage remote participants, including a reduction in the technology expenses. Returning to in-person meetings and supporting remote public comment simultaneously will require technical and department staff support and could range between \$250,000 to over \$700,000 annually as described in the report.


Respectfully submitted,



PHILLIP LECLAIR

Chief Information Officer  
Department of Information Technology

Approved by:



MIGUEL MARQUEZ

City Manager