

Metropolitan Transportation Commission

February 22, 2023

Agenda Item 17a - 23-0292

Return to In-Person Meetings/Brown Act/AB 2449

Subject:

Report on Return to In-Person Meetings/Brown Act/AB 2449

Background:

The Governor's Covid Emergency Orders are set to expire at the end of this month. With that expiration, the provision for remote meetings under AB 361 will no longer be available. Remote participation for Commissioners is still legally possible, however, under both the pre-existing Brown Act teleconferencing mechanism as well as the new procedures made available by AB 2449. Attached is a memorandum describing the state of the law on these issues as well as minimum required procedures for remote participation.

As noted in the memorandum, it is at the Commission's discretion to set expectations for how MTC and its related entities' meetings should proceed, provided that direction is not in conflict with the American with Disabilities Act. Prior to the pandemic, MTC emphasized in-person participation by Commissioners. The Commission may wish to consider what expectations it wishes to set for itself and for its subsidiary bodies as we go forward. Absent direction to the contrary, staff proposes that meetings be convened in-person following pre-pandemic procedures starting in March. Once the Commission has had the opportunity to provide direction, procedures governing remote participation will be provided for adoption in a subsequent month.

Issues:

None.

Recommended Action:

Information. Review legal memorandum and attached draft minimum required procedures for remote participation in Brown Act meetings.

Attachments:

- A. Memorandum Regarding Remote Participation for Brown Act Meetings
- B. Draft Minimum Procedures for Remote Participation for MTC Commissioners and committee members



Alix A. Bockelman



Memorandum

TO: MTC Commission

DATE: February 22, 2023

FR: Kathleen Kane, General Counsel

John Myers, Assoc. General Counsel

RE: Post-Covid Emergency Brown Act Meetings

With the expiration of the Governor's COVID emergency orders on February 28, 2023, the hybrid meetings format permitted during the state of emergency will no longer be available for Brown Act bodies. Instead, the default for meetings will be to return to in-person participation at 375 Beale Street for MTC and its related entities.

For reference, two options for remote participation remain under the statute: (1) teleconferencing under the Brown Act's pre-COVID provisions ("anytime" teleconferencing) and (2) the newly-added process under AB 2449, which allows for remote participation without noticing the off-site location under limited circumstances. A summary of those statutory allowances is below.

"Anytime" teleconferencing is permitted when the following circumstances are met:

1. A quorum of the body is participating in the meeting from within the jurisdictional boundaries of the entity in question. In this case, that means the jurisdictional boundaries of the nine Bay Area counties.
2. The location(s) for remote participation have been included in the meeting's published agenda.
3. The meeting's agenda has been posted at the remote location at least 72 hours in advance for a regular meeting and is visible to the public 24 hours a day through the meeting time.
4. The remote locations are open and accessible to the public.
5. The public may participate in real time in the meeting through being able to watch a simultaneous broadcast and providing live public comment during appropriate portions of the meeting.

AB 2449 makes limited allowances for circumstances – such as health or childcare issues – where it may not be possible to admit members of the public to the remote meeting location. There are two types of remote participation possible under the statute: "just cause" and "personal emergency."

For AB 2449 “just cause” remote participation, the following must be true:

1. The participating member must be facing one of the enumerated circumstances under the statute: childcare or caregiving obligations; contagious illness; physical or mental disability that is not otherwise accommodated; or travel on official business.
2. The member must provide a description of the circumstances justifying the “just cause” remote participation.
3. Two-way broadcasting from the remote location must be available and working throughout the meeting.
4. A quorum of the body must participate in person from one physical location that is noticed according to the Brown Act.

For the “personal emergency” provision, the following must be true:

1. The member must be experiencing a personal physical or family emergency.
2. The member must submit a request for emergency remote participation as soon as possible to the meeting body, which must act on the request as soon as possible by majority vote.
3. A quorum of the body must participate in person from one physical location that is noticed according to the Brown Act.
4. Two-way audio and visual broadcasting from the remote location must be available and working throughout the meeting.

There are strict limitations on the use of the AB 2449 procedures. The “just cause” category can only be used twice per member per calendar year, and combined use with “personal emergency” cannot exceed 3 consecutive months, or more than 20 percent of the years’ meetings. The “personal emergency” provision does not have a specific numerical limit but cannot exceed 3 consecutive months or 20 percent of the meetings in a year. For both categories, the use of AB 2449 exemptions cannot exceed 2 meetings if the body meets fewer than 10 times in a calendar year.

Reading these provisions together, the key takeaway is this:

If any member invokes AB 2449 procedures, a quorum of the body must meet in person at one physical location. This is true even if they have already noticed alternative remote locations under the “anytime teleconferencing” rules.

For this reason, close coordination with your clerk staff is *essential* to ensure that meetings can go forward as planned. If issues arise for members, please consult with the clerk/Office of General Counsel as soon as possible to ensure we do not have to cancel meetings for lack of an in-person quorum.

MTC is committed to making accommodations, where feasible, to address barriers to participation created by illness or disability. Please let the Office of General Counsel or clerk staff know of any issues you may face so that we can work through potential solutions.

Attached to this memo are minimum-required procedures for using teleconferencing options. These procedures are not intended to set policy for the Commission, but instead represent the legal and posting requirements that must be met in order to proceed under the remote participation provisions of the Brown Act. The Commission has discretion in setting expectations for how it and its related entities' meetings should proceed. However, any direction given by the Commission must allow for individual accommodation wherever possible under the Americans with Disabilities Act.

REMOTE MEETINGS PROTOCOL:

A member wishing to participate remotely in any scheduled meeting must:

1. Inform the Clerk at the earliest possible date of the intention to participate remotely.

For “anytime teleconferencing,” notice should be given *at least 10 days in advance* so that the remote location can be included in the agenda, which is generally published 7 days in advance of regular meetings.

For “just cause” and “personal emergency” teleconferencing, notice should be given to the clerk at the earliest possible date. If at all possible, notice should be given *10 days in advance*.

2. For “anytime teleconferencing,” the member must:
 - post the agenda at the teleconferencing location in a place visible to the public 24 hours a day at least 72 hours prior to a regular meeting or 24 hours prior to a special meeting.
 - ensure that the remote location has the equipment and internet capabilities for remote participation available and in working order
 - ensure that the remote location is open and accessible to the public at all times during and immediately before the scheduled meeting
 - provide the Clerk with a signed form indicating that posting and accessibility requirements have been met
3. For “just cause” teleconferencing, the member must:
 - provide a general description of the circumstances to the Clerk and the Chair of the body justifying remote participation under the just cause provisions of AB 2449. This information is public and should not include sensitive medical information. This description should be provided at the earliest possible date, and at least 10 days in advance of the meeting wherever possible.
 - ensure that equipment and internet access necessary to support two-way live broadcasting is available and working at the remote location
4. For “personal emergency” teleconferencing, the member must:
 - provide a description of the circumstances to the Clerk and Chair of the body justifying remote participation under the personal emergency provisions of AB 2449 as soon as possible after the circumstances arise. This information is public and should not include sensitive medical information. If possible, the meeting agenda will be amended to reflect the request to participate remotely. The request may be added verbally at the beginning of the meeting if it does not come in time to repost the agenda.
 - ensure that equipment and internet access necessary to support two-way audio and visual live broadcasting is available and working at the remote location
 - when the meeting starts, note for the record whether there are any persons 18 years old or older in the room, and disclose that fact and their relationship(s) to the member before each vote.