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MEMORANDUM

To: City Council, City of Portola
Jon Kennedy, Interim City Manager
From: Steven C. Gross, City Attorney
Date: January 5, 2023
Subject: The Brown Act and Teleconferencing

Interim City Manager Kennedy asked me to prepare this Memorandum to brief the City Council on upcoming changes to the Brown Act and its teleconference provisions.

A. Background

For approximately the last 35 years, the Brown Act has permitted legislative bodies to use video teleconferencing for certain purposes in connection with a meeting. (Government Code Section 54953(b)). “Teleconference” is defined as “a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both.” (Government Code Section 54953(b)(4))

1. Traditional Teleconferencing

From approximately 1997 through 2021, the teleconference rules remained largely unchanged. While options for using teleconferencing have been added by AB 361 in 2021 and AB 2449 in 2022, the historic or traditional teleconferencing provisions continue to remain in effect and are available for use. Those provisions are referred to in this Memorandum as “traditional teleconferencing.”

2. AB 361 Teleconferencing

In response to the COVID-19 pandemic, the teleconference provisions were substantially modified by AB 361 when it was signed into law on September 16, 2021 and became effective on October 1, 2021. AB 361 only remains in effect until January 1, 2024, when it terminates by its own provisions. AB 361 provides tremendous flexibility for conducting meetings and the District has been conducting most of its meetings for the last year pursuant to these rules.

However, AB 361 teleconferencing can only be utilized while a state of emergency that has been proclaimed by the Governor is in effect. On October 17, 2022, Governor Newsom

announced that the COVID-19 state of emergency will end on February 28, 2023. Therefore, as of March 1, 2023, teleconferencing will only be able to be conducted under the traditional teleconferencing rules or AB 2449 teleconferencing rules.

3. AB 2449 Teleconferencing

On September 13, 2022, AB 2449 was signed into law and became effective on January 1, 2023. It will remain in effect through the end of 2025. These rules are very complex and restrictive; they may prove to be of little value. Beginning on January 1, 2026, only the traditional teleconferencing rules will be available unless further legislation is enacted.

B. Traditional Teleconferencing Rules

1. Agendas must be posted at all teleconference locations
2. Each teleconference location must be identified on the notice and agenda
3. Each teleconference location must be accessible to the public
4. At least a quorum of the members of the legislative body must participate in locations with the boundaries of the agency
5. The public must be able to address the legislative body directly from each teleconference location
6. All votes must be by rollcall

(Government Code Section 54953(b))

C. AB 361 Teleconferencing Rules

1. Notice of the meeting must be given in accordance with the other provisions of the Brown Act
2. Bodies may meet via teleconference without complying with the traditional teleconferencing rules during a proclaimed state of emergency by the Governor and either
 - a. state or local officials have imposed or recommended measures to promote social distancing;
 - b. for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees; or
 - c. by majority vote, pursuant to (b) above, that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees
3. When notice of a meeting is given or the agenda is posted, notice of the means by which the public may access the meeting must be given, which may be by a call-in option or an internet-based service option
4. A physical location from which the public may attend or comment need not be provided
5. If a disruption prevents the broadcasting of the meeting to the public using the call-in option or internet-based service option, or if a disruption within the local agency's control

prevents the public from offering public comments using the call-in option or internet-based service option, no further action may be taken until public access to the meeting via the call-in option or internet-based service option is restored

6. Can't require that public comments be submitted in writing in advance of the meeting; public must be able to address the body and offer comment in real time
7. Members of the public who choose to make public comment through an internet website or online platform not under the control of the agency may be required to register as required by the third-party website or platform
8. Must allow a reasonable amount of time for members of the public to register or otherwise be recognized before closing public comment
9. Must make findings at least every 30 days of the need to meet via teleconference without complying with the traditional teleconferencing rules

(Government Code Section 54953(e))

D. AB 2449 Teleconferencing Rules

1. At least a quorum of the Council must participate in person from a singular physical location identified on the agenda, which location must be open to the public and within the boundaries of the agency
2. A Council member may only teleconference for publicly disclosed "just cause" or in "emergency circumstances" approved by the legislative body
3. A Council member may only teleconference for a limited number of meetings during a calendar year – no more than 3 consecutive months or 20% of meetings or no more than 2 if there are 10 or less meetings in the calendar year
4. There must be either a two-way audiovisual platform or two-way telephonic service and a live webcasting of the meeting to allow the public to remotely hear and visually observe the meeting, and remotely address the legislative body
5. The agenda must identify and include an opportunity for all persons to attend via a call-in option, internet-based service option, and at the in-person location of the meeting
6. Members of legislative body may only participate remotely if they:
 - a. notify the legislative body at the earliest opportunity possible, including at the start of a regular meeting, of their need to participate remotely for "just cause", including a general description of the circumstances relating to their need to appear remotely at the given meeting; or
 - b. request the legislative body to allow them to participate in the meeting remotely due to "emergency circumstances" and the legislative body takes action to approve the request. The 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.
7. "Just cause" is limited to one or more of the following:

- a. a childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely
 - b. a contagious illness that prevents a member from attending in person
 - c. a need related to a physical or mental disability as defined by statute; or
 - d. travel while on official business of the legislative body or another state or local agency
8. “Emergency circumstances” means a physical or family medical emergency that prevents a member from attending in person
 9. The member of the legislative body shall publicly disclose at the meeting, before any action is taken, whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member’s relationship with any such individual(s)
 10. The member of the legislative body shall participate through *both* audio and visual technology
 11. If a disruption prevents the broadcasting of the meeting to the public using the call-in option or internet-based service option, or if a disruption within the local agency’s control prevents the public from offering public comments using the call-in option or internet-based service option, no further action may be taken until public access to the meeting via the call-in option or internet-based service option is restored
 12. Can’t require that public comments be submitted in writing in advance of the meeting; public must be able to address the body and offer comment in real time
 13. Members of the public who choose to make public comment through an internet website or online platform not under the control of the agency may be required to register as required by the third-party website or platform
 14. Must allow a reasonable amount of time for members of the public to register or otherwise be recognized before closing public comment
 15. The legislative body shall have and implement a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, and in notice of the time of the meeting is otherwise given or the agenda for the meeting is posted, the legislative body shall also give notice of the procedure for receiving and resolving requests for accommodation
 16. The legislative body may take action on an item not on the agenda by two-thirds vote of the members present or unanimous vote of less than two-thirds are present that there is a need to take immediate action and the need for action came to the attention of the agency after the agenda was posted to consider action on a request from a member to participate in a meeting remotely due to emergency circumstances if the request does not allow sufficient time to place the proposed action on the posted agenda and the legislative body may approve such a request by a majority vote of the legislative body

(Government Code Sections 54953(f) and 54954(b))