



**CITY OF SALINAS
COUNCIL STAFF REPORT**

DATE: JANUARY 10, 2023

DEPARTMENT: CITY ATTORNEY’S OFFICE
CITY CLERK

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TITLE: BROWN ACT UPDATE: CONTINUED REMOTE MEETINGS

RECOMMENDED MOTION:

No action is recommended. This is an Administrative Report provided as information for the City Council and the public.

EXECUTIVE SUMMARY:

Members of the City Council and the public have asked for the opportunity to participate remotely in City Council meetings. This Administrative Report provides information to the City Council and the public related to how the City of Salinas may conduct remote meetings. With Governor Newsom’s announcement that the COVID-19 State of Emergency will end on February 28, 2023, cities will be restrained in their continued use of remote meetings; cities’ ability to utilize AB 361, which is effective only during a declared state of emergency, will be limited leaving pre-pandemic teleconferencing laws and AB 2449 as the remaining available options. Non-Brown Act meetings—community meetings, for example, which do not fall within the definition of a “meeting” under the Brown Act—may continue to utilize remote participation options.

BACKGROUND:

Prior to the COVID-19 pandemic, the Brown Act had strict requirements for the legislative bodies of local agencies to meet by teleconference. Among other restrictions, all teleconference locations had to be identified in the notice and the agenda of the meeting and each teleconference location had to be accessible to the public. In addition, at least a quorum of the legislative body had to be present within the boundaries of the local agency. During the COVID-19 Pandemic and State of Emergency, the Brown Act’s teleconferencing requirements were relaxed to allow both members of the legislative body and members of the public to participate through alternative remote options. The intent of these relaxed provisions was to prevent the spread of COVID-19 by allowing remote participation in public meetings without the need for groups of people to congregate.

AB 361 (Rivas, Robert)

In March of 2020, Governor Newsom issued an executive order temporarily waiving some of these restrictions. The Legislature followed up the Governor’s executive order with AB 361, which provided a statutory exception, authorizing local agencies to use teleconferencing without complying with all of the Brown Act’s restrictions in specified circumstances related to public health and safety emergencies. AB 361 (Government Code section 54953) amended and codified the modified Brown Act provisions implemented in the Governor’s executive order and allows for participation in meetings of legislative bodies by teleconferencing by phone or video platforms such as Microsoft Teams or Zoom. AB 361 also requires that the public be given the opportunity to address the legislative body with their comments in real time. Local agencies may continue to make or to renew remote meeting findings under that law as appropriate. That is, AB 361 may be used only if the purpose of the meeting is to declare a local emergency or if the meeting occurs during a period of a declared local emergency. AB 361’s provisions are effective through January 1, 2024. However, with the Governor having announced his intent to end the COVID-19 State of Emergency on February 28, 2023, AB 361 will likely have limited effect, essentially becoming ineffective in the absence of a local emergency. Teleconferencing after the pandemic ends will need to occur under existing Brown Act requirements or under the provisions of AB 2449.

AB 2449 (Rubio, Blanca)

AB 2449 (Government Code section 54953), signed into law in September 2022, provides local agencies with long-term permissions to hold remote meetings without having to give the public access to private locations, subject to certain restrictions. This alternative option may only be used under limited circumstances and will expire on January 1, 2026.

AB 2449 does not extend AB 361, which still sunsets on January 1, 2024. Instead, the bill implements another temporary exception authorizing agencies to meet by teleconference without strict compliance with the traditional notice and physical access requirements. Where AB 361 is based on an agency’s need for teleconferencing, AB 2449’s new framework is based on the circumstances of individual members of the legislative body. AB 2449 does not provide additional opportunity for the public to participate remotely.

Beginning January 1, 2023, the legislative body can use teleconferencing without noticing each teleconference location or making it publicly accessible, provided a least a quorum of the body participates in person at a single physical location that is identified on the agenda, open to the public, and within the boundaries of the agency, and provided that other requirements regarding accessibility are met. AB 2449 may be used only if “just cause” is met or if “emergency circumstances” exist for individual members of the legislative body. An individual member of the legislative body may participate remotely only in one of two circumstances:

1. With “just cause” one or more of the members of the legislative body (but less than a quorum) can participate remotely after giving notice as soon as possible. AB 2449 defines “just cause” as
 - a. a family childcare or caregiving need;
 - b. a contagious illness;

- c. a need related to a physical or mental disability that is not otherwise accommodated;
or
 - d. travel while on official business.
2. In “emergency circumstances,” defined as a physical or family emergency that prevents the member from attending in person, one or more member of the legislative body (but less than a quorum) can participate remotely by requesting approval to do so from the legislative body. The legislative body may take action on the request as soon as possible, including at the beginning of the meeting, even if there was not sufficient time to place the request formally on the agenda.

Under either circumstance, the member in question must give a general description of the circumstances relating to their need to participate remotely, but need not disclose any medical diagnosis, disability, or other confidential medical information. In addition, a member may use the just cause provisions up to two meetings per calendar year. A member may not participate in remote meetings under this law for more than three consecutive months or twenty percent of the agency’s regular meetings within a calendar year. If the legislative body meets less than ten times a year, a member may not participate remotely for more than two meetings.

The following rules also apply when meeting under just cause or emergency circumstances:

- Provide either a two-way audio visual system or a two-way phone service in addition to live webcasting;
- Identify a call-in or internet-based access option on the agenda, in addition to the in-person meeting location;
- Ensure that if a disruption to the online meeting occurs, the body takes no further action on agenda items until public access is restored; and
- Avoid requiring public comments to be submitted in advance and provide a real-time option for the public to address the body at the meeting.

Additionally, members participating remotely must publicly disclose at the meeting whether anyone else eighteen years or older is present with the member and the general nature or the member’s relationship with the individual.

Outside of the limited circumstances authorized by AB 2449 (and until January 1, 2024, AB 361) public meetings can still occur via teleconference if the legislative body complies with the general (pre-pandemic) agenda, notice, and quorum requirements of the Brown Act.

AB 361 Rules in Effect Today and Re-Codified in AB 2449.

As a reminder, when a state of emergency is involved, a legislative body may hold teleconference meetings without meeting certain procedural requirements (post agendas at teleconference locations, identify teleconference locations in the agenda, make all teleconference locations open to the public) in the following circumstances:

- The meeting is held during a proclaimed state of emergency and state/local officials have imposed or recommended measures to promote social distancing;
- The meeting is held during a proclaimed state of emergency for the purpose of determining whether meeting in person during the emergency would present imminent risks to the health or safety of attendees; and/or
- The meeting is held during a proclaimed state of emergency and the body has already determined that meeting in person during the emergency would present imminent risks to the health or safety of attendees.

If the legislative body is relying on the above findings to justify meeting by teleconference, it must:

- Give the public notice of how to access the meeting and offer public comment;
- Ensure that if a disruption to the online meeting occurs, the body takes no further action on agenda items until public access is restored;
- Avoid requiring public comments to be submitted in advance, and provide a real-time option for the public to address the body at the meeting; and
- If the state of emergency remains active or social distancing measures continue to be imposed/recommended by state or local officials, continue to make findings supporting the teleconference meetings at least every thirty days.

CEQA CONSIDERATION:

Not a Project. The City of Salinas has determined that the proposed action is not a project as defined by the California Environmental Quality Act (CEQA) (CEQA Guidelines Section 15378).

STRATEGIC PLAN INITIATIVE:

This Administrative Report aligns with the City Council’s Goal of Effective and Culturally Responsive Government (City of Salinas Strategic Plan 2022-2025) by providing information to the City Council and the public on the options available for remote participation in City Council meetings.

DEPARTMENTAL COORDINATION:

The City Attorney and the City Clerk coordinated on this Administrative Report.

FISCAL AND SUSTAINABILITY IMPACT:

There is no fiscal impact to the City of Salinas related to this Administrative Report.

ATTACHMENTS:

- AB 361
- AB 2449