



**DATE:** February 21, 2023

**TO:** Transportation Authority of Marin Citizens' Oversight Committee

**FROM:** Anne Richman, Executive Director

**SUBJECT:** Return to In-Person Meetings in Compliance with AB 2449 (Discussion), Agenda Item No. 5

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## **RECOMMENDATION**

This is a discussion item.

Staff would also like to receive input from the Citizens' Oversight Committee (COC) regarding whether a remote meeting participation option should be provided to the public if no COC member/alternate is requesting to join the COC meeting remotely starting in March.

## **BACKGROUND**

Prior to the Covid-19 pandemic, TAM conducted all public meetings, subject to the Ralph M. Brown Act (Brown Act), in-person, including the COC meetings, which were held in the TAM conference room. Pursuant to the legislation outlined below, from April 2020 to March 2022, the COC meetings were held virtually via Zoom. From May 2022 to the present, the COC meetings have been held in a hybrid format, whereby members of the public and members/alternates of the COC had the option of participating in-person in the TAM conference room or remotely via Zoom.

On March 4, 2020, Governor Newsom declared a State of Emergency to help the State prepare for a broader spread of COVID-19. In response to the COVID-19 pandemic, on March 17, 2020, Governor Newsom issued Executive Order N-29-20, which suspended certain provisions of the Brown Act in order to allow local legislative bodies to conduct meetings electronically without a physical meeting place. Executive Order N-29-20 expired on September 30, 2021.

On September 16, 2021, Governor Newsom signed AB 361, which became effective immediately upon approval. AB 361 provides local government bodies that are subject to the Brown Act the ability to continue to use video and/or teleconferencing through December 31, 2023 under certain conditions, including when state or local officials have recommended social distancing during a proclaimed state of emergency.

On September 13, 2022, Governor Gavin Newsom signed into law AB 2449, which provides a remote participation option for members of a legislative body of a local agency under specific and limited circumstances when no state of emergency is in effect, through January 1, 2026.

On October 17, 2022, Governor Newsom announced that the COVID-19 State of Emergency will end on February 28, 2023, thereby nullifying the conditions of AB 361, and allowing legislative bodies to conduct meetings in accordance with the rules of AB 2449.

## DISCUSSION

In general, once the State of Emergency ends, members/alternates must be physically present in the same location for a meeting of the COC with certain exceptions allowed, which are discussed below.

### Option 1 - Longstanding Teleconference Provision of the Ralph M. Brown Act

A member/alternate may attend meetings by teleconference in accordance with the Brown Act. The longstanding teleconference provision, which requires public access to all teleconference locations, including a member's home, is generally not well suited for remote attendance by members, especially those who want to attend meetings from their home.

The requirements for teleconferencing under this option are as follows:

- Meeting agenda must be posted at each teleconference location.
- Meeting agenda must identify each teleconference location.
- Each teleconference location must be accessible to the public.
- Members of the public must have an opportunity at each teleconference location to directly address members of the COC.
- A quorum of the COC must participate in the meeting from teleconference locations within the jurisdiction.
- All votes taken must be by roll call.
- The technology used for the teleconference may be audio only, or both audio and visual.

Pursuant to the above, if COC members/alternates were to attend the meeting electronically from their homes, the home addresses would have to be published on the agenda, their homes would have to be accessible to disabled persons, and the public would be entitled to enter the homes to observe the members at the meeting and offer public comment from those locations.

### Option 2 - Remote Attendance for Just Cause or Emergency Circumstances Under AB 2449

AB 2449 allows the legislative body of a local agency to use teleconferencing without complying with the traditional Brown Act teleconferencing rules or the modified AB 361 rules in certain circumstances. To do so, at least a quorum of the members of the legislative body must participate in person from a singular physical location identified on the agenda, which location will be open to the public and within the boundaries of the local agency. The legislative body must also provide 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. 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.

This second teleconference option under AB 2449 allows COC members/alternates to attend meetings remotely, without having to make the locations from which they attend known or accessible to the public. However, the option is limited to two situations, both of which are significantly circumscribed by regulation: "just cause" and "emergency circumstances."

AB 2449 defines "just cause" exclusively to mean one of the following:

- A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, or spouse, as those terms are defined in California Government Code Section 12945.2, or domestic partner, that requires the COC member to remotely attend the meeting.
- A contagious illness that prevents the COC members/alternates from attending the meeting in person.
- A need related to a physical or mental disability as defined in California Government Code Sections 12926 and 12926.1, the state disability law, if not otherwise accommodated under federal disability law.

- Travel while on official business of the COC, or of another state or local agency.

To teleconference on the basis of "just cause," these requirements apply:

- Members/alternates must notify staff as soon as possible, including at the start of a meeting, of their needs to attend the meeting remotely, including a general description of the circumstances relating to the need.
- Member/alternates may use this option no more than two meetings per calendar year.

AB 2449 defines "emergency circumstances," exclusively to mean "a physical or family medical emergency that prevents a member from attending in person." (Cal. Gov. Code § 549530)(1).

To teleconference on the basis of "emergency circumstances," these requirements apply:

- As soon as possible, the member must request approval of the COC, and must make a separate request for each meeting in which remote attendance is sought.
- The member must provide to the COC a general description of the circumstances relating to the need to attend the meeting remotely; the description generally need not exceed 20 words and the COC may not require the member to disclose any medical diagnosis or disability, or any personal medical information that is exempt under existing law.
- The COC must approve the request and should approve it at the earliest opportunity; if the request does not allow sufficient time to place this proposed action on the meeting agenda, the policy body may take action at the beginning of the meeting.

In addition to the requirements outlined above, the following requirements apply regardless of whether the COC member's remote attendance is based on "just cause" or "emergency circumstances":

- A COC member/alternate may not attend meetings remotely for more than three consecutive months or more than 20% of the meetings during the calendar year (or more than two meetings during the calendar year if the COC meets fewer than 10 times per calendar year).
- The COC member/alternate must disclose at the meeting, before any action is taken, whether any other individual 18 years of age or older is in the room at the remote location with the member, and the general nature of the member's relationship with any such individual.
- The COC member/alternate must attend the meeting through both audio and visual technology.
- At least a quorum of the COC must attend the meeting in person from a single physical location clearly identified on the agenda; the location must be open to the public and situated within the jurisdiction.

Staff is seeking the COC's feedback on whether to continue to allow public participation via zoom, especially in the event that the COC member/alternates wish to invoke the provisions of Option 1 or Option 2 to participate remotely themselves. If no COC members/alternates are participating remotely, then staff recommends that public participation be solely in person in order to streamline the meeting production. It is worth noting that under any of the above scenarios, public comments can be submitted in advance of a meeting through various methods as well, as is current practice.

If members/alternates wish to make use of either the Option 1 or the Option 2 provisions at future meetings, staff urges them to contact staff and the COC Chairperson as early as possible so that appropriate information and arrangements can be made.

## **FISCAL IMPACTS**

None.

## **NEXT STEPS**

Effective March 1, 2023, TAM will conduct all public meetings, subject to the Ralph M. Brown Act (Brown Act), in-person under the rules of AB 2449. COC meetings will continue to be held in the TAM conference room, located at 900 Fifth Avenue, Suite 100, San Rafael, with an option for members of the public to participate remotely if decided by the COC, and to allow, if there is a need, members/alternates of the COC to participate in-person or remotely under the provisions of AB 2449.

## **ATTACHMENTS**

None.