



# TOWN OF FAIRFAX

## STAFF REPORT

### February 1, 2023

**TO:** Mayor and Town Council

**FROM:** Heather Abrams, Town Manager

**SUBJECT:** Receive Information Related to Remote Participation in Public Meetings After February 28, 2023

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#### **RECOMMENDATION**

Receive information related to remote participation in public meetings after February 28, 2023.

#### **BACKGROUND**

Since October 2021, the Town Council and Town boards, committees, and commissions have relied on AB 361 to hold fully remote or hybrid meetings. AB 361 is set to expire in January 2024; however, in practical terms, AB 361 cannot be relied upon without a proclaimed State of Emergency. Governor Newsom has announced that the proclaimed State of Emergency will end on February 28, 2023.

With the expiration of the State of Emergency, the Town Council and Town committees will be required to hold meetings in-person beginning in March 2023. For Town Council and Planning Commission only, members may participate remotely if they comply with the Brown Act. In addition to the standard options (also known as the “old” rules), the Act now includes two new options for remote participation, which are summarized below. For Council and Planning Commission, members of the public may participate in-person or via Zoom.

The Town lacks the equipment and staff resources to support hybrid meetings for boards, committees, and commissions other than the Town Council and Planning Commission as of February 28, 2023. Town staff will continue to investigate options to provide a “plug-and-play” hybrid meeting option for committees and commissions that advise the Council, however, no timeline nor cost estimate is available at this time.

#### **DISCUSSION**

The Brown Act includes traditional teleconferencing rules and new provisions adopted under AB 2449. Although the Act gives members of legislative bodies the option to participate remotely, utilizing these provisions will require members to plan ahead and to work closely with staff to comply with the statutory requirements.

##### A. Traditional Teleconferencing Rules

Anyone participating remotely under traditional teleconferencing rules must include their remote location on the publicly-posted agenda, post the agenda at the specified location, and be prepared to make that location open to the public. This will require members to provide the

address of their remote location to the Town Clerk well in advance of the meeting, so that staff can include the address on the notice and agenda for the meeting. The member must also post the agenda at their remote location. Aside from these agenda-related requirements, there are very few limits under traditional Brown Act rules related to remote participation. A quorum of the members must participate from locations within Fairfax, but they need not participate from a single location. Nor are there limitations on the permitted reasons for remote participation or the number of times per year that a member may participate remotely.

## B. AB 2449 Rules

In contrast, while remote participation by legislative body members under AB 2449 does not require the address of a remote location to be included on the agenda, the agenda to be posted at the location or the location to be open to the public, it comes with more onerous requirements for the legislative body member than traditional teleconferencing rules. Specifically, if any member relies on AB 2449 to participate remotely, the member may only do so if a quorum of the Council participates in-person from a single location in Fairfax. In addition, remote participation is only permitted where there is “Just Cause” or an “Emergency Circumstance” as defined by the Act.

1. Just Cause – A member may participate remotely under one of the “just cause” provisions listed below. To do so, the member must notify the legislative body at the earliest possible opportunity of their need to participate remotely and provide a general description of the reason for this need. Only the following four circumstances are acceptable as “just cause” for remote participation:

- a) childcare or caregiving of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires a member 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; or
- d) travel while on business of the legislative body or another state or local agency.

2. Emergency Circumstances – A member may participate remotely if they have a physical or family medical emergency that prevents a member from attending in person. To do so, the member must request that the legislative body allow them to participate in the meeting remotely because of emergency circumstances and the legislative body must take action to approve the request. This request should either be listed on the agenda or if it is not on the agenda, the legislative body may act on the request at the beginning of the meeting by majority vote.

Before acting on an emergency circumstance request, the legislative body must request a general description of the circumstances relating to the member’s need to appear remotely. The Act specifies that the description cannot exceed 20 words and the member does not have to disclose any personal medical information.

Beyond the limitation on qualifying reasons for participating remotely, AB 2449 also limits the number of times a member can participate remotely and requires that members utilize hybrid technology. Additionally, a member participating remotely 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 individuals.

**FISCAL IMPACT**

None

**CEQA AND CLIMATE ACTION PLAN CONSISTENCY**

The Council's review of information related to remote meeting participation is not a "project" under the California Environmental Quality Act, because it does not involve an activity which has the potential to cause a direct or reasonably foreseeable indirect physical change in the environment. (Cal. Pub. Res. Code § 21065).