



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Toni Taber

SUBJECT: Incorporate Governor's Executive
Order regarding Teleconference
Requirements in the Brown Act into
City Open Government (Sunshine)
Resolution

DATE: March 13, 2020

Approved

Date

3/13/20

RECOMMENDATION

Adopt a resolution modifying City public meetings and amending the City's Consolidated Open Government and Ethics Resolution No. 77135 to incorporate Section 11 of the Governor's Executive Order N-25-20 regarding teleconference requirements in the Brown Act to allow City legislative bodies to hold public meetings via teleconferencing or otherwise electronically without noticing the teleconferenced locations on the agenda, without making teleconferenced locations accessible to the public, without posting agendas at teleconferenced locations, without requiring members of the legislative bodies to be physically present at the location specified in the meeting notice, and without requiring a quorum of the members of the local body to participate from locations with the City's jurisdiction.

OUTCOME

Approval of this action will allow the City Council, Council Committees, City Decision-Making Bodies, City Boards, Committees and Commissions, and City Other Advisory Entities to hold public meetings by teleconference, or otherwise electronically, without listing the teleconference locations, as long as the agenda indicates as such 72 hours in advance, and as long as the agenda lists one publicly accessible physical location that the public can observe and attend to provide public comment.

BACKGROUND

The Brown Act allows a local legislative body to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to attend and to address the local legislative body, as long as the following requirements are met: each teleconference location from which a member is participating is noticed on the agenda; each teleconference location is accessible to the public; members of the public must be able to address the body at each teleconference location; at least one member of the legislative body must be physically present at the location specified in the meeting agenda;

and, during teleconference meetings, at least a quorum of the members of the local body must participate from locations within the local body's territorial jurisdiction.

On March 12, 2020, Governor Gavin Newsom issued Executive Order N-25-20, which in Section 11, suspended these teleconferencing requirements during the period in which state or local public officials impose or recommend measures to promote social distancing, as long as public meetings are still noticed within the timeframe prescribed by the Brown Act, and local bodies notice at least one publicly accessible location from which members of the public shall have the right to observe and offer public comment at the public comment.

The City has adopted Consolidated Open Government and Ethics Resolution No. 77135, which imposes additional public meeting requirements than those imposed by the Brown Act. In response to the current threat to the general public of the COVID-19 virus, in order to apply the suspension of the Brown Act teleconferencing requirements in Executive Order N-25-20 to the City's legislative bodies, it is recommended that the City Council adopt a resolution modifying City public meetings and incorporating Section 11 of the Governor's Executive Order N-25-20 regarding suspension of the teleconference requirements in the Brown Act into the City's Consolidated Open Government and Ethics Resolution No. 77135.

ANALYSIS

Adoption of this resolution will allow City Council, Council Committees, City Decision-Making Bodies, City Boards, Committees and Commissions, and City Other Advisory Entities to hold public meetings via teleconferencing, or otherwise electronically, without noticing the teleconferenced locations on the agenda, without making teleconferenced locations accessible to the public, without posting agendas at teleconferenced locations, without requiring members of the legislative bodies to be physically present at the location specified in the meeting notice, and without requiring a quorum of the members of the local body to participate from locations within the City's jurisdiction.

Agendas will still need to be posted in compliance with the timelines prescribed on the Matrix of Public Meeting Requirements on page 2-17 of Resolution No. 77135, and will still need to list at least one publicly accessible physical location from which members of the public can observe and provide public comment. If members of the legislative body teleconference or otherwise electronically participate in the public meeting, that fact would need to be noted on the meeting agenda at least 72 hours in advance of the meeting, but the remote location would not be listed. During the meeting, all votes would still need to occur by roll call.

For example, even if the meeting agenda was required to be posted 7 days in advance of the meeting, a Commission agenda may indicate, at least 72 hours in advance of the meeting, "One or more Commissioners may be teleconferencing or otherwise electronically participating from a remote location." The agenda should also indicate, "As of the date of this posting [insert date, which could be the date of the meeting], Commissioners X, Y, and Z will be participating via teleconference." At the beginning of the meeting, the Chair would announce which

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Commissioners are participating via telephone or otherwise electronically, and that all votes will be counted by roll call vote.

This action does not affect public participation by teleconference. Thus, even now, if the public is allowed to participate by teleconference or webinar, the toll-free teleconference number or webinar link information can be provided at any time on the agenda.

EVALUATION AND FOLLOW-UP

This resolution will be effective only during the period in which state or local public officials impose or recommend measures to promote social distancing. It will automatically be ineffective once those measures have been lifted. If additional executive orders affecting the Brown Act are issued by the Governor, the City Council would need to take actions to implement such executive orders into the City's Consolidated Open Government and Ethics Resolution.

CLIMATE SMART SAN JOSE

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

COORDINATION

This memorandum has been coordinated with the City Manager's Office and the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

Not applicable.

CEQA

Not a Project, File No. PP17-008. General Procedure & Policy Making resulting in no changes to the physical environment.

TONI TABER
City Clerk

For questions, please contact Toni Taber, City Clerk, at (408) 535-1270.