



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Toni Taber  
David Sykes

**SUBJECT:** Incorporate Current and Future  
Governor's Executive Orders  
regarding the Brown Act into  
City Open Government (Sunshine)  
Resolution

**DATE:** March 19, 2020

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## **RECOMMENDATION**

Adopt a resolution modifying City public meetings and amending the City's Consolidated Open Government and Ethics Resolution No. 77135 to incorporate Paragraph 3 of the Governor's Executive Order N-29-20 regarding teleconference requirements in the Brown Act to allow City legislative bodies to hold public meetings solely by teleconferencing or otherwise electronically, and to incorporate all future Governor's Executive Orders regarding the Brown Act into the City's Sunshine procedures, as deemed appropriate by the City Clerk and City Manager, without further action from the City Council during this period that state or local public health officials have imposed or recommended social distancing measures.

## **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 solely by teleconference, or otherwise electronically, without listing the teleconference locations and without any physical location, as long as the agenda, at least 72 hours in advance, indicates that members of the legislative body may be participating electronically, indicates that the public may only participate by teleconference or webinar, and indicates the method (e.g., toll-free telephone number, videoconference link) by which the public may participate electronically. This will be applied to meetings that have been determined to be essential.

## **BACKGROUND**

The Brown Act allows a local legislative body to hold public meetings by teleconference and to make public meetings accessible telephonically or otherwise electronically to the public seeking to attend and to address the local legislative body, as long as the following requirements are met: (1) each teleconference location from which a member is participating is noticed on the agenda;

(2) each teleconference location is accessible to the public; (3) the public must be able to address the body at each teleconference location; (4) at least one member of the legislative body must be physically present at the location specified in the meeting agenda; and, (5) 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 as long as public meetings were still noticed within the timeframe prescribed by the Brown Act, and local bodies noticed at least one publicly accessible location from which members of the public could observe the meeting and offer public comment.

On March 17, 2020, the City Council incorporated Executive Order N-25-20 into the City's Consolidated Open Government and Ethics (Sunshine) Resolution No. 77135 to allow the City to utilize the suspension of the Brown Act teleconferencing requirements in Executive Order N-25-20.

Later that day, Governor Newsom issued Executive Order N-29-20, which withdrew and superseded Executive Order N-25-20. This new Executive Order suspended the Brown Act teleconferencing requirements so that legislative bodies can hold public meetings solely by teleconference, or otherwise electronically, without listing the teleconference locations and without any physical location, as long as the agenda that is posted 72 hours in advance indicates that the members of the legislative body will be participating by teleconference, provides the teleconference or webinar access information by which the public may participate electronically, and lists the procedure for individuals with disabilities to request reasonable accommodations. Thus, a physical location for the public to observe and provide public comment at the public meeting is no longer required.

The City's Consolidated Open Government and Ethics Resolution No. 77135 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-29-20 to the City's legislative bodies, it is recommended that the City Council adopt a resolution modifying City public meetings and amending the City's Consolidated Open Government and Ethics Resolution No. 77135 to incorporate Paragraph 3 of the Governor's Executive Order N-29-20 regarding suspension of the teleconference requirements in the Brown Act.

During this COVID-19 pandemic period, it is anticipated that the Governor may issue additional Executive Orders which affect the Brown Act. To address such rapidly changing directives, it is recommended that the City Council incorporate all future Governor's Executive Orders regarding the Brown Act into the City's Sunshine procedures, as deemed appropriate by the City Clerk and City Manager, without further action from the City Council.

## **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 solely by teleconferencing, or otherwise electronically, without noticing the teleconferenced locations on the agenda, without making teleconferenced or physical locations accessible to the public, without posting agendas at teleconferenced locations, without requiring members of the legislative bodies to be physically present at the meeting, 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. If members of the legislative body teleconference or otherwise electronically participate in the public meeting, that must be noted on the meeting agenda at least 72 hours in advance of the meeting, but the remote location would not be listed. If the public can only participate by teleconference or webinar, that must be noted on the meeting agenda at least 72 hours prior to the meeting along with the method (e.g., toll-free telephone number or videoconference link) by which the public may participate electronically and the procedure for individuals with disabilities to request reasonable accommodation, consistent with the Americans with Disabilities Act. During the meeting, all votes by the legislative body would still need to occur by roll call.

For example, even if the City Council meeting agenda is posted 10 days in advance of the meeting, the City Council agenda may indicate, at least 72 hours in advance of the meeting, "One or more Councilmembers may be teleconferencing or otherwise electronically participating from a remote location." Though not required, the agenda can also indicate, "As of the date of this posting [insert date, which could be the date of the meeting], Councilmembers X, Y, and Z will be participating by teleconference or videoconference." If the public can only participate by teleconference or webinar, the City Council agenda should indicate, at least 72 hours prior to the meeting, "The public can observe the meeting and provide public comment only by teleconference [insert toll-free telephone number and related information] or webinar [insert videoconference link]." If the method or information by which the public may participate electronically changes, that updated information can be posted within 72 hours prior to the meeting. At the beginning of the meeting, the Mayor will announce which Councilmembers are participating by telephone or otherwise electronically, and that all votes will be counted by roll call vote.

## **CONCLUSION**

Adoption of this resolution 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 solely by teleconference, or otherwise electronically, without listing the teleconference locations and without any physical location, as long as the agenda, at least 72

hours in advance, indicates that members of the legislative body may be participating electronically and provides the electronic participation access information (e.g., toll-free telephone number or videoconference link) for the public to participate. This will be applied to meetings that have been determined to be essential.

### **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, such directives will be incorporated into the City's Sunshine procedures, as deemed appropriate by the City Clerk and City Manager, without further action from the City Council.

### **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 Attorney's Office.

### **COMMISSION RECOMMENDATION/INPUT**

Not commission recommendation or input is associated with this action.

### **CEQA**

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



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City Clerk



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City Manager

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