



Arroyo Verdugo Communities Joint Powers Authority

DATE: December 1, 2022
TO: Governing Board
FROM: Laura Rubio-Cornejo, Executive Director
SUBJECT: RETURN TO IN PERSON MEETINGS

RECOMMENDATION:

1. Find that this action is exempt from review pursuant to the California Environmental Quality Act (CEQA) in accordance with State CEQA Guidelines Section 15061(b)(3), the “common sense” exemption that CEQA only applies to projects that have the potential for causing a significant effect on the environment; and
2. Provide direction to staff on return to in person meetings

BACKGROUND:

In response to the risks presented by the COVID-19 pandemic, temporary changes to the Brown Act were enacted to allow for remote meetings of all California legislative bodies. Several government agencies have returned to in-person meetings, with some allowing for remote public participation. This report provides a brief history of how the Brown Act was modified in response to the COVID-19 pandemic. Staff is seeking direction from the Governing Board on how to handle public comment at the Arroyo Verdugo Communities Joint Powers Authority (AVCJPA) Governing Board meetings.

March 2020 Executive Orders

A portion of the Brown Act’s remote meeting requirements were suspended at the onset of COVID-19 pandemic by Governor’s Executive Order’s N-25-20 and N-29-20. Provisions that were suspended included the following:

- Requirement that a quorum of the legislative body participating from locations within the jurisdiction;
- Requirement that each remote meeting location be identified in the meeting agenda;
- Requirement that meeting agendas post all teleconference locations;
- Requirement that each meeting location must be “accessible” to the public; and
- Requirement that public comment be allowed at each remote meeting location.

Pursuant to these executive orders, the AVCJPA Governing Board began to meet remotely in March of 2020.

AB 361

On June 11, 2021, the Governor issued Executive Order N-08-21, which rescinded the above noted suspensions effective September 30, 2021. In recognition of that the pandemic was ongoing, on September 16, 2021 the Governor signed AB 361, an urgency measure, which amended the Brown Act and authorized teleconferenced public meetings under certain circumstances where the participation is from a remote location. AB 361 went into effect October 1, 2021 and expires on January 1, 2024 or sooner should the Governor end the COVID-19 state of emergency.

AB 361 applies to meetings during a state of emergency as declared by the Governor. The law requires either imposed or recommended measures to promote social distancing by state or local officials, or a finding by the legislative body that meeting in person would present imminent risks to the health or safety of attendees as a result of the emergency.

AB 361 requires several procedural safeguards to protect public participation during a remote meeting, key measures are summarized as follows:

- The public must have the ability to address the legislative body directly, and must be given information on how to address the body;
- The public must be provided either a call-in or internet-based service option;
- The body must stop the meeting if the call-in or internet-based option fails;
- The legislative body cannot require that public comments be submitted in advance (although this option can be provided);
- Speakers cannot be required to pre-register (except as required by an independent call-in or internet platform);
- Members of the public must be given a reasonable time to register to provide public comment; and
- Agencies that provide a timed public comment period shall not close the public comment period until that time period has expired.

The Governing Board has at each of its meetings voted to continue to meet remotely as allowed under AB 361. On October 17, 2022, the Governor announced his intent to end the COVID-19 state of emergency on February 28, 2023. Should the state of emergency end as announced, AB 361 would cease to apply and pre-pandemic Brown Act rules would again apply.

AB 2449

On September 13, 2022 the Governor signed AB 2449 which goes into effect on January 1, 2023 and sunsets on January 1, 2026. AB 2449 establishes certain requirements and procedures for remote meetings including the following:

- A quorum of the body must participate from a single, physical, public location as identified on the agenda and within the body's jurisdiction;
- Where a physical quorum is met, AB 2449 allows a member of the body who is not physically present to request to remotely attend. Allowances for a member to meet remotely include "just cause" (childcare or caregiving need, contagious illness, defined physical or mental disability not otherwise accommodated, or travelling on official business of the body of another government agency), or, where approved by the body, due to "emergency

circumstances”

- Requirements set forth by AB 2449 for remote participation include:
 - The member of the body attending remotely must publicly disclose whether anyone over 18 years of age is in the room at the time of the meeting;
 - The member must participate using both audio and video; and
 - The member cannot participate remotely for more than three consecutive months or 20 percent of the regular meetings in a calendar year. If the legislative body meets fewer than ten times per calendar year, remote participation by any one member cannot be for more than two meetings.

RETURN TO IN PERSON MEETINGS

Prior to the COVID-19 state of emergency all AVCJPA Governing Board meetings were held in-person only. Circumstances where a Board member needed to participate remotely were governed by Brown Act rules and posted accordingly.

Throughout the pandemic AVCJPA staff have supported virtual, all-remote Governing Board meetings allowing for remote participation of Board members and public comment. This required minimal support from the City of Pasadena’s Department of Information and Technology (DoIT) and was more easily facilitated due to the all remote nature of the meetings.

A return to in person meetings requires direction from the Board on how to handle public comment, namely whether to return to the pre-pandemic practice of having all in-person meetings, inclusive of public comment or whether to allow for both in-person and remote public comment.

In-person AVCJPA Governing Board meetings will be held at the City of Pasadena Council Chambers. The following considerations should be noted in providing direction to staff on how to proceed:

- Option 1: All in-person meetings, including in-person public comment
 - Pre-Pandemic Brown Act rules would apply;
 - Public comment available only in-person and through written comment; and
 - Board members would be allowed to participate remotely via telephone by following the Brown Act provisions for remote meetings; and
- Option 2: In person meetings with remote and in-person public comment allowed
 - Pre-Pandemic Brown Act rules would apply;
 - Public comment available in-person, through written comment and remote;
 - Board members would be allowed to participate remotely via telephone or zoom by following the Brown Act provisions for remote meetings; and
 - Board meetings would be live streamed through K-Pas and online; and

Facilitating Option 1 would require no additional resources from AVCJPA staff or member cities. Facilitating Option 2 would require additional support from the City of Pasadena’s DoIT, KPAS for live streaming and additional staff support to assist with managing live public comment. The following assumptions and related costs have been made:

- KPAS support for live streaming- one staff in City Hall control room at \$1,800 per year (\$300 per meeting);

- DoIT support for zoom functions and allowing remote commenters into the meeting would cost \$1,170 per year (\$195/meeting); and
- AVCJPA staff to assist with managing live public comment- One additional staff person would be needed to help manage incoming public comment. No cost is being assumed for this but would require a member city employee to assist.

The total amount of \$2,970 has not been identified in the budget. AVJCPA staff would either need to tap into the JPA's reserves or invoice each member city for their fair share in order to cover the cost.

Given that over the course of the COVID-19 state of emergency the AVCJPA Governing Board did not receive any public comment, Option 2 would not seem to be fiscally prudent. Staff recommends moving forward with Option 1.

ENVIRONMENTAL REVIEW:

The California Environmental Quality Act (CEQA), State CEQA Guidelines Section 15061(b)(3) provides a "common sense" exemption to environmental review that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to review. The action proposed herein, the continuance of holding meetings remotely during a declared state of emergency, does not have the potential for causing a significant effect on the environment.

FISCAL IMPACT:

A return to all in person meetings would have no additional fiscal impact.

A return to in person meetings while allowing for the public to participate remotely would cost an additional \$2,970 per year. This amount has not been identified in the budget. AVJCPA staff would either need to tap into the JPA's reserves or invoice each member city for their fair share in order to cover the cost.