

MEMO

Discussion/Action Item #: 8



Meeting Date: April 21, 2023

To: Board of Directors
From: Rob Wellington, Legal Counsel
Approved by: General Manager, Felipe Melchor

Subject: Discuss and Consider Approval of Board Member Teleconference Policy

RECOMENDATION:

That the Board of Directors consider, discuss and then approve the attached Board Member Teleconference Policy.

BACKGROUND

With the ending of the Governor's proclaimed COVID-19 State of Emergency on February 28, 2023, the attention of legislative bodies of local public agencies has turned to the new set of rules and procedures for teleconferencing their public meetings, as set forth in Assembly Bill 2449, which came into effect on January 1, 2023.

AB 2449 and the other two provisions for conducting public agency meetings by teleconferencing or videoconferencing were generally discussed by this Board at its meeting of February 17, 2023, with a review of the memo entitled "Board Teleconference Rules (Effective as of March 1, 2023)."

DISCUSSION

The AB 2449 legislation provides a somewhat complicated set of criteria that must be satisfied, procedures that must be implemented and strict recordkeeping requirements and limitation of the number of times a board member can rely upon the provided bases ("just cause" and "personal emergency") to attend remotely.

Therefore we have drafted and submitted to the Board herewith a proposed Policy setting forth the rules and procedures for video- or teleconferencing by the general public, and by board members under the usual/traditional video- or teleconferencing rules historically available (pre-COVID-19) under the Brown Act, and additionally, and in more detail, the recently expanded rules and procedures for videoconferencing pursuant to AB 2449.

One suggested provision that I have added to this policy, that is not specifically required by AB 2449, is the provision under the Expanded Teleconference Procedures (on page 3) for the optional use of email to the District's Executive Assistant/Board Clerk for the "just cause" notifications and the "emergency circumstance" requests. A timely oral notification or request would still be permissible.

CONCLUSION

Submitted for your consideration and adoption/

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Let's not waste this.

**BOARD MEMBER TELECONFERENCING POLICY
OF THE
MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT**

The following policy (“Policy”) shall govern the District’s use of teleconferencing for the attendance at meetings of the members of its Legislative Bodies. The General/Public Teleconference Policies (Article B) and Standard Teleconferencing Procedures (Article C) shall apply in all instances, except when a Board member has either “just cause” or an “emergency circumstance” so as to permit the use the Expanded Teleconferencing Procedures (Article D).

A. Definitions

Unless otherwise defined herein, the following definitions shall apply to this Policy:

District – shall refer to the Monterey Regional Waste Management District.

Brown Act/Ralph M. Brown Act – shall reference to Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the California Government Code, known as the “Ralph M. Brown Act” pursuant to Government Code section 54950.5, as such shall be amended from time to time.

Legislative Body – shall mean the Board of Directors or a Standing Committee of the District.

Member – shall mean a member of a District Legislative Body.

Meeting – shall mean a meeting of the Legislative Body.

State of Emergency – shall mean a state of emergency proclaimed by the California Governor or such others as may be empowered pursuant to Section 8625 of the California Emergency Services Act, as set forth in Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2 of the California Government Code.

Teleconferencing – attendance from different locations, other than the physical location of a meeting, by way of an audio device, whether it be telephone, audio-only internet connection, or otherwise.

Videoconferencing – attendance from different locations, other than the physical location of a meeting, by way of a dual audio and visual device, whereby participants can be both seen and heard.

B. General/Public Teleconferencing Policies:

At the discretion of the Legislative Body and/or the General Manager, any employee, consultant, vendor, or individual attending a meeting of a Legislative Body, other than a member of the Legislative Body, shall be permitted to attend via teleconference or videoconference without compliance with the rules or conditions set forth herein. Members of a Legislative Body, inclusive of the governing board members and other committees or bodies required to comply with the Brown Act, may only participate via teleconference or videoconference as permitted by the following two policies (Articles C and D).

To the extent a Member of a Legislative Body desires to attend a meeting via teleconference or videoconference, the Member shall generally be required to comply with the following “Standard Teleconferencing Procedures” (Article C) unless the circumstances exist to justify the use of the “Expanded Teleconferencing Procedures” (Article D).

A Member not in compliance with any such procedure, as applicable, shall not be permitted to attend a meeting via Teleconference or Videoconference for any purpose, whether to participate in or listen to such meeting.

In all instances in which a Member is attending a meeting via teleconference or videoconference, teleconferencing or videoconferencing, the Legislative Body shall:

1. Take all votes by roll-call;
2. Conduct the meeting in a manner that protects the statutory and constitutional rights of the parties and public appearing before the Legislative Body;
3. Provide notice and post agendas as otherwise required by the Brown Act
4. Permit members of the public access to the meeting and an opportunity to address the Legislative Body as required by the Brown Act.

C. Standard/Usual Teleconferencing Procedures (as historically available in the Brown Act.)

A Member may attend a meeting via teleconference or videoconference if the following conditions are satisfied:

1. At least a quorum of the members of the Legislative Body participate in the meeting from locations within the boundaries of the district;
2. A hard copy of the agenda posted for the meeting is posted at all teleconference locations, each of which are identified in the notice and the agenda for the meeting;
3. Each teleconference location is physically accessible to the public, and the public is permitted to comment at each teleconference location.

D. Expanded Teleconferencing Procedures (Pursuant to AB2449 and effective through January 1, 2026):

A Member may attend a meeting via videoconference only (teleconference will not be permitted under these procedures), without the need to comply with the Standard Teleconferencing Procedure requirements to notice and post at the agenda locations or make such locations accessible to the public, if the following conditions are satisfied:

1. At least a quorum of the members of the Legislative Body participate in-person from a single physical location accessible to the public, which is within the boundaries of the district and clearly identified in the posted agenda;
2. The public is permitted to attend the meeting either by teleconference or videoconference in a manner such that the public can remotely attend and offer real-time comment during the meeting;
3. Notice of the means by which the public can remotely attend the meeting via teleconference or videoconference and offer comment during the meeting is included within the posted agenda;
4. The Member(s) attending remotely have either “just cause” or an “emergency circumstance” that justifies their attendance via videoconference.
 - a. A Member shall only have “just cause” for remote attendance if such participation is for one of the following reasons:
 - i. To provide childcare or caregiving need to a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner, with such terms having the same meaning as those terms are defined in Government Code section 12945.2;
 - ii. Due to a contagious illness that prevents the Member from attending in person;
 - iii. Due to a need related to a physical or mental disability as defined in Government Code sections 12926 and 12926.1 not otherwise accommodated; or

- iv. Due to travel while on official business of the Legislative Body or another state or local agency.
 - b. A Member shall have an “emergency circumstance” if such participation is due to a physical or family medical emergency that prevents the Member from attending in person.
5. The Member(s) have not attended a meeting remotely on the basis of “just cause” for more than two meetings in the current calendar year (with attendance at board meetings and committee meetings considered separately); and
 6. The Member(s) have not attended a meeting remotely on the basis of “just cause” or “emergency circumstance” for more than three consecutive months or more than two (2) meetings in a calendar year [*a number that would be 20% of the regular meetings of the Legislative Body (board or committee meetings) in a calendar year, rounded down to the nearest whole number*] in a calendar year (again with attendance at board meetings and committee meetings considered separately).
 7. The Legislative Body has, and has implemented, a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and resolving any doubt in favor of accessibility. In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, the Legislative Body shall also give notice of the existence of a procedure for receiving and resolving requests for accommodation.

In order to utilize the Expanded Teleconference Procedures, a Member shall:

1. For a “just cause” circumstance, notify the Legislative Body at the earliest opportunity, including up to the start of a regular meeting, of their need to participate remotely for just cause, including a general description of the circumstance relating to their need to appear remotely at the given meeting;
2. For an “emergency circumstance,” request to participate at a meeting due to an “emergency circumstance” as soon as possible, preferably before the posting of the agenda but up to the start of the meeting, with such request including a general description of the circumstances relating to their need to appear remotely at the given meeting, though any description for emergency circumstances need not exceed 20 words and need not include any medical diagnosis or disability or personal medical information exempt from disclosure by law.
3. Whenever possible it is recommended that the above-mentioned notification of “just cause” or request regarding an “emergency circumstance” be submitted by email to Executive Assistant/Board Clerk Ida Gonzales, at igonzales@regenmonterey.org, or her designee, as soon as possible prior to the Legislative Body Meeting, but no later than the start of the Meeting.
4. 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 such individuals.
5. Participate through videoconferencing, with both audio and visual technology.

Upon receipt of a request from a Member to utilize the Expanded Teleconference Procedures, the Legislative Body shall:

1. Take action by majority vote on a request to participate remotely due to an “emergency circumstance” at its earliest opportunity, which may be taken as a noticed agenda item or as

an added item if sufficient time was not provided to place the proposed action on the agenda.

2. If a Member seeks to participate due to a specified “emergency circumstance” and the Legislative Body votes not to accept the basis for virtual attendance under AB 2449, then the Member may participate only as a general member of the public and cannot vote on any action item.
3. In the event of a disruption that prevents the broadcast of the meeting to members of the public, or in the event of a disruption within the District’s control that prevents members of the public from offering public comment using the teleconferencing or videoconferencing options, take no further action during a meeting until such access is restored.

E. Reserved for Emergency Teleconferencing Procedures.

This Article E is reserved at this time for setting forth such “Emergency Teleconferencing Procedures” as the Legislative Body may choose to enact should there be a State of Emergency proclaimed.

F. Miscellaneous Provisions:

With respect to the Standard/Public Teleconferencing Procedures and Expanded Teleconferencing Procedures set forth herein, such are intended to comply with Government Code sections 54953(b) and (f), respectively, and as such, in the event of a conflict between this Policy and such statutory provisions the statutory provisions shall control and be implemented as if set forth in full in this Policy.