

City of Piedmont
COUNCIL AGENDA REPORT

DATE: January 17, 2023

TO: Mayor and Council

FROM: Sara Lillevand, City Administrator

SUBJECT: Receipt of a Report on Changes to State Law Regarding Teleconference Meetings and Provide Direction to Staff on Next Steps

RECOMMENDATION

Receive a report on changes to state law regarding teleconference meetings and provide direction to staff on next steps.

BACKGROUND

Since the beginning of the pandemic in March of 2020, the state's public meetings laws have been relaxed to allow for use of teleconferencing by members of legislative bodies without the strict noticing and public access requirements contained in the Brown Act. Initially, this was through an executive order and currently it is in statutory amendments (AB 361), which became effective September of 2021.

AB 361 allows legislative bodies to use abbreviated notice and public access requirements for teleconference meetings, as long as the Governor's State of Emergency remained in force and the legislative body make findings every thirty days that the State of Emergency continues to directly impact the ability of the members to meet in person. The Council has made findings to this effect since AB 361 came into force in 2021.

Governor Newsom has announced his intention to rescind the COVID-19 State of Emergency at the end of February of 2023. This means that the teleconference requirements of the Brown Act which were in place prior to the pandemic will come back into effect on March 1, 2023. In addition, the legislature has made allowance for the sparing use of teleconferencing by members of legislative bodies in other limited circumstances, given just cause, as defined in the Brown Act.

Under the Brown Act, the City of Piedmont's legislative bodies include the City Council and all Commissions, Boards, and Committees.

It is important to note that the regulations regarding teleconference meetings only apply to members of the legislative bodies (Councilmembers, Commissioners, Board and/or Committee Members). The law does not restrict the ability of a legislative body to make teleconference

participation available to members of the public, staff, and/or consultants to participate in meetings virtually if the legislative body so desires.

Traditional Teleconferencing Requirements Under the Brown Act

The traditional, pre pandemic teleconferencing requirements are as follows:

- The meeting agenda must be posted at each teleconference location
- Each teleconference location must be identified on the agenda
- Each teleconference location must be accessible to the public
- A quorum of the legislative body must participate from locations within the jurisdiction of the legislative body.

Just Cause or Emergency Teleconferencing Requirements Under the Brown Act

As mentioned above, the legislature has amended the Brown Act to allow for sparing use of teleconferencing by members of legislative bodies who have just cause or emergency circumstances. The legislature has defined these terms to mean a physical or family medical emergency that prevents a member from attending in person and includes any one of the following:

- childcare or caregiving of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires a member to participate remotely;
- a contagious illness that prevents a member from attending in person;
- a need related to a physical or mental disability; or
- travel while on business of the legislative body or another state or local agency

To participate remotely under the just cause or emergency circumstances provisions, the member must request that the legislative body allow them to participate in the meeting remotely due to emergency circumstances as soon as possible, and the legislative body must take action to approve the request. The legislative body may take action on this request at the earliest opportunity and if the request does not allow sufficient time to place it on the agenda for consideration for the meeting for which the request is made, then the request should be made at the start of the meeting and include a general description of the circumstances related to one of the four items listed above. This general description does not have to be more than 20 words and the member does not have to disclose any personal medical information.

No member of the legislative body may participate in meetings solely by teleconference for a period of more than three consecutive months or 20 percent of the regular meetings for the legislative body within a calendar year, or more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year.

If members participate remotely using the just cause or emergency provisions, the following additional rules apply:

- The legislative body must provide a way for the public to remotely participate in the meeting and must provide notice of how to access the meeting and offer comments

- The public must also be permitted to attend the meeting in person
- The body cannot require public comments to be submitted before the meeting but rather must be allowed in real time.
- Remote members must participate through both visual and audio (i.e. cameras and microphones on)
- Before any action is taken, remote members must disclose whether any other people over 18 years old are present in the room at the remote location and the general nature of the member's relationship with the individual

The requirements for using either the traditional teleconference requirements or the just cause/emergency teleconference requirements set a high bar for remote participation by members of a legislative body. Prior to the pandemic, the traditional requirements for teleconference meetings have made them generally infeasible for meetings by Piedmont's legislative bodies.

Remote Participation by Community Members, Staff, and Consultants

The limitations on remote participation discussed above apply only to the members of the legislative body. Staff and/or members of the public may still appear in meetings remotely without any additional notice requirements. If the legislative body is meeting entirely in person, the public must be permitted to participate in person and may be permitted to participate remotely. If a teleconference option is used by a member of the body, the public must be permitted to participate both in person and remotely.

FISCAL IMPLICATIONS

The implementation of virtual and hybrid meetings during the pandemic has seen increased costs for the City. Prior to the pandemic, the only staff required to attend a meeting was the staff liaison to the body. If a meeting was televised, a KCOM staff member would also work the meeting from the control room.

When teleconference and/or hybrid meeting are implemented, an additional staff member (meeting moderator) is required for teleconference and hybrid meetings to handle the logistics and operations of the virtual software platform used for the meeting, Zoom. Though running a virtual meeting may not seem overly complicated, the operations which happen behind the scenes, including handling public speakers, coordinating panelists and presentations, and other duties require an additional dedicated staff member.

Because of the technology setup in the Council Chambers, if a meeting which allows remote participation of any kind is held, whether or not it is televised, KCOM staff must be on site to operate the cameras and sound system in the City Council Chambers.

Generally, the meeting moderator has been the administrative assistant for the department which staffs the legislative body or the Deputy City Clerk for the City Council, working overtime. This translates to an additional cost of between \$55 and \$80 per hour (before benefits) for this staff member for the duration of the meeting plus setup and takedown time. For meetings which allow teleconference participation by the public that would not normally require KCOM staff, a cost of

between \$41 and \$55 per hour is incurred.

While these costs do add up, the ability of community members to remotely participate in meetings of the City's legislative bodies has generally been considered an enhancement of the ability of the community to participate in government decision making.

DIRECTION TO STAFF

The teleconferencing requirements for members of legislative bodies come from state law and cannot be changed. However, staff requests direction from the City Council on whether it desires to continue to allow community members to participate virtually in meetings of legislative bodies.

Given the fact that the City already incurs the cost of televising the City Council, Park Commission, Planning Commission, and Recreation Commission, it seems reasonable to continue remote public participation in these meetings. These are the bodies that traditionally have seen the most public participation and the cost of one additional Zoom moderator is nominal given the potential for increased public participation in these discussions.

By: John O. Tulloch, Assistant City Administrator / City Clerk