

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT



STAFF REPORT

MEETING DATE: 1/25/2023

Staff Report No. 23-089

TO: AC Transit Board of Directors
FROM: Linda A. Nemeroff, Board Administrative Officer/District Secretary
SUBJECT: Implementation of AB 2449

BRIEFING ITEM

AGENDA PLANNING REQUEST: ☐

RECOMMENDED ACTION(S):

Consider receiving an update on the implementation of AB 2449 regarding new teleconference provisions under the Brown Act.

Staff Contact:

Linda A. Nemeroff, Board Administrative Officer/District Secretary

Jill A. Sprague, General Counsel/Chief Legal Officer

STRATEGIC IMPORTANCE:

There is no strategic importance associated with this report.

BUDGETARY/FISCAL IMPACT:

There is no budgetary or fiscal impact associated with this report.

BACKGROUND/RATIONALE:

Since September 2021, the Board has adopted resolutions on a monthly basis to allow all the District's legislative bodies to hold remote teleconferenced meetings without having to comply with the teleconference requirements of the Brown Act. This was made possible by Assembly Bill 361 (2021) which permits local agency legislative body members to continue remote participation in meetings during a declared state of emergency through December 31, 2023, provided local agencies comply with specific requirements.

Governor Newsom has signaled that he intends to lift the pandemic state of emergency on February 28, 2023, which will eliminate the conditions needed to implement AB 361. This means that beginning on March 1, 2023, all legislative body members will be required to attend meetings in person unless they (1) follow the Brown Act's noticing requirements for legislative body member teleconference participation or (2) follow new emergency provisions for teleconferenced participation contained in AB 2449, which will be in effect through January 1, 2026. The two options in the Brown Act to participate by teleconference are provided below:

Option 1: (the same process used prior to the pandemic)

Pursuant to the Brown Act and Board Policy, the following requirements must be met in order for a member of a legislative body to participate in a meeting via teleconference:

- The meeting agenda(s) shall be posted at all teleconference locations and include a listing of each teleconference location. For example, a Director teleconferencing from a hotel must see that the agenda is posted in the public area of the hotel (such as where notices of events occurring at the hotel are listed) and on the door of Director's room.
- Any notices of the meeting shall list each teleconference location. The District Secretary shall be notified by a Director desiring to teleconference of the Director's location in sufficient detail and sufficiently in advance of the meeting date to meet the requirements for providing the appropriate notice.
- Each teleconference location shall be accessible to the public. For example, if a Director is teleconferencing from his/her hotel room then the door to the room must be ajar or unlocked to permit members of the public to enter during the course of the teleconferenced meeting.
- A speaker phone must be used at the location of the teleconferencing site to permit members of the public who attend the meeting to be able to hear the meeting and, as appropriate, participate in the meeting.
- A quorum of the Board must participate from locations within the boundaries of the District.
- Failure to comply with any of the requirements will prohibit a Director from participating in a meeting by teleconference.
- All votes taken during a teleconferenced meeting shall be by roll call.

Option 2 AB 2449

AB 2449 requires a quorum of the legislative body members to participate in person from a single physical location situated within the local agency jurisdiction, clearly identified on an agenda and open to the public. The legislative body must vote by roll call. In addition, less than a quorum of legislative body members may utilize virtual teleconferencing without publicly noticing their location and making the location accessible to the public under certain circumstances. A member of the legislative body shall only participate in the meeting remotely if all of the following requirements are met:

(A) One of the following circumstances applies:

(i) The member notifies the legislative body at the earliest opportunity possible, including at the start of a regular meeting, of their need to participate remotely for **just cause** (as defined below), including a general description of the circumstances relating to their need to appear remotely at the given meeting. This provision shall not be used by any member of the legislative body for more than two meetings per calendar year.

"Just Cause" is defined as:

- Childcare or caregiving need that requires them to participate remotely
- A contagious illness that prevents a member from attending in person
- A need related to a physical or mental disability not otherwise accommodated by the ADA

- Travel while on official business of the legislative body or another state or local agency

(ii) The member requests the legislative body to allow them to participate in the meeting remotely due to **emergency circumstances** (as defined below) and the legislative body takes action to approve the request. The legislative body shall request a general description of the circumstances relating to the need to appear remotely at the given meeting. A general description of an item generally need not exceed 20 words and shall not require the member to disclose any medical diagnosis or disability, or any personal medical information that is already exempt under existing law.

“Emergency Circumstances” is defined as a physical or family emergency that prevents a member from attending in person. For the purposes of this clause, the following requirements apply:

- A member shall make a request to participate remotely at a meeting pursuant to this clause as soon as possible. The member shall make a separate request for each meeting in which they seek to participate remotely.
- The legislative body may take action on a request to participate remotely at the earliest opportunity. If the request does not allow sufficient time to place proposed action on such a request on the posted agenda for the meeting for which the request is made, the legislative body may take action at the beginning of the meeting.

(B) The member shall 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 any such individuals.

(C) The member shall participate through both audio and visual technology.

The provisions of AB 2449 shall not serve as a means for any member of a legislative body to participate in meetings of the legislative body solely by teleconference from a remote location for a period of more than three consecutive months or 20 percent of the regular meetings for the local agency within a calendar year, or more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year.

In addition, in order to use the provisions of AB 2449, additional conditions must be met, including:

- The legislative body must provide at least one of the following ways by which the public may remotely hear and visually observe the meeting, and remotely address the legislative body:
 - A two-way audiovisual platform.
 - A two-way telephonic service and a live webcasting of the meeting.
- In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment.
- The agenda shall identify and include an opportunity for all persons to attend and address the legislative body directly via a call-in option, via an internet-based service option, and at the in-person location of the meeting.
- In the event of a disruption that prevents the legislative body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a

disruption within the local agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption that prevents the legislative body from broadcasting the meeting may be challenged.

- The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time.
- Individuals desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

ADVANTAGES/DISADVANTAGES:

AB 2449 promotes in person attendance at meetings but also allows limited flexibility under certain circumstances for members of the legislative body to participate remotely without meeting the usual teleconferencing requirements prescribed under the Brown Act. However, the legislation is administratively burdensome, especially when taking into account the number of bodies the District has created that are subject to the Brown Act. It will require staff to track the use of the just cause and emergency circumstances provisions for each member of a legislative body, result in additional agenda items, and restrict remote participation by requiring a quorum of a legislative body to attend meetings in person at a fixed location. In addition, AB 2449 has similar technological requirements to AB 361 which will need to be met for each body.

ALTERNATIVES ANALYSIS:

There is no alternatives analysis as the teleconference rules are predefined in the Brown Act.

PRIOR RELEVANT BOARD ACTION/POLICIES:

Board Policy 101 - Board of Directors Rules for Procedure

ATTACHMENTS:

None

Prepared by:

Linda A. Nemeroff, Board Administrative Officer/District Secretary

Approved/Reviewed by:

Linda A. Nemeroff, Board Administrative Officer/District Secretary

Jill A. Sprague, General Counsel/Chief Legal Officer