

REPORT TO CITY COUNCIL

DATE: MAY 25, 2022

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: NATHAN HAMBURGER, CITY MANAGER

BY: RAMIRO ADEVA, ASSISTANT CITY MANAGER

SUBJECT: STATUS UPDATE AND DISCUSSION ON ASSEMBLY BILL 1944 AND ASSEMBLY BILL 2449 REGARDING PROPOSED AMENDMENTS TO THE BROWN ACT FOR TELECONFERENCE MEETINGS

In 1953, the California State Legislature adopted the Ralph M. Brown Act (Brown Act) to ensure that meetings of legislative bodies of public agencies in the State be conducted in a manner that is accessible to anyone wanting to attend, observe and/or participate in the discussions and/or decisions of the legislative body, with minimal exceptions.

The Brown Act contains many provisions, including language specific to the allowance of public meetings via teleconferencing subject to the following requirements:

1. The legislative body notice each teleconference location of each member that will be participating, and
2. That each teleconference location be accessible to the public, and
3. That members of the public be allowed to address the legislative body at each teleconference location, and
4. That the legislative body post an agenda at each teleconference location, and
5. That at least a quorum of the legislative body participate from locations within the boundaries of the local agency's jurisdiction.

On March 17, 2020, in response to a need borne out of the pandemic, the Governor issued Executive Order (EO) N-29-20, which relaxed the teleconferencing requirements of the Brown Act to facilitate virtual meetings during the COVID-19 declared emergency, and included a sunset date of September 30, 2021.

Prior to the expiration of EO N-29-20, the Legislature adopted Assembly Bill (AB) 361 in mid-September 2021, authorizing local agencies to continue meeting remotely without relaxing the Brown Act's standard teleconferencing provisions, including the requirement

that meetings be conducted in physical locations, if the meeting is held during a state of emergency proclaimed by the Governor and either of the following applies:

1. State or Local officials have imposed or recommended measures to promote social distancing, or
2. The Agency has already determined or is determining whether, as a result of the declared emergency, meeting in person would present imminent risks to the health or safety of attendees.

Upon making certain findings every 30-days, a local agency is then able to continue the Brown Act's modified teleconferencing allowances per AB 361, which has a sunset date of January 1, 2024.

Based on feedback provided by the City Council, there was an interest in exploring remote participation at times for City related meetings. There are currently two bills, AB 1944 (Lee) and AB 2449 (Rubio), being considered in Sacramento, that seek to make further modifications to the Brown Act. Both bills have similar intents and seek to allow members of a legislative body of a local agency to use teleconferencing without identifying each teleconference location in the notice and agenda of the meeting, and without making each teleconference location accessible to the public.

AB 2449 (Rubio) includes the added detail that requires at least a quorum of the members of the legislative body to participate in person from a singular location clearly identified on the agenda, open to the public and situated within the boundaries of the territory over which the local agency exercises jurisdiction. AB 1944 (Lee) does not include such a provision.

On May 4, 2022, both bills were presented by their respective authors to the State Assembly's Local Government committee comprised of Assembly members Bloom, Lackey, Boerner Horvath, Ramos, Luz Rivas, Robert Rivas, Voepel, and Aguiar-Curry.

AB 1944 (Lee) was approved to move forward by a vote of 5-2-1, and AB 2449 (Rubio) was approved to move forward by a vote of 7-1-0. The City's Assembly member Richard Bloom voted "yes" on both bills while noting in his deliberation that he hoped the authors would continue to work with the opposition in preparing final drafts.

While both bills continue to move through the State's legislative process, the general points of support and opposition for each bill are as follows:

Arguments in support of AB 1944 (Lee) express that the bill is an important modernization to the Brown Act that protects local elected officials' location when participating from a non-public, remote location, while improving access to members of the public via a teleconferencing option.

Additionally, supporters claim an increase in participation and interaction with members of the public who would otherwise been unable to access such meetings. Supporters further assert that the pandemic has proven that the ability for legislative body members to participate remotely is effective, transparent, and actually encourages participation from a broader component of the public than was anticipated.

Arguments in opposition of AB 1944 (Lee) claim the bill comes at too great a cost to democratic principles, and sacrifices the value of public transparency and the public's right to meaningful access to legislative body members, which they assert is consistent with the California Constitution. Opposition to AB 1944 (Lee) actually agrees with supporters that disclosing a members remote location is dangerous, however they contend the issue is more about a faulty presumption that public officials' private homes or offices are appropriate places from which to join a public meeting.

Arguments in support of AB 2449 (Rubio) are similar to those in support of AB 1944 (Lee), with added sentiments that existing teleconferencing provisions of the Brown Act are antiquated and fail to recognize in the digital age that a teleconference location is wherever there is a person with a computer, a tablet, or even a mobile phone. Supporters of this bill further emphasize AB 2449 (Rubio) does not require teleconferencing, but merely seeks to modernize existing law to ensure greater public participation in meetings of the legislative bodies of local agencies who choose to utilize teleconferencing. Supporters highlight the bill's requirement that a quorum of the governing body be physically present at a clearly identified meeting location for all public meetings in the spirit of maintaining transparency and accountability.

Arguments in opposition of AB 2449 (Rubio) claim this bill would excise the longstanding democratic protection afforded to the people that requires the entire legislative body to directly face the public. They further state the current draft of the bill should be modified to narrow the circumstances in which members outside of the quorum can participate remotely, so that the same members cannot avoid physically appearing without circumstances that justifies limiting the public's access to the member elected to serve the people's interests.

Since the City's current Legislative Platform does not include a formal stance of support or opposition related to this specific matter, staff is seeking feedback and/or direction from the Council on whether there is a "support" or "oppose" stance for AB 1944 (Lee) and/or AB 2449 (Rubio). This direction would enable staff to respond with formal Letters of Support or Opposition in a timely manner, as both bills continue moving through the State's legislative process. The Council could also choose to take no stance at this time, although doing so would mean staff may not be able to meet the often tight timeframes for requests for Letters of Support or Opposition.

Additionally, staff is seeking feedback on any specific points the Council would like conveyed to the bill author(s) and/or the City's legislative representative on the State Assembly.

Lastly, Cal Cities (formerly known as the League of California Cities) is on the official record as supporting AB 1944 (Lee) and supporting AB 2449 (Rubio) in concept.

RECOMMENDATION

Staff respectfully recommends the City Council:

1. Discuss and provide feedback and/or direction on AB 1944 (Lee) and AB 2449 (Rubio), specifically whether the Council supports or opposes either of the bills, and
2. Discuss and provide feedback to staff of any specific points the Council would like conveyed to the bill author(s) and/or City legislative representative on the State Assembly.