



## Berkeley Housing Authority

1936 University Ave., Suite 150, Berkeley, CA 94704  
Telephone: (510) 981 5470 Fax: (510) 981 5480

Item 8D

NEW BUSINESS

December 8, 2022

*Office of the Executive Director*

To: Honorable Chair and Members of the Berkeley Housing Authority Board

From: Jhaila R. Brown, General Counsel

Subject: Assembly Bill 2449: Teleconference Procedures

### BACKGROUND

Assembly Bill 2449 (“AB 2449” or the “Bill”) which was approved by the Governor on September 13, 2023, amends provisions of the Brown Act relating to remote participation by members of legislative bodies in meetings open to the public. The Bill addresses procedural challenges that members of local agencies have experienced while complying with the Brown Act in the wake of COVID-19 pandemic. More specifically, AB 2449 provides for alternative teleconference procedures by no longer requiring that remote meeting locations be identified or necessarily have them be open to the public. The sections below explain AB 2449’s requirements, benefits, and how it differs from the previous remote participation alternative, Assembly Bill 361 (“AB 361”).

### DISCUSSION

#### **AB 2449 Requirements: Just Cause and Emergency Circumstances**

To take advantage of AB 2449’s benefits, (1) a majority of the members of the legislative body must participate in-person from the same location clearly identified in the agenda, which (2) must be within the boundaries of the agency’s jurisdiction and (3) must be open to the public. This means that only a minority of members may participate remotely for a planned meeting. Additionally, under AB 2449, an agency must prepare a two-way audiovisual platform online that gives remote participants the ability to interact via videoconference in real-time, and/or a live webcasting of the meeting with a two-way telephonic service that allows participants to dial-in and contribute verbally.

Any member opting to participate remotely must provide one of two specific reasons for doing so: (1) “just cause”, or (2) emergency circumstances.

The Bill defines “just cause” as (1) childcare or caregiving need of a child, parent, grandparent, sibling, spouse or domestic partner; (2) contagious illness that prevents a member from attending in person; (3) a need related to a physical or mental disability; (4) travel while on official business of the legislative body or another state or local agency. The member planning on participating remotely must notify the legislative body at the earliest opportunity possible—including at the start of meeting which they intend to attend remotely—of their need accompanied with a general description of the relevant “just cause” for remote participation. Additionally, “just cause” reasons for participating remotely cannot be used by any member for more than two meetings in a calendar year if the agency meets fewer than ten times annually.

“Emergency circumstances” is defined as a physical or family medical emergency that prevents a member from attending in person. As opposed to the “just cause” option for remote participation, this alternative requires that the member request the legislative’s body approval to participate remotely. If there is insufficient time to include the request on the posted agenda for the meeting for which the request is made, the legislative body can act to address the request at the beginning of the meeting in accordance with [existing law](#).

Under both scenarios, the following requirements also apply:

1. Any member participating remotely shall do so through both audio and video technology.
2. Remote members must publicly disclose at the meeting, prior to any action, whether any other individuals 18 years or older are present in the room with the member at the remote location, and the general nature of the member’s relationship with such individuals.
3. AB 2449 does not apply for any member participating solely by teleconference from a location for a period of more than 3 consecutive months, or 20% of the regular meetings for the agency within a calendar year.

### **AB 2449 Benefits Compared to AB 361**

AB 2449 is meant to adopt the benefits of teleconferencing in a post-pandemic world while addressing some obstacles created by its predecessor, AB 361. Hence, unlike AB 361, AB 2449 does not require a legislative body to make specified findings within 30 days of the first teleconference meeting pursuant to the provisions and continue to make those findings every 30 days thereafter to continue to meet under its procedures. AB 2449 is not limited in its application to when a state of emergency has been declared. However, AB 2449 also contains a sunset clause that means these new provisions are set to expire on January 1, 2026. Otherwise, AB 2449’s benefits are similar to AB 361 in the sense that it allows members to participate remotely without meeting traditional agenda posting requirements at those remote locations or requiring them to be accessible to the public.

### **FINANCIAL IMPLICATIONS**

None.

### **CONTACT PERSON**

Jhaila R. Brown

Attachments:

1. Chart summarizing AB2449

<b>AB 2449</b>	
Teleconference Meeting Requirements	<p>(1) Majority of members must participate in-person from the same location identified in the agenda.</p> <p>(2) The physical location is within the boundaries of the agency's jurisdiction.</p> <p>(3) The physical location must be open to the public</p> <p>(4) Majority vote approval for remote participation of members</p> <hr/> <p>For individual members:</p> <ul style="list-style-type: none"> <li>- Notify the legislative body at the earliest opportunity possible, including the start of a regular meeting.</li> <li>- Include a brief (need not exceed 20 words) description of circumstances relating to need to appear remotely.</li> </ul>
Technological Requirements	<ul style="list-style-type: none"> <li>- Public visual and audio observation of in person meeting by two-way audiovisual platform or two-way telephonic service and live webcasting + participation via call-in, internet service, or in-person comment</li> <li>- Remote participant must use audiovisual service</li> </ul>
Reasoning Requirements	<p>(1) Just Cause<sup>1</sup> does not require approval</p> <p>(2) Emergency Circumstances<sup>2</sup> requires approval</p>
Limitations	<ul style="list-style-type: none"> <li>- A member cannot participate remotely more than twice for "just cause" reasons, nor for "emergency" reasons if the body regularly meets fewer than 10 times annually.</li> <li>- Otherwise, a member cannot participate remotely for more than 3 consecutive months or 20% of regular meeting within a calendar year.</li> </ul>
Main Benefits	<ul style="list-style-type: none"> <li>- No state of emergency declaration required.</li> <li>- No 30 days findings requirement.</li> <li>- No prior notification or approval.</li> <li>- No required posting of remote locations</li> </ul>
Expiration	January 1, 2026

<sup>1</sup> "Just Cause" exists in limited instances requiring a member to participate remotely, including: (1) caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner; (2) contagious illness prevents attendance, (3) a need related to physical or mental disability not otherwise accommodated; or (4) traveling on official business of the legislative body or another state agency.

<sup>2</sup> "Emergency Circumstances" are defined as a physical or family medical emergency that prevents a member from attending in person.