



Office of the City Manager

ACTION CALENDAR
December 18, 2007

To: PK Honorable Mayor and Members of the City Council

From: PK Phil Kamlarz, City Manager

Submitted by: Pamyla Means, City Clerk

Subject: Use of Teleconferencing for Participation in Commission Meetings

RECOMMENDATION

Allow the use of teleconferencing by commission members to participate in commission meetings due to extreme, unforeseen health or disability limitations only.

SUMMARY

On October 23, 2007 the City Council directed the City Manager to explore the possibility for requests for teleconferencing by commission or task force members when members have a good reason that they are unable to attend meetings in person.

After reviewing the issue and the many challenges inherent in this type of participation by public officials, staff does not recommend allowing teleconferencing at the Commission or Task Force level for any reason other than extreme, unforeseen health or disability limitations. There are many obstacles to providing teleconferencing capabilities to commissioners. The primary concerns are centered on participation and fairness, technical challenges, meeting management, Brown Act requirements, public policy considerations, and cost.

Despite these many challenges, it is possible to formulate a reasonable policy that allows teleconferencing in very specific, unavoidable situations.

FISCAL IMPACTS OF RECOMMENDATION

Unknown potential costs associated with equipment, phone lines, technical support, commission secretary training, and phone charges.

CURRENT SITUATION AND ITS EFFECTS

Currently, there is no official policy regarding teleconferencing for city boards and commissions.

The use of teleconferencing requires compliance with the requirements of the Brown Act. This involves posting agenda notices within the prescribed timeline and public accessibility at the meeting location as well as each teleconference location.

December 18, 2007

Currently, commissioners who cannot attend a meeting either request a routine leave of absence for the meeting they will miss, or be marked absent.

BACKGROUND

Some commissioners have requested the ability to teleconference for commission meetings. These requests have primarily come from commissioners who are out of the area for travel or business purposes. At the October 23, 2007 Council meeting, Councilmember's Wozniak and Moore submitted a request that the Council consider a policy on this matter.

RATIONALE FOR RECOMMENDATION

There are several areas of concern regarding teleconferencing for commissioners:

1. Brown Act Requirements and Meeting Management Challenges

In order to participate in a meeting via teleconference, compliance with the following provisions of the Brown Act (GC 54953(b)) is required.

- (a) All votes taken during a teleconferenced meeting shall be by roll call.
- (b) Agendas shall be posted at all meeting locations. For the purposes of the requirement, each teleconference site is considered a meeting location.
- (c) Teleconference meetings must be conducted in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency.
- (d) Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. This requires advance planning to insure that the teleconference location is posted on the agenda for the meeting. In addition, each teleconference meeting location must be made accessible to any member of the public who so desires to attend the meeting at that location.
- (e) At least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction.
- (f) The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

Secretaries are required to take minutes, respond to inquiries from the commission and the public (many times while the meeting is in progress), and perform all administrative tasks at the meetings – simultaneously. Adding the technical demands and potential technical difficulties of teleconferencing will reduce the ability of the secretary and the chair to manage the meeting effectively. In addition, this will require additional training for commission secretaries in the areas of the Brown Act, parliamentary procedure and legislative processes.

December 18, 2007

In addition new legislation (SB 343) was recently signed by the Governor. This new law effective July 1, 2008 requires that all writings or documents which are related to any item on an open session agenda and which are distributed to a majority of the City Council or any Commission within 72 hours of a regular meeting be made available for public inspection at the time the subject writing or document is distributed to a majority of the subject body at a designated location identified on the subject agenda. This new requirement will be difficult if not impossible to comply with for members of the public who attend at remote teleconference locations, particularly ones without equipment such as a fax machine or printer.

2. Technical Issues

The technical obstacles to providing teleconferencing are numerous. The greatest challenges are listed below.

- a) Most of the facilities used by commissions for meetings do not have phones or phone lines in the meeting room.
- b) Except for the commissions that meet in the Council Chambers, no meeting facilities have streaming video capability. The lack of streaming to view and hear the meeting along with the addition of a member participating by phone diminishes the quality of public participation and the effectiveness of the meeting.
- c) Any technical errors that may occur during the meeting will require after hours technical support in order to allow that member to continue to teleconference for that meeting.
- d) How will the member at the remote location receive late submissions, handouts, visual aids, etc?
- e) Ongoing problems with sound system availability and/or speakerphone systems. Many existing meeting locations do not have sound systems or phone lines. The use of a speakerphone alone will in most cases be inadequate and will in fact require the addition of a sound system to amplify the conversation so that all in attendance can be heard and understood. The size of the room and the number of people in attendance will affect the sound quality and in some cases, it will still be difficult and perhaps not possible for everyone attending to be heard and understood. Therefore, it is not recommended that more than one person be allowed to teleconference at any given meeting.

3. Phone Line Usage Costs

Commission meetings often last more than two hours. If a commissioner is teleconferencing from a remote location (out of the calling area or even outside the country) there will be significant long distance charges; these charges are not currently budgeted.

4. Participation, Fairness, and Due Process

Participation at commission meetings is enhanced by being present at the meeting through improved communication between the legislative body and the public. Other effective communication considerations including eye contact, facial expressions, and body language would be diminished. Although video streaming of meetings is available for some meetings (those held in the current Council Chambers), remote locations do not have the capability to video stream meetings.

Legal issues surrounding teleconferencing may be raised for those commissions who conduct noticed public hearings, particularly those whose meetings are not streamed. Given that nearly all commissions conduct their meeting in facilities without video streaming capabilities, the commissioner at the remote location will not be able to view materials presented at the meeting, which may impact his/her ability to vote on an issue, especially in adjudicatory matters.

The technical limitations of all meeting facilities will need to be examined and evaluated to determine if it can accommodate teleconferencing. The site must have access to phone lines, speakerphones, and a sound system. It is possible that more than one commissioner will request teleconferencing for the same meeting. If the number of members who so request exceeds the City's capacity for teleconferencing, there would have to be some mechanism for allocating teleconferencing capacity, which would inevitably lead to conflicts. Multiple teleconference sites further complicates the issues identified above and is predominately the basis for the recommendation that only one teleconference member and site be allowed at any given meeting.

5. Public Policy

With the ongoing discussions and the city's commitment to enhance open governmental processes, the limitations of teleconferencing would hinder the public's access to public officials and thereby lessen the vitality and integrity of the discourse at commission meetings.

When a commissioner accepts an appointment to one of the city's citizen commissions, he/she is committing to fully participating in the process. The commitment to attend meetings is recognized when the appointment is accepted, and all efforts should be made to take into account the commission-meeting schedule prior to making travel arrangements.

Commissioners who are not able to attend a meeting may request a leave of absence. By requesting a leave of absence, the Mayor or appointing Councilmember may appoint a temporary replacement that is able to fully participate in the meeting. This is a routine process that is utilized regularly.

December 18, 2007

Despite these concerns, the council may wish to adopt a policy allowing teleconferencing in certain circumstances. The suggested policy is outlined below:

TELECONFERENCING FOR COMMISSIONERS

Criteria for allowing teleconferencing:

Commissioner is unable to attend a commission meeting due to an extreme, unforeseen health or disability situation that would prohibit attendance for a prolonged period of time. Teleconferencing may only be conducted at a meeting location that can accommodate such request as determined by the commission secretary.

Procedure for approval (if criteria above can be met):

1. Commissioner must complete a form requesting the ability to teleconference. The form must include the reason that teleconferencing is needed, the timeframe of the request and meeting dates affected, the address and telephone number of the teleconference location and a statement that the commissioner will accept the responsibility to post the meeting notice in accordance with the requirements of the Brown Act and make the location accessible to any member of the public who so desires to attend at that location.
2. The request is placed on the agenda of the next regular commission meeting and is voted upon by the full commission membership. The request must receive a two-thirds vote for approval. In the event of an urgent matter where a special meeting of the commission is called to consider a request to teleconference, the request must be approved at least five business days prior to the meeting date to allow for proper Brown Act noticing.
3. Only one commissioner from any commission may be permitted to teleconference at each meeting.
4. Teleconferencing is not permitted under any circumstance for subcommittee meetings.

Teleconferencing will not be approved for:

1. Vacation or business travel.
2. Task Force or sub-committee meetings.

ALTERNATIVE ACTIONS CONSIDERED

Not to allow teleconferencing under any circumstances.

CONTACT PERSON

Pamyla Means, City Clerk, 981-6900

Attachments: List of Commissions subject to teleconferencing policy

December 18, 2007

Commissions subject to Teleconferencing Policy

Board of Library Trustees
Citizens Humane Commission
Civic Arts Commission
Commission on Aging
Commission on Disability
Commission on Early Childhood Education
Commission on Labor
Commission on the Status of Women
Community Environmental Advisory Commission
Community Health Commission
Design Review Committee
Disaster and Fire Safety Commission
Downtown Area Plan Advisory Committee
Downtown Berkeley Business Improvement District Advisory Board
Elmwood Advisory Board
Energy Commission
Fair Campaign Practices Commission
Homeless Commission
Housing Advisory Commission
Human Welfare and Community Action Commission
Landmarks Preservation Commission
Loan Administration Board
Mental Health Commission
Parks and Recreation Commission
Peace and Justice Commission
Personnel Board
Planning Commission
Police Review Commission
Public Works Commission
Solano Avenue Business Improvement District Advisory Board
Transportation Commission
Waterfront Commission
West Berkeley Project Area Commission
Youth Commission
Zero Waste Commission
Zoning Adjustments Board