MEMORANDUM

TO: Honorable London N. Breed, Mayor
   Angela Calvillo, Clerk of the Board of Supervisors

FROM: Jon Givner, Deputy City Attorney
      Anne Pearson, Deputy City Attorney
      Bradley Russi, Deputy City Attorney

DATE: March 13, 2020

RE: Meetings of Policy Bodies During Local COVID-19 Emergency

On February 25, 2020, Mayor London N. Breed declared the existence of a local emergency relating to COVID-19. Since that declaration, the County Health Officer has issued public health recommendations and orders relating to large events on both City and private property, and the Mayor and Governor Newsom have issued emergency orders suspending select laws applicable to boards, commissions, and other policy bodies (collectively, "policy bodies"). In this memorandum we address a number of questions that have arisen regarding policy body meetings during the emergency. Because of the fast-evolving nature of the emergency and the orders issued to address it, we will update as necessary this memorandum on the City Attorney’s website.

What emergency orders and measures have the Mayor, Health Officer, and Governor issued relating to public meetings?

- The Health Officer has issued public health recommendations relating to sanitation standards and social distancing.
- On March 11, 2020, the Mayor supplemented her initial declaration of local emergency to suspend select provisions of local law. The Mayor temporarily suspended the section of the City Charter that prohibits teleconferencing by members of City policy bodies, and extended deadlines in local law by which policy bodies must act.
- On March 12, 2020, the Governor issued an executive order suspending provisions of the Brown Act to allow members of policy bodies to participate in public meetings remotely.
- On March 13, 2020, the Health Officer issued an order prohibiting most mass gatherings in any space with a maximum occupant load of 100 people or more, but allowing meetings of policy bodies in rooms with a maximum occupant load of 100 people or more, provided the meeting is held in a government-owned building, actual attendance at the meeting does not exceed 100 people, and the people responsible for the meeting ensure compliance with sanitation and social distancing recommendations. The Health Officer’s order also strongly recommends that the City cancel all policy body meetings that are not necessary to make decisions essential to the continuity of governmental operations and services and the promotion of the health, safety, and welfare of the public. This order is effective from Friday, March 13 at 5:00 p.m. until Friday, April 30, 2020 at 11:59 p.m.
May City policy bodies meet during the emergency?

Yes. The Health Officer's order dated March 13, 2020 allows City policy bodies, including commission subcommittees and advisory bodies, to meet and continue to accept public comment in person or through written communications in advance of the meeting, provided attendance at such meetings does not exceed the maximum occupant load for the room, and sanitation and social distancing recommendations can be put into effect. Where the maximum occupant load of the meeting room exceeds 100 people, attendance at the meeting must be limited to no more than 100 people. For example, the Board of Supervisors may hold a meeting in the Board Chambers, which has a maximum occupant load of 253 people, but must limit attendance at the meeting to no more than 100 people.

But the Health Officer's order also strongly recommends that the City cancel all policy body meetings that are not necessary to make decisions essential to the continuity of governmental operations and services and the promotion of the health, safety, and welfare of the public.

To date, the Board of Supervisors, its committees, and several other policy bodies have not significantly changed their regularly scheduled meetings. Some other policy bodies have decided to cancel their meetings. If a policy body chooses to meet, it must ensure that the occupancy standards are not exceeded, and should abide by the Health Officer's recommendations, including sanitation measures and social distancing, as discussed below.

If a policy body chooses to cancel its meeting, it must provide notice of the cancellation to the public as soon as reasonably possible by posting the cancellation notice on its website and at the Main Library. And to the extent time permits, the policy body should also post notice of the cancellation at the meeting site and the departmental office, and mail notice to members of the public who have requested in writing to receive meeting agendas. Though not legally required, we recommend that bodies also email notice of the cancellation to parties with a matter on the agenda and to persons who normally receive agendas by e-mail.

Can members of policy bodies join meetings by teleconference, skype, or similar means for purposes of a quorum, voting, and discussion?

Yes, but only during the state of emergency. Although the San Francisco Charter requires members of policy bodies to attend meetings in person, and the Brown Act imposes several requirements on members who participate in meetings by teleconference, the Mayor and the Governor have issued emergency orders suspending those restrictions during the declared emergency. Therefore, members of policy bodies may participate in meetings by teleconference, skype, or other means. But the policy body still must provide notice of the meeting, consistent with the Sunshine Ordinance and the Brown Act. Even if all of the members of the policy body participate remotely, the policy body must provide at least one publicly accessible location where members of the public may listen to the meeting and provide comment in person, provided that occupancy at that meeting location does not exceed the occupancy standard for the meeting room, up to a maximum of 100 people. The members and staff of the policy body need not be present at the publicly accessible location.
If a member of a policy body intends to join a meeting remotely, the member should contact the clerk or secretary of the body as far in advance of the meeting as possible to make appropriate arrangements.

Can members of the public provide public comment by telephone, skype, or similar means?

The Brown Act and Sunshine Ordinance do not require policy bodies to allow members of the public to comment remotely, but those laws also do not prohibit the practice. So in general, the City is not legally required to provide opportunities for remote public comment by all members of the public. In some circumstances, the Americans with Disabilities Act and other laws may require a policy body to allow remote public comment as an accommodation for a person with a disability. If a policy body offers an opportunity for remote public comment to a person with a disability, it is not required to extend the same opportunity to persons without a disability.

If a policy body decides to allow remote public comment to people who are not legally entitled to an accommodation, all members of the public who wish to speak, either remotely or in person, must be given a chance to do so for the same amount of time as other members of the public on every item. When deciding whether to allow remote public comment to all members of the public, a policy body should weigh the importance of transparency and public input as well as the potential technological and practical challenges. We recommend that all policy bodies seek guidance in advance about these issues from the Clerk of the Board of Supervisors and the Department of Technology if they are considering allowing remote public comment.

A policy body that wishes to consider allowing remote public comment may discuss at a regularly noticed meeting whether to allow remote comment at subsequent meetings. The chairperson or staff of a policy body should not decide to allow remote public comment until the entire policy body has discussed and voted on the matter.

Do legal deadlines for action by the policy body apply during the emergency?

State and local laws impose various deadlines on policy bodies. For example, many policy bodies are required to approve budget-related items by a certain date or hold hearings on appeals within a specific number of days from the date of the notice of appeal. In her March 11 order, the Mayor suspended deadlines imposed by local law during the emergency and for 14 days following the termination of the emergency, if the policy body is unable to meet and take the required action due to the emergency. But for now, all deadlines imposed by state law are still in effect. Policy bodies that are bound by legal deadlines under local or state law should consult in advance with the City Attorney’s Office to determine whether those deadlines have been waived or remain in effect.

What are the general best practices for public meetings during the emergency?

On March 9, 2020, the Clerk of the Board posted guidance about public access to meetings of the Board of Supervisors during the emergency. The guidance discusses occupancy requirements for meeting rooms and overflow procedures, and encourages members of the public to use existing methods of remote communication such as e-mail. The President of the Board of
Supervisors has also asked the Board to defer non-essential items to shorten meetings and not bring out people unnecessarily. Policy bodies may wish to seek guidance from the Clerk of the Board of Supervisors to ensure that they are following consistent policies.