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MEMORANDUM

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

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

DATE: April 10, 2020

RE: Updated Advice Regarding Meetings of Policy Bodies During COVID-19 Emergency

Based on recent developments including new state and local emergency orders to address the COVID-19 pandemic, in this memorandum we update and supersede our memorandum of March 13, 2020, entitled, "Meetings of Policy Bodies During Local COVID-19 Emergency." In addition, we update our memorandum of March 24, 2020, entitled identically to this memorandum, solely to reflect the Mayor's April 2, 2020 order extending the restriction on meetings of policy bodies through May 3, 2020.

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 a number of public health orders relating to COVID-19 including a stay safe at home order, the Governor and State Health Officer issued an overlay state stay safe at home order, and the Mayor and Governor have issued emergency orders suspending select laws applicable to boards, commissions, and other policy bodies, including advisory bodies (collectively, "policy bodies").

In this memorandum, we address a number of questions that have arisen regarding policy body meetings during the emergency. The three main changes are that (1) policy bodies now, for the duration of the COVID-19 emergency, can hold their meetings entirely remotely and do not have to provide a physical room for the public to gather to participate in the meeting, (2) policy bodies, such as the Board of Supervisors, may with certain limitations receive briefings from local, state, or federal officials concerning information relevant to the COVID-19 emergency, without that briefing being subject to the public meeting requirements, and (3) policy bodies can hold special meetings on 24 hours' notice. 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.

A. **Orders and Recommendations of the Mayor, Governor, and County Health Officer Relating to Policy Body Meetings**

The Mayor, the Governor, and the County Health Officer have issued the following emergency orders that specifically relate to meetings of policy bodies:

- On March 11, 2020, the Mayor supplemented her initial declaration of local emergency with an order to suspend select provisions of local law. The Mayor suspended the sections of the

MEMORANDUM

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

DATE: April 10, 2020
PAGE: 2
RE: Updated Advice Regarding Meetings of Policy Bodies During COVID-19 Emergency

City Charter that prohibit teleconferencing by members of 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 and without noticing their remote locations, but requiring that there be a physical meeting place for members of the public. On March 18, 2020, the Governor issued another executive order superseding the previous order and authorizing policy bodies to meet by teleconference without having a physical meeting place for members of the public.
- On March 16, 2020, the County Health Officer ordered City residents to stay safe in their homes except for certain essential needs and services, and prohibiting all public and private meetings and travel, with certain exceptions. On March 19, 2020, the Governor issued an Executive Order also requiring all Californians to stay at home, with certain exceptions. The Governor's Executive Order does not specify an end date.
- On March 17, 2020, the Mayor issued another supplemental emergency order prohibiting all City policy bodies from holding public meetings without prior authorization from the Board of Supervisors, Mayor, or Mayor's designee, upon a determination that the policy body has an urgent need to take action to ensure public health, safety, or essential government operations. This order applies to all commissions, boards, and advisory committees other than the Board of Supervisors and its committees. The Mayor extended the order on April 2, 2020. The order is now effective through May 3, 2020.
- On March 21, 2020, the Governor issued another executive order, suspending provisions of state law to allow members of policy bodies to simultaneously receive briefings from local, state, or federal officials concerning information relevant to the COVID-19 emergency outside of a meeting of the policy body and to ask questions of such officials, so long as the members of the policy body do not discuss the COVID-19 emergency among themselves or take any action.
- On March 23, 2020, the Mayor issued another supplemental order suspending several provisions of local law regarding policy body meetings, including, among others: (1) the requirement for policy bodies to provide more than 24 hours' notice of special meetings; (2) the requirement for policy bodies to post their agendas and other information at the Main Library; (3) any requirement to televise meetings if televising is not reasonably feasible; (4) the requirement to provide a physical location for members of the public to attend or make public comment when all members of the policy body are teleconferencing from remote locations; (5) the requirement that each member of the public be provided an equal amount of time for public comment; and (6) other requirements that would impede policy bodies' compliance with the Governor's executive orders. The supplemental order also waived all requirements in the Sunshine Ordinance regarding gatherings of passive meeting bodies.

During the course of the emergency, the Governor, Mayor and Health Officer might issue additional orders, and could extend the termination dates of the orders described above. We will update this memorandum as appropriate to address any changed circumstances.

MEMORANDUM

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

DATE: April 10, 2020
PAGE: 3
RE: Updated Advice Regarding Meetings of Policy Bodies During COVID-19 Emergency

B. Questions and Answers Regarding Policy Body Meetings during the Emergency

The orders described above have changed or suspended a number of rules that normally apply to policy body meetings. In this section of the memorandum we answer questions arising from those orders.

1. May policy bodies meet during the emergency?

Under the Mayor's March 17 and April 2 orders, City boards, commissions, and advisory bodies may not meet until after May 3, 2020, unless the Board of Supervisors, by written motion, or the Mayor or her designee, directs that a meeting be held because the policy body has an urgent need to take action to ensure public health, safety, or essential government operations. There are no restrictions on meetings of the Board of Supervisors and its committees.

If the presiding officer of a policy body other than the Board of Supervisors intends to schedule a meeting after May 3, the presiding officer should consult with the Mayor's Office and the City Attorney's Office before posting an agenda.

2. Can members of policy bodies join meetings by teleconference, including skype or similar means, for purposes of a quorum, voting, and discussion during the emergency?

Yes. The Mayor and the Governor have issued emergency orders suspending laws that would otherwise require members of policy bodies to attend meetings in person. Therefore, members of policy bodies may participate in meetings by teleconference, such as skype or other electronic means, either audio or video or both.

3. Must there be a physical meeting place for meetings of policy bodies?

No. Under the Governor's March 18 emergency order and the Mayor's March 23 supplemental order, a policy body may hold a remote meeting without providing a physical meeting place, provided the public may observe or listen and offer public comment in the meeting telephonically or through other electronic means. If a policy body holds a remote meeting, the body must disclose on any required meeting notice and on the agenda the means by which the public may observe or listen and offer public comment in the meeting. And as with any meeting, the policy body must have a process for a member of the public to request a reasonable modification or accommodation under the Americans with Disabilities Act to observe and offer public comment in the meeting, and that process must be disclosed on meeting notices and agendas.

In light of the County Health Officer's guidance and the orders requiring people to stay safe at home, policy bodies generally should not hold any in-person meetings or provide physical locations for members of the public to congregate during this emergency. If the chairperson of a policy body wishes to provide a physical location for a particular meeting, the chairperson should first consult with the Mayor's Office and the Department of Public Health.

4. Where must notice and agendas of meetings of policy bodies be posted?

The policy body must post the notice and agenda for a meeting on the policy body's website. Also, the policy body must make a reasonable effort to post the notice and agenda in City Hall outside Room 244, the office for the Board of Supervisors, although that posting may

MEMORANDUM

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

DATE: April 10, 2020
PAGE: 4
RE: Updated Advice Regarding Meetings of Policy Bodies During COVID-19 Emergency

not be feasible during the emergency. Posting at the Main Library is not required at this time because the Main Library is currently not open to the general public. When the Main Library opens to the public, policy bodies must resume the normal practice of posting notices and agendas there.

5. When must notice and agendas of policy body meetings be posted?

During the emergency, policy bodies must post a notice and agenda at least 72 hours before any regular meeting and at least 24 hours before any special meeting. And during the emergency, policy bodies are not required to post a special meeting notice 15 days in advance of holding a meeting at a location other than the building where the policy body holds regular meetings including when a policy body meets by teleconference without providing a physical meeting place.

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

As discussed above, when a policy body holds a meeting without providing a physical meeting place, the policy body must provide a means to allow the public to provide public comment telephonically or through other electronic means. The policy body may allow members of the public to comment by telephone, skype, or similar electronic means, or may allow members of the public to send email messages for the clerk or chairperson to read aloud during the meeting.

Policy bodies generally should not hold any in-person meetings or provide physical locations for members of the public to congregate during this emergency. If the County Health Officer, Mayor and Governor revise their orders in a way that allows policy bodies to meet in person during the emergency, policy bodies that hold in-person meetings may continue to provide opportunities for remote public comment. The Brown Act and Sunshine Ordinance do not require the body to allow members of the public to comment remotely, but those laws also do not prohibit the practice. In those circumstances, the City is not legally required to provide opportunities for remote public comment by all members of the public provided there is a physical location for the meeting that is available to the public. 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 during an in-person meeting, it is not required to extend the same opportunity to persons without a disability.

7. Must a policy body allow all members of the public the same amount of time to speak during public comment?

No. Under the Mayor's March 23 supplemental declaration, policy bodies are not required to provide equal time for members of the public to speak during public comment, provided that any departure from the equal time rule is not designed to favor or discriminate against a particular viewpoint. Suspension of the equal time rule will give policy bodies greater flexibility in managing periods for public comment in the face of challenges that may be presented by public comment provided by telephone or other electronic means, or if the emergency presents a need to shorten meetings. If a policy body is interested in departing from

MEMORANDUM

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

DATE: April 10, 2020
PAGE: 5
RE: Updated Advice Regarding Meetings of Policy Bodies During COVID-19 Emergency

the equal time rule, the chairperson of the body should first confer with the City Attorney's Office.

8. Must a policy body televise meetings at which members are teleconferencing from remote locations?

No. Under the Mayor's March 23 supplemental order, policy body meetings need not be televised if the chairperson of the body has determined that televising the meeting is not reasonably feasible. Before making that decision, the chairperson must consult with the Mayor's office or the staff of SFGovTV.

9. Must a policy body holding a remote meeting take action by roll call votes?

Yes. Under the Brown Act, policy bodies must take a roll call vote on every action during a teleconference meeting. Policy bodies may not approve actions "without objection" or "same house same call."

10. May a policy body receive a briefing regarding the emergency outside a public meeting?

Yes, subject to certain restrictions. Under the Governor's March 21 order and the Mayor's March 23 supplemental declaration, policy bodies may receive briefings from local, state, or federal officials concerning information relevant to the COVID-19 emergency. When a policy body gathers in person or by telephone to receive such a briefing, the gathering is not a meeting subject to the Brown Act and Sunshine Ordinance, as long as the members of the policy body do not discuss the briefing among themselves or take any action during the gathering. Members of the policy body may ask questions of the officials giving the briefing but may not ask questions of one another.

11. 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.

12. May there be gatherings of passive meeting bodies during the emergency?

Yes. This memorandum discusses rules that apply to the City's policy bodies during the emergency. The Sunshine Ordinance also normally requires limited public notice and public access to gatherings of "passive meeting bodies" that are not policy bodies. These "passive meeting bodies" include (1) gatherings of advisory committees or other multimember bodies created by the initiative of a member of a policy body, the Mayor, the City Administrator, a department head, or an elective officer; (2) social, recreational, or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited;

MEMORANDUM

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

DATE: April 10, 2020

PAGE: 6

RE: Updated Advice Regarding Meetings of Policy Bodies During COVID-19 Emergency

and (3) gatherings of committees created by the initiative of a member of a policy body, the Mayor, or a department head, consisting solely of City employees, that are reviewing, developing, modifying, or creating City policies or procedures relating to public health, safety, or welfare, or to services for the homeless.

The Mayor's March 23 supplemental declaration suspended the notice and access rules that normally apply to gatherings of passive meeting bodies. Under the Mayor's declaration, these gatherings may occur, subject to social distancing requirements, but public notice and attendance rules do not apply. Even though these gatherings are legally permissible under the Mayor's order, members generally should not meet in person in light of the County Health Officer's guidance and the stay safe at home orders.