



# STEERING COMMITTEE

## Agenda Report

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**File #:** 2022-2564

**Agenda Date:** 10/26/2022

**Agenda Item No:** 2.

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**FROM:** James D. Herberg, General Manager  
Originator: Kelly A. Lore, Clerk of the Board

**SUBJECT:**

### CONTINUATION OF TELECONFERENCED PUBLIC MEETINGS

#### GENERAL MANAGER'S RECOMMENDATION

RECOMMENDATION: Recommend to the Board of Directors to:

- A. Discuss and provide direction to staff on the continuation of remote meetings; and
- B. If appropriate, adopt Resolution No. OC SAN 22-33 entitled, "A Resolution of the Board of Directors of the Orange County Sanitation District authorizing the continuation of remote meetings pursuant to Government Code Section 54953".

#### BACKGROUND

Under Government Code §54943(b)(3), a legislative body may use teleconferencing in connection with any meeting if it posts agendas in all teleconference locations, identifies each teleconference location in the meeting notice, makes each teleconference location accessible to the public, and allows members of the public to address the legislative body from each teleconference location.

On September 16, 2021, Governor Newsom signed AB 361. The bill amends §54943 to allow legislative bodies to use teleconferencing for public meetings without complying with the requirements of §54943(b)(3) if 1) the Governor has proclaimed a state of emergency and the County of Orange recommends social distancing for vulnerable populations, and 2) the legislative body has determined that meeting in person would present an imminent risk to the health of Board Members, staff, and the public. The first condition is currently satisfied because the Governor's proclaimed State of Emergency remains in effect, and the County of Orange currently recommends measures to promote social distancing for vulnerable populations. In addition, the following facts support a finding by the Board that meeting in person would present an imminent risk to the health of Board Members, staff, and the public:

- In-person meetings of the Orange County Sanitation District's (OC San) Governing Board and Committees involve relatively large numbers of attendees, as the Board has 25 members and OC San has a large staff.
- The room in which Board and Committee meetings take place is not large enough to easily accommodate social distancing given the number of Board Members and staff that regularly attend.

- While effective COVID-19 vaccines are widely available, many Orange County residents have not been vaccinated.
- In order to slow down the transmission of COVID-19 and its variants, public health officials recommend that unvaccinated persons avoid gatherings and practice social distancing.
- Some individuals who contract COVID-19 and its variants have no symptoms or have only mild symptoms and are therefore unaware that they carry the virus and may be transmitting it to others.
- Older adults and individuals with medical conditions are at higher risk of severe illness from COVID-19 and its variants.
- The age, condition, and health of a significant portion of residents within OC San's jurisdiction place them at risk for serious health complications, including hospitalization and death, from COVID-19 and its variants.
- Younger and otherwise healthy people are also at risk for serious health problems and may transmit COVID-19 and its variants to others.

In order to hold remote meetings without complying with §54943(b)(3), the legislative body must: 1) give notice of the means by which members of the public may access the meeting and offer public comment, 2) provide a call-in or internet based option, and 3) provide an opportunity for the public to address the legislative body in real time. Microsoft Teams will allow OC San to comply with the second and third requirements.

On September 13, 2022, Governor Newsom signed into law AB 2449 (Rubio) marking further modifications to the Brown Act which go into effect on January 1, 2023. AB 2449 provides alternative teleconference procedures to allow members of a legislative body to participate remotely, the application of which relies on individual facts and circumstances. AB 2449 allows the legislative body of a local agency to use teleconferencing without complying with the traditional Brown Act teleconferencing rules or the AB 361 rules in certain circumstances. To do so, at least a quorum of the members of the legislative body must participate in person from a singular physical location identified on the agenda, which location will be open to the public and within the boundaries of the local agency. The legislative body must also provide either a two-way audiovisual platform or two-way telephonic service and a live webcasting of the meeting to allow the public to remotely hear and visually observe the meeting, and remotely address the legislative body. The agenda must identify and include an opportunity for all persons to attend via a call-in option, internet-based service option, and at the in-person location of the meeting.

In addition to the above prerequisites, AB 2449 also contains a number of provisions that only allow a member of the legislative body to participate remotely under certain circumstances for "just cause" and "emergency", which are narrowly defined in the legislation. Additionally, AB 2449's teleconference procedures may not be used by a member of the legislative body to teleconference for a period of more than three consecutive months or 20% of the regular meetings within a calendar year, or more than two meetings if the legislative body meets fewer than 10 times per calendar year. Members participating remotely must do so through both audio and visual technology and must publicly disclose whether any individual over the age of 18 is present at the remote location with the member.

The remote meeting rules enacted in AB 361 will expire on January 1, 2024. AB 2449's rules remain in effect through 2025. Since AB 2449 modified that Brown Act and AB 361 suspends components of

the Brown Act, AB 361 remains the prevailing direction as to how meetings may be conducted until Governor Newsom rescinds the State of Emergency order and the County of Orange no longer recommends social distancing for vulnerable populations. On October 17, 2022, Governor Newsom announced that the COVID-19 State of Emergency will end on February 28, 2023.

## **RELEVANT STANDARDS**

- Comply with Government Code Section 54943
- Commitment to safety & reducing risk in all operations
- Provide a safe and collegial workplace

## **PROBLEM**

At the meeting on September 28, 2022, the Board of Directors asked that the format of how meetings are conducted (remote, in-person, hybrid) be agendaized for discussion.

Should OC San officials continue to impose or recommend measures to promote social distancing in OC San facilities and want to continue conducting remote meetings, Resolution No. OC SAN 22-33 needs to be adopted.

## **PROPOSED SOLUTION**

At the request of the Board, discuss and provide direction to staff on the continuation of remote meetings. To facilitate this discussion, staff has identified the following three options for future Board of Directors and Board Committee meetings.

### **Option #1: Continuation of remote meetings**

Meetings of the Board of Directors and Board Committees have been conducted in this format since March/April 2020. This option will continue to be available pursuant to AB 361 as long as the Governor's State of Emergency order is in place, which the Governor announced will end on February 28, 2023. As this is currently how meetings are conducted, nothing further is needed outside of the Board of Directors being required to continue to adopt a resolution every 30 days to continue using the relaxed Brown Act teleconferencing requirements. This option allows full access to the public for participation in meetings of the OC San Board of Directors whether they want to attend in person or remotely.

### **Option #2: Hybrid meetings**

This option would allow some Board Members to participate virtually in meetings and others to attend in person. This option will continue to be available pursuant to AB 361 as long as the Governor's State of Emergency order is in place, which the Governor announced will end on February 28, 2023. This format presents challenges as attendance varies by meeting, meaning that Alternate Directors may participate; both Directors and Alternate Directors may be absent, most often with no advance notification to staff; among other scenarios. Implementing this format may require some sort of reservation system and adherence to it. Staff has ensured that the technology is in place to accommodate this format, but technical difficulties may arise in transitioning to this format. The Board of Directors would continue to be required to adopt a resolution every 30 days to continue using the relaxed Brown Act teleconferencing requirements. This option allows full access to the

public for participation in meetings of the OC San Board of Directors whether they want to attend in person or remotely.

**Option #3: In-person meetings**

This option would return meetings to the in-person format as they were prior to the COVID-19 pandemic. Staff would take all precautions to safeguard the health and welfare of Board Members and staff in returning to this format. This option allows access to the public for participation in meetings of the OC San Board of Directors only if they are able to attend in person.

**TIMING CONCERNS**

To continue in the remote meeting format, if the Resolution is not adopted, Board of Directors and Committee meetings will be required to meet in person pursuant to Government Code §§54950 et seq.

**PRIOR COMMITTEE/BOARD ACTIONS**

September 28, 2022 - Adopted Resolution No. OC SAN 22-32 entitled, "A Resolution of the Board of Directors of the Orange County Sanitation District authorizing the Continuation of Remote Meetings pursuant to Government Code Section 54953" and requested that a discussion of the format of how meetings are conducted be agendaized.

September 14, 2022 - Adopted Resolution No. OC SAN 22-26 entitled, "A Resolution of the Board of Directors of the Orange County Sanitation District authorizing the Continuation of Remote Meetings pursuant to Government Code Section 54953".

August 24, 2022 - Adopted Resolution No. OC SAN 22-24 entitled, "A Resolution of the Board of Directors of the Orange County Sanitation District authorizing the Continuation of Remote Meetings pursuant to Government Code Section 54953".

July 27, 2022 - Adopted Resolution No. OC SAN 22-21 entitled, "A Resolution of the Board of Directors of the Orange County Sanitation District authorizing the Continuation of Remote Meetings pursuant to Government Code Section 54953".

July 13, 2022 - Adopted Resolution No. OC SAN 22-20 entitled, "A Resolution of the Board of Directors of the Orange County Sanitation District authorizing the Continuation of Remote Meetings pursuant to Government Code Section 54953".

June 22, 2022 - Adopted Resolution No. OC SAN 22-19 entitled, "A Resolution of the Board of Directors of the Orange County Sanitation District authorizing the Continuation of Remote Meetings pursuant to Government Code Section 54953".

May 25, 2022 - Adopted Resolution No. OC SAN 22-14 entitled, "A Resolution of the Board of Directors of the Orange County Sanitation District authorizing the Continuation of Remote Meetings pursuant to Government Code Section 54953".

April 27, 2022 - Adopted Resolution No. OC SAN 22-13 entitled, "A Resolution of the Board of Directors of the Orange County Sanitation District authorizing the Continuation of Remote Meetings pursuant to Government Code Section 54953".

April 13, 2022 - Adopted Resolution No. OC SAN 22-12 entitled, "A Resolution of the Board of Directors of the Orange County Sanitation District authorizing the Continuation of Remote Meetings pursuant to Government Code Section 54953".

March 23, 2022 - Adopted Resolution No. OC SAN 22-11 entitled, "A Resolution of the Board of Directors of the Orange County Sanitation District authorizing the Continuation of Remote Meetings pursuant to Government Code Section 54953".

February 23, 2022 - Adopted Resolution No. OC SAN 22-08 entitled, "A Resolution of the Board of Directors of the Orange County Sanitation District authorizing the Continuation of Remote Meetings pursuant to Government Code Section 54953".

January 26, 2022 - Adopted Resolution No. OC SAN 22-02 entitled, "A Resolution of the Board of Directors of the Orange County Sanitation District authorizing the Continuation of Remote Meetings pursuant to Government Code Section 54953".

January 12, 2022 - Adopted Resolution No. OC SAN 22-01 entitled, "A Resolution of the Board of Directors of the Orange County Sanitation District authorizing the Continuation of Remote Meetings pursuant to Government Code Section 54953".

December 15, 2021 - Adopted Resolution No. OC SAN 21-24 entitled, "A Resolution of the Board of Directors of the Orange County Sanitation District authorizing the Continuation of Remote Meetings pursuant to Government Code Section 54953".

November 17, 2021 - Adopted Resolution No. OC SAN 21-20 entitled, "A Resolution of the Board of Directors of the Orange County Sanitation District authorizing the Continuation of Remote Meetings pursuant to Government Code Section 54953".

October 27, 2021 - Adopted Resolution No. OC SAN 21-15 entitled, "A Resolution of the Board of Directors of the Orange County Sanitation District authorizing the Continuation of Remote Meetings pursuant to Government Code Section 54953".

October 6, 2021 - Adopted Resolution No. OC SAN 21-14 entitled, "A Resolution of the Board of Directors of the Orange County Sanitation District authorizing Remote Meetings pursuant to Government Code Section 54953".

## **ADDITIONAL INFORMATION**

To continue in the remote meeting format, the Board of Directors must make certain findings by majority vote every 30 days to continue using the relaxed Brown Act teleconferencing requirements pursuant to Government Code Section 54953(e).

**CEQA**

N/A

**FINANCIAL CONSIDERATIONS**

N/A

**ATTACHMENT**

*The following attachment(s) may be viewed on-line at the OC San website ([www.ocsan.gov](http://www.ocsan.gov)) with the complete agenda package:*

- Resolution No. OC SAN 22-33