

February 25, 2009

**MEMORANDUM**

**TO:** Francesca Loftis, Chair, and  
Members of the El Dorado Local Agency Formation Commission

**FROM:** Andrew Morris and Joshua Nelson, General Counsel

**RE:** Agenda Item 6B2: Discussion of SLT Representative participating via telephone

---

**BACKGROUND**

At the February 25th meeting, LAFCO will consider a request from the City of South Lake Tahoe to allow its representative to attend and participate in LAFCO meetings by teleconference. To aid in this discussion, we have prepared a memorandum outlining the Brown Act requirements and limitations related to LAFCO Commissioners attending meetings by teleconference.

**BRIEF ANSWER**

The Brown Act allows local agencies to use teleconferencing in connection with any meeting or proceeding authorized by law. In addition to its general requirements, the Brown Act imposes unique requirements on teleconference meetings. These requirements are summarized below.

- Teleconferencing may be used in connection with any meeting within LAFCO's subject-matter jurisdiction. (Gov. Code § 54953 (b)(2).<sup>1</sup>)
- The meeting notice and agenda must identify the teleconference location. (§ 4953(b)(3).)
- LAFCO must post the notice and agenda at the teleconference location prior to the meeting. (§ 54953(b)(3).)
- The teleconference location must be accessible to the public, including permitting the public to participate in public comment from that location. (§ 54953(b)(3).)
- A quorum of Commissioners must participate in the meeting from locations within LAFCO's jurisdiction. (§ 54953(b)(3).)
- All votes taken during a teleconference meeting must be by roll call. (§54953(b)(2).)

\*\*\*

---

<sup>1</sup> All statutory references in this memorandum are to the Government Code unless otherwise noted.  
SACRAMENTO\JNELSON\56196.2

## **DISCUSSION**

LAFCO may use teleconferencing in connection with any meeting or proceeding within its subject-matter jurisdiction. (§ 54953 (b)(2).) “Teleconference” is defined as “a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both.” (§ 54953 (b)(4).) However, the Brown Act imposes specific requirements on these types of meetings. As the Attorney General’s Brown Act guide states, “[e]ach teleconference meeting must be conducted in such a manner so as to protect the statutory and constitutional rights of the public.” (See *Brown Act – Open Meetings for Local Legislative Bodies* (2003) California Attorney General’s Office, p. 14.)

### **1. Agenda and Notice Requirements**

Each teleconference location must be identified in the notice and agenda for the meeting. (§ 54953(b)(3).) The agenda should clarify that individuals may participate in public comment from the teleconference location. (See § 54954.3.) In addition, the agenda must be posted outside the teleconference location as required by the Brown Act. As with the normal agenda, this depends on the type of meeting it is. For regularly scheduled meetings, the agenda must be posted at least seventy-two hours prior to the meeting. By contrast, the agenda must be posted at least twenty-four hours prior to any special meeting.

The Brown Act does not provide specific guidance on the posting requirement, but where practical, the agendas should probably be posted both outside the main facility of a teleconference location (e.g., outside an office building) and outside the specific teleconference location (e.g., outside the particular room or office door). Agendas should also remain visible at these locations. They should not be posted behind doors that are frequently ajar or behind counters, so as to be out of average reading distance.

### **2. Teleconference Location Requirements**

Teleconference locations must be accessible to the public. (§ 54953(b)(3).) Obviously this requirement precludes some locations, such as car telephones or offices not accessible to the public. Furthermore, all telephones used for teleconferencing must have a functioning speaker to enable public access, even if there are no members of the public present at a particular location. The meeting must be conducted so that participants are clearly identified by audio alone.

Similarly, LAFCO must ensure that each teleconference meeting is conducted in such a manner so as to avoid and address logistical problems in providing public access. For example, if a Commissioner is teleconferencing from his or her office, someone must be present to allow the public entry into the office building if it is normally locked after hours. If the office is in a location where the public is not welcome, then teleconferencing cannot occur at that location. Similarly, vacationing Commissioners wishing to teleconference must realize that the public must have access, for example, to the Commissioner’s home, hotel room, or even cruise ship cabin and receive notice of that opportunity in the agenda.<sup>2</sup>

---

<sup>2</sup>If the remote teleconference location is found to be inadequately noticed, then the remote Commissioner’s vote would be invalidated.

Furthermore, the public must have the opportunity to address the Commission at each teleconference site. This provision requires some cooperation among meeting sites. It requires that all audio and video hookups ensure that all Commissioners can hear and respond to public comments from all locations. It also requires that the public can hear all Commission deliberations. Consequently, teleconferencing by phone without an available speaker phone may prove to be insufficient.<sup>3</sup>

### **3. Quorum Requirement & Roll Call Voting**

The Brown Act requires that at least a quorum of the legislative body must participate from locations within LAFCO's jurisdiction in any teleconference meeting. In the present case, if only one Commissioner wishes to teleconference, this would clearly be permissible. In addition, assuming the Commissioner participated from a location within LAFCO's geographic area, he or she would actually count towards the quorum requirement.

Additionally, all votes taken during the teleconferenced meeting must be by roll call. (§ 53953 (b).) To avoid any potential Brown Act issues, some local agencies read a script prior to each roll call vote. We have attached a sample script for your reference. The script clarifies for the record that a Commissioner is participating by teleconference and that meeting is being conducted pursuant to the Brown Act.

### **CONCLUSION**

The Brown Act permits LAFCO to use teleconferencing in connection with any regular or special meeting. However, if LAFCO does so, it must comply with the applicable Brown Act requirements. Most relevant to the present situation, these include (1) identifying the teleconference location in the meeting agenda and notice, (2) posting the agenda and notice at the teleconference location, (3) permitting members of the public to attend and participate in the meeting from the teleconference location and (4) conducting all votes by roll call.

Please do not hesitate to contact us with questions or concerns.

---

<sup>3</sup> No case law is yet available to provide further clarity on this issue.

**[General Counsel Recommended Script]**

**REGULAR MEETING OF EL DORADO LAFCO**  
**(Government Code Section 54953)**

**[PRIOR TO ROLL CALL]**

Prior to roll call, I would like to make clear for the record of this meeting, and it should be reflected in the minutes, that this LAFCO meeting is conducted pursuant to California Government Code Section 54953, in that one member of the Commission will be participating in this meeting by speaker phone. In accordance with the Brown Act, the teleconference location has been identified in the notice and agenda for this meeting.

It would now be appropriate for our Clerk to conduct roll call, after which I will confirm certain matters for the record.

**[ROLL CALL]**

Please bear with me while I briefly go through some special procedures required by the Brown Act. I would now like to request that Commissioner [NAME] respond to the following questions:

- (1) Commissioner [NAME], can you hear me well?
- (2) Were you able to hear our proceedings on this end up until now?
- (3) Do you have a copy of the agenda for this meeting?
- (4) Is the agenda posted at the location where you are?
- (5) Is your location reasonably accessible to the public, such that any member of the public could participate in this teleconference from your location if he or she wished to do so?
- (6) Is there any member of the public there with you who would like to participate in the public comment portion of this meeting, or otherwise address any agenda item for this meeting?

I would now like to ask that any member of the Commission speak up at this time if such Commissioner has not been able to clearly hear Commissioner [NAME]. Hearing no comment, the record should reflect that all Commissioner present have indicated that they were able to hear Commissioner [NAME] clearly.

I would next request that any Commissioner speak up at this time if such Commissioner has any reason to believe, based on voice recognition or otherwise, that the person representing himself to be Commissioner [NAME] is not truly so. Hearing no comment, the record should reflect that no Commissioner has expressed doubt that Commissioner [NAME] is the party participating by teleconference along with the Commissioners present here.