

ADMINISTRATIVE POLICIES AND PROCEDURES

SUBJECT: LEGISLATIVE BODY REASONABLE ACCOMMODATION POLICY FOR REMOTE PARTICIPATION AT MEETINGS SUBJECT TO THE BROWN ACT

EFFECTIVE: UPON ADOPTION

1. PURPOSE

The purpose of this policy is to ensure compliance with the Brown Act and to provide a written procedure for receiving and swiftly resolving reasonable accommodation requests for members of the City of Merced legislative bodies, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and resolving any doubt in favor of accessibility. The purpose is to enable participation in legislative body meetings through remote participation for a qualifying individual whose disability precludes their in-person attendance at a meeting of their legislative body. As set forth in California Attorney General Opinion No. 23-1002, which addressed the applicability of the Americans with Disabilities Act (“ADA”) to meetings subject to the Brown Act, the opinion stated that not every disability necessitates remote participation, because not every disability precludes in-person attendance; therefore, a fact intensive, individualized, case-by-case inquiry is required when considering remote participation as a reasonable accommodation.

Requests for Reasonable Accommodation:

2. DEFINITIONS

“Member of a Legislative Body” means, as used in this policy, any individual who is a member of the Merced City Council or a member of any commission, committee, board or other body of the City of Merced, whose meetings are subject to the Brown Act and shall be referred to herein as “Member.”

3. PROCEDURE

A Member who desires to attend meetings remotely because of a qualified disability shall make an accommodation request in writing to the City’s Director of Human Resources (“Director”). The request should include a written statement that the Member requires remote participation under this Policy because of their disability. Member is not required to disclose the particular disability. The request shall be made at least three weeks before the meeting for which the Member first seeks accommodation. If the City maintains a “Reasonable Accommodation Form,” the request shall be made on such form.

The Director is authorized to make reasonable inquiries about the Member’s need for accommodation, to conduct the necessary case-by-case inquiry into the request and to

accommodate a qualifying disability, consistent with applicable law. The City may require additional information, such as a medical provider's certification of the existence of a qualifying disability and the need for the accommodation to attend remotely. The City may not ask the Member or their medical provider to disclose a specific diagnosis. The Director will inform the Member, the City Manager, the City Attorney and the City Clerk of the decision on the request for reasonable accommodation in writing.

An approved reasonable accommodation for remote access attendance at public meetings shall be in effect for the period of time that the Member's disabling condition continues, and the decision of the Director shall reflect this determination.

4. CONFIDENTIALITY

All information regarding a Member's claimed disability or medical information must be kept confidential and maintained in a separate medical file by the Director. Such information may be disclosed in limited circumstances, such as to first aid and safety personnel, when appropriate, to government officials investigating compliance with the ADA, or to City staff trained on and entrusted with the handling of confidential medical information, if such disclosure is necessary to effectuate the reasonable accommodation.

5. MEMBER'S RESPONSIBILITIES UNDER THE BROWN ACT

If the accommodation for remote participation is granted, the Member is required to comply with the applicable provisions of Government Code Section 54953(c) as follows:

1. The Member shall participate through both audio and visual technology, except that any Member with a disability, as defined by California Government Code Section 12926 and used in Section 12926.1, or by Section 12102 of Title 42 of the United States Code, may participate only through audio technology if a physical condition related to their disability results in a need to participate off camera.

2. The Member shall disclose at the meeting before any action is taken, whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the Member's relationship with any of those individuals.

APPROVED:

D. Scott McBride
City Manager