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Request for Selected Waiver of Brown Act Attendance Requirements

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To: senator.becker@senate.ca.gov
Cc: Joan Dentler <joan.dentler@sen.ca.gov>

Sun, Feb 12, 2023 at 11:28 PM

Dear Senator Becker,

This email requests a waiver from the requirement for in-person attendance at Midcoast Community Council (MCC) meetings for members with immunocompromised family members (and we suggest for similar situations state-wide). In sum, **the health risk is from Long COVID, which exacerbates greatly upon repeated exposure** - and not to the immediate onset of the disease which has been greatly reduced by vaccines and emerging treatments of the disease in its acute phase.

Below are suggestions for how the Brown Act could be amended for exclusions which would apply to the MCC and similar unpaid, advisory groups, without changing the overall requirements for major legislative bodies. We also provide justification for the desired elimination of attendance requirements, for both the MCC specifically, and for other small agencies who may face similar problems with the in-person attendance requirement, given health concerns.

As a first step, we suggest that the Governor extend the period of COVID emergency in California to match the extension recently granted by President Biden. That will hopefully give the legislature time to amend the Brown Act as requested herein.

The Need:

There are two principal reasons a waiver of the in-person attendance requirement is needed for the MCC.

1. Health and Safety of Council Members and their families. At least three (3) of the five current council have family members who are permanently immuno-compromised. Also, some of the most qualified applicants for our two vacant positions have raised in-person attendance as a 'strike issue' for their candidacy, and have declined to apply for our two vacancies. Requiring those members to attend would expose them and their family members to COVID-19 and other infectious diseases now in community spread. The current death rate from COVID-19 has remains above 185,000 per year (chart), and the nationwide concern about a triple-demic is well documented. The current public health situation is not temporary, and the risk of repeated exposure to inevitable new variants of COVID-19 include not only the potentially mitigated risks (*via vaccines, Paxlovid, etc.*) of contracting COVID, but also the greatly increased chances of contracting of Long COVID, which has been shown to markedly increase the probability of adverse outcomes (links to Mayo Clinic and VA study), especially for the elderly population which characterizes this Council and its family members. Emerging public health evidence (e.g. from China) is that COVID-19 will continue for some time to come in our population, as new variants escape the protection of vaccines and other treatments. President Biden recently extended the Covid public health emergency through April.

Note that the meeting space for the MCC is 'borrowed' from another agency and has the size and poor ventilation (one-wall windows) of a school classroom. At times, over 100 people have tried to cram into this space for controversial topics like the pump track and off-leash dog walking. There is inadequate ventilation in the best of times, and it lacks HEPA filters and UV sterilization and refreshing circulation, such as is available on commercial aircraft. Wearing masks is not a solution, as even typical N-95 masks are only about 80% effective over a period of a few hours, which means the compound probability of contracting an airborne disease from repeated exposure would be about 50% after 3 meetings, and 67% after 5. Putting our Council Members at risk is unacceptable, and will likely impede the continued functioning of the Council, which leads to the second reason for a waiver.

2. Membership in the MCC will fall to untenable levels. The MCC is already a difficult body to recruit members for, as is evidenced by only having 5 of the 7 required members after this most recent election. It is possible, even likely, that if a waiver of the in-person attendance requirement is not granted that the Council will be unable to hold meetings until such a waiver is granted, because it will lack a quorum. It is also possible that 3 of the 5 current members will resign if they are required to attend in person, and qualified new applicants will withdraw.

We have learned over the past 3 years how Zoom meetings have: improved community participation and collaboration; reduced the travel time burden for presenters, officials, and the public; improved the quantity of information exchanged (e.g. via Zoom Chat); and avoided the health risks of the Pandemic. Requiring in-person attendance, given the additional health risks and travel time penalty required thereby, further undermines the willingness of qualified residents to serve.

Basis for Limited Attendance Exemption:

The rationale for in-person attendance exemptions is stated above. However, the scope of an exemption could derive from factors as described below, and thus targeted to a limited set of public bodies, if so desired.

Certainly, **were a handicapped person to join the Council, I would expect ADA provisions to provide accommodations, including waivers of in-person attendance, to that person, as we are a semi-rural area with no public transportation to our meeting site.** The health risks posed by Long COVID present a similar need for accommodation. Similarly, I would hope that the immuno-compromised family members of a council member would receive protection in a similar manner, given the Triple-demic and age of infectious diseases in which we now live.

I/we can understand that the State and County would be unwilling to remove attendance requirements for fully salaried, staff-supported, elected officials in the Senate, Assembly, and Boards of Supervisors. However, amendments to the Brown Act could grant the MCC, and other smaller boards and councils, exceptions to those requirements on the following grounds, which could be narrowed or expanded depending upon the scope of entities desired beyond just the MCC. Targeted exemptions could be granted for boards and councils which are some combination of:

1. Advisory Boards, with no ability to pass laws, code, or approve public spending.
2. Unsalaries
3. Lacking health benefits or per diems or per meeting or mileage allowances
4. Uncompensated for work materials, hardware and software required for the duties of the office
5. Rural, requiring transportation to locations at times where no public transport exists (such as ours)
6. Unsupported by salaried staff
7. Lacking meeting facilities which meet ASHRAE and other public health ventilation requirements ([link](#)).
8. In areas where the background level of infectious diseases in the wastewater is above pre-COVID levels ([link to Verily](#))

Next Steps:

My/our request is that until a meeting facility is provided by the State or County which satisfies safe ventilation standards ([CDC link](#)), AND which contains [air monitoring equipment](#) to demonstrate the sufficiency of the purification available, AND until the background level of infectious diseases in our wastewater testing falls below pre-COVID levels, **the in-person attendance requirement of the Brown Act be immediately suspended for the MCC, at a minimum for Council members with family members who are immunocompromised.** We further suggest that the Act be modified permanently, to exclude the attendance requirement for the MCC and other elected bodies based on some or all of the criteria listed above. Failure to do so invites the creation of regular Super-Spreader events in our communities, and potentially lawsuits in the event of adverse health outcomes.

If an exemption is allowed for some Council members, as described above, but Hybrid meetings (combining in-person with Zoom access) are required, then we request that the State or County provide:

1. Computer equipment sufficient to connect to and operate the meetings and recordings
2. Information Technology staff to maintain the software and hardware for operability and security
3. Audio Visual staff to operate the computers, cameras, and speakers on site (perhaps PCTV could be paid additional monies to expand its duties)
4. Rapid virus test kits for those present, and a requirement that attendees take and pass such tests before entrance. (depending upon Public Health guidance)

Thank you in advance for your consideration and cooperation in making this request a reality. I hope you will lead an amendment to the Brown Act to continue to foster broad community participation in our government.

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