



## Architectural Review Board Staff Report

**From: Jonathan Lait, Planning and Development Services Director**  
**Lead Department: Planning and Development Services**

**Meeting Date: March 16, 2023**  
**Report #: 2302-1025**

### **TITLE**

Review and Adoption of the Revised Architectural Review Board By-Laws to Address Remote/Virtual Meeting Attendance in 2023

### **RECOMMENDATION**

Staff recommends that the Architectural Review Board (ARB) discuss, review, and adopt a revised version of the By-Laws to address allowances for remote meeting attendance.

### **PROJECT DESCRIPTION**

On November 17, 2022, and February 16, 2023, the ARB discussed modifications to the by-laws to align with state regulations regarding remote meeting attendance. Based on those discussions and to align with recently adopted state laws, staff recommends a modification to the ARB's By-laws as shown in underline in Attachment A and as further discussed below.

### **BACKGROUND**

The Brown Act has long permitted remote attendance through teleconferencing, as long as: 1) the locations of each teleconference participant are provided in notices and agendas, 2) the agenda is posted at each teleconference location, and each location is open to the public, and 3) at least a quorum of the board members participates from locations within the boundaries of the City. The Brown Act does not limit the number of times these procedures can be used. AB 361 allowed a local government to suspend these teleconference requirements during a statewide emergency, such as the COVID-19 pandemic, by making certain findings. However, the statewide emergency has now been formally lifted; therefore, the AB 361 exceptions no longer apply.

Effective January 1, 2023, AB 2449 provides an additional, limited exception to the typical teleconference requirements, which do not rely on the existence of a statewide emergency. A board member may participate remotely, without making their location available to the public, only when there exists a "just cause" or "emergency circumstances" approved by the board, for remote participation, and the reason is disclosed to the public. In addition, a quorum of the board must meet in a single location (i.e. the meeting must be a "hybrid" meeting). The exception under AB 2449 may not be used by a member of the board for more than three

consecutive months or more than 20% of the regular meetings in a calendar year (Four (4) total meetings per year for the ARB).

As has always been the case under the Brown Act, if a member of the board wishes to attend virtually without citing one of the “just cause” or “emergency circumstances” identified under the law and follows the necessary standard remote attendance procedures set forth in Attachment A, then they may do so without a limitation on the meetings. However, boardmembers have indicated that they do not have an interest in remote attendance pursuant to the standard remote attendance procedures (separately from the allowances under “just cause” or “emergency circumstances”). Therefore, these standard remote attendance procedures are not discussed further.

#### Attendance Policies of Other Boards/Commissions

Council directed all commissions and boards to adopt their own remote attendance policy. On January 30, 2023, Council adopted revisions to the Council Procedures and Protocol Handbook that allowed for a total of five remote hearings per legislative body (i.e. five for Council and five for each Council Committee). However, the Brown Act requirements, as discussed above, would also apply.

#### ARB By-laws

The current ARB by-laws were last updated in September 2022. They do not include rules on attendance such as how many meetings a member can miss, nor do they take into account the COVID-19 Pandemic when virtual meeting attendance became necessary. The Palo Alto Municipal Code Chapter 2.21 provides content regarding the composition of the board and how often the board may meet (twice monthly). The meeting frequency is also cited in Section 6.9 of Article VI of the ARB By-laws. The ARB By-laws contain three sections in Article VI regarding meetings. In accordance with Council direction, the ARB may wish to discuss adding By-laws Section 6.3 to set forth a virtual attendance policy.

#### **ANALYSIS**

Staff has provided suggested edits to the ARB by-laws in underline in Attachment A. In accordance with the feedback from boardmembers at the February 16, 2023 hearing, detailed protocol for remote meeting attendance has been removed from the by-laws and the proposed by-laws simply indicate that remote meeting attendance will comply with the Brown Act requirements. Because boardmembers expressed that there was no interest in attending virtually without “just cause” or “emergency circumstances,” the proposed modifications also clarify that only four hearings (20% of the hearings within a calendar year) and for no more than 3 consecutive months may be attended remotely.

A separate internal protocol document will be maintained by staff to clarify the required protocols in conformance with the Brown Act in the event that a boardmember chooses to attend remotely under “just cause” or “emergency circumstances. A draft of this internal protocol is included in Attachment B.

**ENVIRONMENTAL REVIEW**

This is not considered a project as defined by CEQA and no review is required.

**ATTACHMENTS**

Attachment A: Redlined ARB By-Laws

Attachment B: Internal Protocol for Remote Meeting Attendance

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RULES AND REGULATIONS AND BY-LAWS OF THE  
PALO ALTO ARCHITECTURAL REVIEW BOARD

ARTICLE I

NAME

Section 1.0 The name of this board shall be the PALO ALTO ARCHITECTURAL REVIEW BOARD (ARB)

ARTICLE II

Section 2.0 This board shall perform any duties imposed upon it by Ordinances of the City of Palo Alto and by applicable State and Federal law, or as requested by the City Council of the City of Palo Alto.

ARTICLE III

Officers

Section 3.0 The officers of the Board Shall consist of a Chairperson, a Vice Chairperson, and a Secretary who shall be a non-voting member.

Section 3.1 The offices of Chairperson and Vice Chairperson shall be elected from among the appointed members of the Board, and the person so elected shall serve for a term of one year or until a successor is elected. Elections shall be held at the first meeting in April of each year, which coincides with the first meeting of new Board members.

Section 3.2 The Director of Planning and Development Services of the City of Palo Alto or their designated representative shall be the Secretary of the Board.

Section 3.3 The duties of the offices of the ARB shall be as follows:

Section 3.31 It shall be the duty of the Chairperson to preside over all meeting of the Board, to appoint committees and to serve as an ex-officio member of the committees so appointed, to call special meetings of the Board and to designate the time and place of such meeting, to set the date and time for the public hearing held by the Board, to sign documents and correspondence in the name of the Board, to ensure the Annual Report/Council Work Plan is completed before the end of their term (March 31<sup>st</sup>), and to represent the Board before the City Council, its commissions and committees, and such other groups and organizations as may be appropriate. The Chairperson may designate the Vice Chair, or in the Vice Chairperson's absence, another member of the Board to act in their stead.

Section 3.32 It shall be the duty of the Vice Chairperson to assist the Chairperson and to act in their stead during their absence.

Section 3.33 It shall be the duty of the Secretary to keep a record of all meeting of the Board, to accept in the name of the Board documents and correspondence addressed to it, to present such correspondence to the Board, to provide the Board with early notification of pending projects that will require the ARB’s review, and perform other staff functions as deemed necessary by the Board. The Secretary will determine the agenda for all public meeting of the Board, based upon an assessment of the applications made to the City requiring architectural review, and based also upon the desirability of hearing such other matters as may be deemed, by the Chairperson or by the Secretary, to be of concern to the Board.

ARTICLE IV

Committees

Section 4.0 The Chairperson shall appoint special committees as they be desired or required.

ARTICLE V

Quorums and Voting

Section 5.0 Three members of the Board shall constitute a quorum for the purposes of conducting business.

Section 5.1 All actions taken must be by affirmative vote of majority of those Board members present, except to adjourn or continue for lack of a quorum.

A tie vote constitutes a denial of an item, except that a member of the Board may then move that the item be reconsidered or continued to another meeting. A majority of the Board may then vote to reconsider or continue the item to another meeting

ARTICLE VI

Meetings

Section 6.0 Regular meetings of the ARB shall be held not less than twice a month. The Chairperson shall establish the dates of the meetings. Meetings shall be held on Thursday at 8:30 A.M. in the Palo Alto City Hall. Regular meetings may be adjourned and reconvened upon a majority vote of the members present.

- Section 6.1 The Chair, Vice Chair and Secretary shall meet ahead of each public hearing to go over the agenda and submit early questions to staff that will be answered at the hearing.
- Section 6.2 Special meetings may be called at any time by the Chairperson, or at the request of three members, by a written or oral notice given to each member at least 48 hours before the time specified for the proposed meeting.
- Section 6.3 Board members may attend remotely in accordance with the Brown Act, including traditional teleconferencing procedures in Government Code Section 54943, subdivision (b)(3), and remote attendance procedures set forth in Assembly Bill 2449 (Cal.Gov. Code Section 54953, subdivision (f)). Remote attendance under AB 2449 shall not be used for more than 20% of regular meetings (4 total meetings) in a calendar year or for more than three consecutive months.

## ARTICLE VII

### Rules

- Section 7.0 All meetings of the Board shall be conducted in accordance with a modified Robert's Rules of Order.

## ARTICLE VIII

### Design Awards

- Section 8.0 Design Awards for outstanding built projects may be awarded every five years beginning in 2005. Award-winning projects shall be selected from those reviewed by the ARB, and completed since the last awards were made.
- Section 8.1 Criteria and number of awards shall be determined by the awarding board.
- Section 8.2 Winning projects may be displayed in the City Hall lobby for one month following the presentation of awards. The ARB shall request that the Mayor of the City of Palo Alto issue an appropriate proclamation.

THE FOREGOING BY-LAWS WERE ADOPTED BY A MAJORITY VOTE OF THE PALO ALTO ARCHITECTURAL REVIEW BOARD THE 28TH DAY OF JUNE, 1973.

Amended: July 3, 1974  
May 19, 1977  
August 4, 2005  
February 5, 2015  
September 15, 2022  
February 16, 2023

## **INTERNAL PROTOCOL FOR REMOTE ARB HEARING ATTENDANCE**

Boardmembers are strongly encouraged to attend meetings in person. State law allows boardmembers to attend meetings remotely by following the procedures outlined in Assembly Bill 2449 (2022) (“AB 2449 Remote Attendance”). For convenience, these procedures are described below and are current as of March 2023. If state law is subsequently amended, the amended terms of State law will apply. A Boardmember attending remotely using these procedures must ensure that:

- a. At least a quorum of the Board is participating in person from a singular physical location clearly identified on the agenda and open to the public.
- b. The Boardmember has either “just cause” or “emergency circumstances” that require remote participation, as required by AB 2449.
  - i. “Just cause” is defined as:
    - a childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires remote attendance,
    - a contagious illness that prevents in-person attendance,
    - a need related to a physical or mental disability which cannot be resolved by a request for reasonable accommodation, or
    - travel while on the business of a state or local agency.
  - ii. “Emergency circumstances” is defined as:
    - a physical or family medical emergency that prevents a Boardmember from attending the Architectural Review Board meeting in person.
- c. Notice. A Boardmember that is attending remotely due to “just cause” or “emergency circumstances” must notify the Chair and the Secretary of the Board at the earliest possible opportunity, including at the start of the meeting, of their need to participate remotely and provide a general description of the circumstances. The Boardmember is not required to disclose any personal medical information.
- d. Acceptance. At the earliest opportunity available to it, the Board, by a majority vote of its members, take action on the request to approve or disapprove it. If the request does not allow sufficient time to place it on the agenda for the meeting for which the request is made, the legislative body must take action on the request at the beginning of the meeting by majority vote.
- e. Disclosures. Boardmembers attending remotely must publicly 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 the individual.
- f. Technology. All technology necessary for the Boardmember and for the public to attend remotely must function at all times, which must include two-way, live audio and visual communication.

If the Boardmember determines that any or all of these requirements cannot be met, he or she shall not participate in the meeting remotely using AB 2449 Remote Attendance procedures.\