

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO)	ORDINANCE NO. 22-1483
CODE SECTION 2.01.055 TO CLARIFY)	
ATTENDANCE AND PARTICIPATION OF)	Introduced by Council President Lynn
COUNCIL MEMBERS BY ELECTRONIC)	Peterson
MEANS)	

WHEREAS, on March 8, 2020, Governor Kate Brown issued Executive Order No. 20-03, Declaration of Emergency due to the Coronavirus (COVID-19) outbreak in Oregon; and

WHEREAS, on March 12, 2020, Metro Council adopted Ordinance No. 20-1443, amending Metro Code 2.01.055 (Participation of Council Members by Electronic means) to enable the Metro Council to conduct regular and special meetings with all councilors participating electronically in certain emergency situations declared by the Metro Council President, without being required to submit a written report and seek approval of the Metro Council President for each instance; and

WHEREAS, HB 2560 (2021), amending ORS 192.670 to require governing bodies to provide an opportunity, to the extent reasonably possible, for members of the public to access and attend public meetings by telephone, video, or other electronic or virtual means, including providing oral and written testimony, was enacted into law and became effective January 1, 2022; and

WHEREAS, during the COVID-19 pandemic, under Metro Code and state law, the Metro Council has been convening Council meetings electronically where all members of the Council are attending remotely by video and teleconference; and

WHEREAS, Metro has provided opportunities for the public to listen to an audio broadcast of Council meetings, as well as to watch Council meetings by videoconference and to provide oral and written testimony; and

WHEREAS, members of the Metro Council have appreciated the improved flexibility and equity of public participation while convening electronically, and desire to amend the Metro Code to continue to provide an option to members of Council to attend and participate in Council meetings by electronic means; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Amendment. Metro Code 2.01.055 (Participation of Council Members by Electronic Means) is hereby amended as provided in Exhibit A attached hereto; and
2. This Ordinance being necessary for the health, safety, and welfare of the Metro area, and to ensure effective and ethical governance by avoiding any disruption in the efficiency of Council proceedings and ability to convene Council meetings while maintaining flexibility to address community health and safety during the continued COVID-19 pandemic, an emergency is declared to exist, and this Ordinance shall take effect immediately, pursuant to Metro Charter Section 38(1).

ADOPTED by the Metro Council this 15th day of September 2022.



Christine Lewis, Deputy Council President

Attest:

Approved as to Form:

Connor Ayers

Carrie MacLaren

Connor Ayers, Recording Secretary

Carrie MacLaren, Metro Attorney

2.01.055 Participation of Council Members by Electronic Means

- (a) For any regular meeting or special meeting of the council, council members may attend and participate in the meeting by telephone or other electronic device.
- (b) The councilor who wishes to participate by electronic means must notify the Council President and Chief Operating Officer in writing before the commencement of the meeting or as soon as reasonably practicable. The Chief Operating Officer will make reasonable efforts to notify all council members when some or all of the members are expected to attend by electronic means.
- (c) Any emergency meeting may be conducted by electronic means consistent with the Oregon Public Meetings Law.
- (d) Except for an executive session, the council will make available at least one place where, or at least one electronic means by which, the public entitled to attend the meeting can listen to the communication at the time it occurs. The place provided may be at a place where no council members are physically present. [Ord. 94-559A, Sec. 1; Ord. 02-958A, Sec. 1; Ord. 11-1251; Ord. 20-1443]

IN CONSIDERATION OF ORDINANCE NO. 22-1483, FOR THE PURPOSE OF
AMENDING METRO CODE SECTION 2.01.055 TO CLARIFY ATTENDANCE AND
PARTICIPATION OF COUNCIL MEMBERS BY ELECTRONIC MEANS

Date: August 23, 2022
Department: Council Office
Meeting Date: September 8, 2022
Prepared by: Kristin Dennis

Presenter(s): Kristin Dennis
Kristin.dennis@oregonmetro.gov
503-797-1829
Length: 30 mins

ISSUE STATEMENT

During the COVID-19 pandemic, under Metro Code and state law, the Metro Council has been convening council meetings electronically where all members of the council, public, and staff are attending remotely by video and teleconference. Metro Council is prepared to continue to conduct Metro Council meetings in a hybrid mode, where members of the public, as well as staff, have the option to attend the meetings in-person or via electronic means.

However, except in an emergency situation declared by the Metro Council President, Metro Code Section 2.01.055 limits councilor ability to attend council meetings by electronic means. Specifically, Metro Code Section 2.01.055 only allows electronic participation by councilors in extraordinary circumstances approved by the Metro Council President, and further requires at least four councilors be physically present for a quorum to exist. Members of the Metro Council have appreciated the improved flexibility, accessibility for public participation, and decreased commuting across the region to support our congestion reduction and climate change goals, while convening electronically, and desire to amend the Metro Code to continue to provide an option to members of council to attend and participate in council meetings by electronic means.

ACTION REQUESTED

Approval of Ordinance No. 22-1483. This ordinance permits electronic participation by council members, providing increased flexibility. Councilors will be required to provide notification to the Council President and Chief Operating Officer (COO) that they intend to participate in a meeting electronically. The COO, or designee, is charged with notifying other councilors.

IDENTIFIED POLICY OUTCOMES

This action will allow Metro Council to continue to meet and conduct regular business by electronic means, providing increased flexibility.

POLICY QUESTION(S)

This action seeks to allow council members to continue to attend and participate in council meetings, even after the Metro Regional Center reopens and Metro Council terminates its declaration of an emergency. It ensures continuity of government by allowing Metro Council to more nimbly respond to other circumstances, such as where in person attendance is impracticable or dangerous due to an emergency situation that threatens the health, safety, and welfare of the Metro Area.

POLICY OPTIONS FOR COUNCIL TO CONSIDER

Option 1: Leave Metro Code as is. Except in the case of emergency circumstances declared by the Metro Council President, councilors who wished to participate electronically would be required to state the reasons why they could not be physically present, why extraordinary circumstances require their presence, and receive approval from the Metro Council President. Four council members would also have to be physically present to meet quorum requirements. If more than three councilors would like to participate electronically, the meeting would be canceled due to lack of quorum.

Option 2: Recommended course of action. Adopt this ordinance. It allows council to meet quorum electronically, providing additional flexibility for councilors to participate in council meetings electronically where in person attendance is impracticable or dangerous due to an emergency situation that threatens the health, safety and welfare of the Metro Area.

RECOMMENDATION

Metro Council should adopt Ordinance No. 22-1483.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

• Known Opposition/Support/Community Feedback

None.

• Anticipated Effects

Ordinance No. 22-1483 would amend Metro Code Section 2.01.055 to allow electronic participation by council members as a regular matter, without extraordinary circumstances or emergency conditions. All Public Meetings Law will still apply.

- **Financial Implications**

None.

BACKGROUND

Ordinance No. 94-559A, adopted by the Metro Council on September 8, 1994, authorized Metro Council members to attend council meetings electronically if they could not be physically present, extraordinary circumstances required their presence, the Metro Council President approved the participation, and at least four council members were physically present at the meeting.

After Governor Kate Brown issued Executive Order No. 20-03, Declaration of Emergency due to the Coronavirus (COVID-19) outbreak in Oregon, Metro Council adopted Ordinance No. 20-1443, amending Metro Code Section 2.01.055 (Participation of Council Members by Electronic means). As amended, Metro Code Section 2.01.055 enables the Metro Council to conduct regular and special meetings with all councilors participating electronically in certain emergency situations declared by the Metro Council President, without being required to submit a written report and seek approval of the Metro Council President for each instance. On March 23, 2020, Governor Kate Brown issued Executive Order 20-23 ordering the public to stay at home to stay healthy, and ordering certain businesses to close unless otherwise permitted to operate as provided by the Governor's Executive Order.

On April 15, 2020, Governor Kate Brown issued Executive Order 20-16, authorizing public meetings to be conducted by telephone, video, or other electronic and virtual means, and establishing requirements for the public to be able to listen or virtually attend the meetings at the time it occurs and providing opportunities for the submission of testimony by phone, video, or other electronic or virtual means, as well as written testimony. The 2020 Legislature also enacted House Bill 4212 (2020), authorizing public meetings to be exclusively conducted by electronic or virtual means and establishing requirements for public attendance, submission of testimony, and making recordings available, among other matters. Those provisions were effective as of June 30, 2020, and automatically repealed 30 days' after the expiration of the Governor's COVID-19 declaration of emergency.

On April 2, 2020, the Chief Operating Officer declared an emergency in the Metro region as a result of the COVID-19 pandemic, which was ratified by Metro Council in Resolution No. 20-5096 on April 23, 2020. Although the Governor terminated the COVID-19 Declaration of Emergency by Executive Order 22-03 in April 2022, the COVID-19 pandemic still continues to present a public health challenge, and the Metro Regional Center has not yet been fully reopened to the public.

During the COVID-19 pandemic, under Metro Code and state law, the Metro Council has been convening council meetings electronically where all members of the council are attending remotely by video and teleconference, as are members of the public and staff. Members of the Metro Council have appreciated the improved accessibility and equity of

public participation while convening electronically, and desire to amend the Metro Code to continue to provide an option to members of council to attend and participate in council meetings by electronic means. In addition, ORS 192.670 was amended by the 2021 Oregon Legislature to require governing bodies to provide an opportunity, to the extent reasonably possible, for members of the public to access and attend public meetings by telephone, video, or other electronic or virtual means, including providing oral and written testimony. Consequently, Metro is making efforts to conduct and support “hybrid” meetings where the public has the option to attend in-person, or electronically. Electronic participation by council members is consistent with this structure. Similar changes to enable electronic participation by elected members have been made by other local governments, including the City of Portland.

ATTACHMENTS

Attachment 1 is a redline version of Metro Code Section 2.01.055, showing the proposed amendment. Note that in addition to the substantive changes discussed above, the section has been reformatted for readability.

2.01.055 Participation of Council Members by Electronic Means

- (a) For any regular meeting or special meeting of the council, council members may attend and participate in the meeting by ~~the use of a voice or data communication device that allows communication with all other meeting participants provided the following conditions are fulfilled:~~ telephone or other electronic device.
- (b) ~~(1)~~ The councilor who wishes to participate by electronic means must ~~file a written request with~~ notify the Council President ~~stating the reasons why the councilor cannot be physically present at the meeting, and why extraordinary circumstances exist that require that the councilor should participate by electronic means.~~
- ~~(2)~~ ~~The Council President files with the~~ and Chief Operating Officer ~~a written report explaining the circumstances and containing the Council President's determination that the physical absence of the councilor is both unavoidable and excusable and that the physically absent councilor should participate in writing before the commencement of~~ the meeting.
- ~~(3)~~ ~~A majority of the council must be physically present at any special or regular meeting for a quorum to exist, or as soon as reasonably practicable. The Chief Operating Officer will make reasonable efforts to notify all council members when some or all of the members are expected to attend by electronic means.~~
- (c) ~~(b)~~ Any emergency meeting may be conducted by electronic means consistent with the Oregon Public Meetings Law.
- ~~(c)~~ ~~Participation at any council meeting by electronic means shall not constitute attendance at a meeting of the council for the purpose of Section 22(1)(e) of the Metro Charter, unless an emergency exists pursuant to subsection (d).~~
- (d) ~~Upon declaration by the Metro Council President, the requirements of subsection (a)(3) need not be satisfied for any meeting conducted electronically due to an emergency situation, such as a threat to~~ Except for an executive session, the health, safety council will make available at least one place where, or welfare of the Metro Area, provided that the meeting otherwise fulfills the requirements of Public Meetings Law at least one electronic means by which, the public entitled to attend the meeting can listen to the communication at the time it occurs. The place provided may be at a place where no council members are physically present. [Ord. 94-559A, Sec. 1; Ord. 02-958A, Sec. 1; Ord. 11-1251; Ord. 20-1443]