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TO: David J. Stoldt, General Manager
FROM: David C. Laredo, General Counsel
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RE: Review of Brown Act Teleconferencing Regulations

Received on
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As of January 1, 2023, three separate laws take effect to regulate remote (teleconferencing) activities of public agencies pursuant to the Brown Act. These teleconferencing regulations are 1) traditional Brown Act rules, 2) AB 361 Emergency rules, and 3) AB 2449 limited Specific Scenario rules. This memo is intended to provide clarity as to how each of these regulations may be implemented.

Traditional Brown Act Teleconferencing Rules

Teleconferencing has long been allowed pursuant to the Brown Act. The Brown Act allows a local agency to use any type of teleconferencing in connection with any meeting. (Gov't Code § 54953(b).) "Teleconference" is defined as "a meeting of individuals in different locations, connected by electronic means, through either audio or video, or both."

Government Code Section 54953(b) contains the following specific requirements:

- Teleconferencing may be used for all purposes during any meeting.
- At least a quorum of the public agency must participate from teleconferencing locations within the city's jurisdiction.
- Each teleconference location must be identified with specificity in the notice and agenda for the meeting.
- Agendas must be posted at each teleconference location.
- Each location, including teleconference locations, must be accessible to the public.
- The agenda must provide the opportunity for the public to address the legislative body directly at each teleconference location.
- All votes must be by roll call.

These rules form the baseline standard for teleconferencing under the Brown Act. If the criteria for AB 361 or AB 2449 cannot be met, the Traditional Teleconferencing rules set forth above shall apply.

Emergency Teleconferencing Rules (AB 361)

Responding to the COVID-19 pandemic, the California Legislature enacted AB 361 to streamline requirements for teleconference/virtual meetings under the Brown Act. Importantly, AB 361 rules apply only during times of a declared emergency.

When a state of emergency is involved, a legislative body may hold teleconference meetings without meeting Traditional Brown Act procedural teleconferencing requirements (e.g., posting agendas at teleconference locations, identifying teleconference locations in the agenda, ensuring each teleconference location is open to the public) in the following circumstances:

- The meeting is held during a proclaimed state of emergency, and state/local officials have imposed or recommended measures to promote social distancing;
- The meeting is held during a proclaimed state of emergency for the purpose of determining whether meeting in person during the emergency would present imminent risks to the health or safety of attendees; and/or
- The meeting is held during a proclaimed state of emergency and the body has already determined that meeting in person during the emergency would present imminent risks to the health or safety of attendees.

If the body relies on the above findings to justify meeting by teleconference, it must also:

- Give the public notice as to how to access the meeting and how to offer public comment;
- Ensure that if access is disrupted during the online meeting, the body take no further action on agenda items until public access is restored;
- Avoid requiring public comments be submitted in advance, and provide a real-time option for the public to address the body at the meeting; and
- If the state of emergency remains active or social distancing measures continue to be imposed or recommended by state or local officials, the agency board shall make findings supporting the teleconference meetings at least every 30 days.

AB 361 remains in effect until Jan. 1, 2024, and local agencies may continue to make or renew remote meeting findings under that law as appropriate.

Crucially, on October 17th, 2022, ***Governor Newsom announced that the COVID-19 State of Emergency will end on February 28, 2023.*** To rely on AB 361 teleconference rules after that date, a separate declaration of emergency must be declared that includes the findings first set forth above.

Limited Specific Scenario Teleconferencing Rules (AB 2449)

AB 2449 provides new teleconferencing rules available January 1, 2023. AB 2449 reaffirms the applicability of Traditional Brown Act teleconference rules, re-codifies rules set out in AB 361 for times of declared emergency, and also provides for relaxed teleconferencing rules in limited circumstances where a member of the legislative body needs to attend remotely for an emergency, or other reasons supported by “just cause.”

AB 2449 provides the legislative body may hold a “hybrid” (partial teleconference, partial in-person) meeting without having to comply with certain procedural requirements (e.g. posting agendas at teleconference locations, identifying teleconference locations in the agenda, or making all teleconference locations open to the public) in the following limited circumstances:

- One or more members of the legislative body (but less than a quorum) may provide “just cause” for not attending the meeting in person; or
- One or more members of the legislative body (but less than a quorum) may experience an

emergency circumstance.

AB 2449 defines “just cause” and “emergency circumstances” for the purposes of teleconferencing.

- “Just cause” is limited to one or more of the following: (i) a childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely; (ii) a contagious illness that prevents a member from attending in person; (iii) a need related to a physical or mental disability as defined by statute; or (iv) travel while on official business of the legislative body or another state or local agency.
- “Emergency circumstances” means a physical or family medical emergency that prevents a member from attending in person.

When a member requests relief for “just cause,” AB 2449 allows a member to provide notification as late as the start of a regular meeting of the local legislative body and the legislative body need not take action to allow the member to attend the meeting virtually under such circumstances. However, unlike a request for remote attendance for “just cause,” a request from a member to attend remotely due to an “emergency circumstance” requires the legislative body to approve the remote attendance at the start of that meeting; without board approval the member shall not be allowed to participate remotely at that meeting.

Members of any legislative body who wish to use one of the above exceptions should be sure to contact the agency’s legal counsel before attending a meeting remotely. AB 2449 imposes restrictions as to the number of times any one member may attend remotely each year under one of these exceptions. Further, a quorum of the body must still meet in-person, and the body must satisfy the following relaxed remote access rules:

- Provide either a two-way audio-visual system or a two-way phone service in addition to live webcasting;
- Identify a call-in or internet-based access option on the agenda, in addition to the in-person meeting location;
- Ensure that if transmission of the online meeting is disrupted, the body shall take no further action on agenda items until public access is restored; and
- Avoid requiring public comments to be submitted in advance and provide a real-time option for the public to address the body at the meeting.

In effect, AB 2449 offers an alternate teleconferencing option that allows a legislative body to use teleconferencing procedures without complying with the traditional teleconference agenda requirements in certain circumstances. However, the complexity of AB 2449’s teleconference scheme will make it difficult to administer. In practice, the similarities between “just cause” and “emergency circumstances” may make it difficult to determine which category should be used and whether facts support one process or the other. These practical implications are further obscured by AB 2449’s limitations on how frequently a member can teleconference under the statute. Importantly the Board Clerk must maintain a record of the number of times each Board member relies on the AB 2449 alternate attendance process, and whether the body approved the remote attendance for an “emergency circumstance.”

AB 2449’s rules remain in effect through 2025. After January 1, 2026, unless further legislation is adopted, only the Traditional Brown Act rules will remain in effect with respect to remote attendance issues.

Conclusion

Brown Act teleconferencing rules continue to change and evolve. As it currently stands, on January 1, 2023, three separate regulations may be used to govern teleconferenced meetings – Traditional Brown Act rules, AB 361 Emergency rules, and AB 2449 limited Specific Scenario rules. Public Officials and Local agencies must work with Staff and legal Counsel to determine which rules apply when it plans to hold a teleconferenced (remote) meeting, and what records must be kept in each circumstance.

Teleconference Rules Summary

	Traditional Rules	AB 361	AB 2449
Effective Date	Now	Now	January 1, 2023
Sunset Date	None	January 1, 2024	January 1, 2026
Triggering Event	None	<ul style="list-style-type: none"> <input type="checkbox"/> Meeting held during a proclaimed state of emergency and state/local officials have imposed/recommended measures to promote social distancing; and/or <input type="checkbox"/> Meeting held during a proclaimed state of emergency to determine whether meeting in person would present imminent risks to the health/safety of attendees; and/or <input type="checkbox"/> Meeting held during a proclaimed state of emergency and the body has already determined that meeting in person during the emergency would present imminent risks to the health or safety of attendees. 	<ul style="list-style-type: none"> <input type="checkbox"/> Member (less than quorum) has “just cause” for not attending in person (childcare or family caregiving need, contagious illness, physical or mental disability need, or travel while on official public business); or <ul style="list-style-type: none"> <input type="checkbox"/> No Action required by Body <input type="checkbox"/> Member (less than quorum) experiences an emergency circumstance (a physical or family medical emergency that prevents in-person attendance). <ul style="list-style-type: none"> <input type="checkbox"/> Requires Body take action to approve remote attendance at the start of the meeting.
Notice	Post agendas at all teleconference locations.	Identify a call-in or internet-based access option on the agenda.	Identify a call-in or internet-based access option on the agenda, in addition to the in-person meeting location.
Member Attendance	A quorum of the body must participate from locations within the boundaries of the territory over which the local body exercises jurisdiction.	<p>No requirement for quorum of in-person or in-jurisdiction members.</p> <p>Members participating remotely may do so through audio/visual technology</p>	<p>A quorum of the body must be meeting in-person from locations within the boundaries of the territory over which the local body exercises jurisdiction.</p> <p>Members participating remotely must do so through both audio and visual technology and must publicly disclose whether any individual over the age of 18 is present at the remote location with the member.</p>
Public Participation	The agenda shall provide an opportunity for members of the public to address the legislative body directly at each teleconference location.	<p>Provide a real-time option for the public to address the body at the meeting.</p> <p>Ensure that if a disruption to the online meeting occurs, the body takes no further action on agendized items until public access is restored.</p>	<p>Provide a real-time option for the public to address the body at the meeting.</p> <p>Ensure that if a disruption to the online meeting occurs, the body takes no further action on agendized items until public access is restored.</p>
Limitations	None.	Body continues to make findings identifying the Emergency and supporting the teleconference meetings at least every 30 days.	<p>A member may only teleconference for a limited number of meetings.</p> <p>Procedure may not be used for a period of more than three consecutive months or 20% of the regular meetings within a calendar year, or more than two meetings if the legislative body meets fewer than 10 times per calendar year.</p>
Voting	All votes must be made by rollcall.	All votes must be made by rollcall.	All votes must be made by rollcall.