



PUBLIC MEETINGS

Ralph M. Brown Act: Generally, the Brown Act provides that all meetings of a legislative body of a local agency be open and public, and all public members be permitted to attend and participate. The Act requires posting an agenda, at least 72 hours before a regular meeting, containing a brief description of each item of business to be transacted or discussed at the meeting, and prohibits any action or discussion from being undertaken on any item not appearing on the agenda.¹ The Act allows for meetings to occur via teleconference under strict restrictions as follows:

- 1) all teleconference locations must be identified in the notice and agenda of the meeting;
- 2) each teleconference location must be accessible to the public;
- 3) members of the public must be allowed to address the legislative body at each teleconference location;
- 4) the agenda must be posted at each teleconference location; and
- 5) at least a quorum of the legislative body must be present within the boundaries of the local agency².

State of Emergency: Governor Newsom proclaimed a State of Emergency related to COVID-19 on March 4, 2020. Local agencies followed guidance and orders of the Alameda County Health Official regarding safety protocols for public meetings.

Governor Newsom's Executive Order No. N-29-20: Issued on March 17, 2020, Executive Order N-29-20 suspended and modified the Brown Act's teleconferencing requirements during the COVID-19 pandemic. This allowed members of legislative bodies to participate in meetings from remote locations without complying with restrictions described above, and allowed public agencies to make meetings electronically accessible to the public. The Order expired on September 30, 2021.

¹ Government Code section 54954.2.

² Government Code section 54953(b).





Assembly Bill (AB) 361 (Changes to the Ralph M. Brown Act): On September 16, 2021, Governor Newsom signed AB 361 into law, as an urgency bill effective immediately since Executive Order N-29-20 was set to expire on September 30, 2021. AB 361 permits legislative bodies of local agencies to continue to meet via teleconference during a state of emergency proclaimed by the Governor, without having to meet the requirements of traditional teleconference meetings under the Ralph M. Brown Act³. AB 361 further requires that the public have the ability to directly address the legislative body in real time via dial-in or electronic means. Additionally, AB 361 requires a legislative body to make findings every 30 days during the course of the state of emergency justifying the continuing need to conduct teleconferenced meetings. The Hayward City Council recently adopted a final AB 361 resolution on January 24, 2023 to allow teleconferenced meetings through February 23, 2023. AB 361 will sunset on January 1, 2024, unless the Governor signs legislation delaying or eliminating the sunset date.

Assembly Bill (AB) 2449 (Open Meetings: Local Agencies: Teleconferences): On September 13, 2022, Governor Newsom signed AB 2449 into law, effective January 1, 2023. AB 2449 does not affect AB 361 but implements another temporary exception to traditional Brown Act teleconferencing rules by authorizing agencies to meet by teleconference without strict compliance with the traditional notice and physical access requirements. AB 2449 authorization expires on January 1, 2026. AB 2449's framework is based on the circumstances of individual members of the legislative body.

The legislative body of a local agency can use teleconferencing without noticing each teleconference location or making it publicly accessible, under the following provisions of AB 2449⁴:

- A. At least a quorum of the body participates in person at a single physical location that is identified on the agenda, open to the public, and within the boundaries of the agency.

³ Government Code section 54953(e).

⁴ Government Code section 54953(f).





- B. There is a procedure for receiving and resolving requests for reasonable accommodations for individuals with disabilities, consistent with federal law.
- C. A member of the legislative body may participate remotely only in one of two circumstances:
 - 1. With “just cause”, the member can participate remotely after giving notice as soon as possible. AB 2449 defines “just cause” as (a) a family childcare or caregiving need; (b) a contagious illness; (c) a need related to a physical or mental disability that is not otherwise accommodated; or (d) travel while on official business. AB 2449 limits a member to participating remotely under this provision to two (2) meetings per calendar year.
 - 2. In “emergency circumstances,” defined as a physical or family emergency that prevents the member from attending in person, the member can participate remotely by requesting approval to do so from the legislative body. The legislative body may take action on the request as soon as possible, including at the beginning of the meeting, even if there was not sufficient time to place the request formally on the agenda.

Under either circumstance, the member in question must give a general description of the circumstances relating to their need to appear remotely, but need not disclose any medical diagnosis, disability, or other confidential medical information.

In addition, AB 2449 provides that a member cannot participate solely by teleconference under the new teleconference framework for more than three (3) consecutive months or more than twenty (20) percent of the agency’s regular meetings (or more than two meetings if the agency meets fewer than ten (10) times per year).

Outside of the limited circumstances authorized by AB 2449 and AB 361, public meetings can still occur via teleconference if the legislative body complies with the general (pre-pandemic) agenda, notice, and quorum requirements of the Brown Act.





End of COVID State of Emergency: Governor Newsom has announced he will end the COVID-19 State of Emergency on February 28, 2023. After that date, legislative bodies of local agencies will resume in-person meetings and follow regular procedures for posting the agenda, except when holding teleconferenced meetings pursuant to either traditional Brown Act rules or AB 2449.

Dated: February 6, 2023

Miriam Lens, City Clerk
Michael Lawson, City Attorney
Michael Vigilia, Sr. Assistant City Attorney

