

The Brown Act – Teleconferencing & Social Media



Office of the Sonoma County Counsel

January, 2023

The Brown Act – Transparency and Public Input



- All meetings of a legislative body of a local agency shall be open and public.
- All persons shall be permitted to attend and participate in the meetings.



What is a Meeting?

- Congregation of a member majority at the same time and place to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction

(see details below for teleconference meetings)

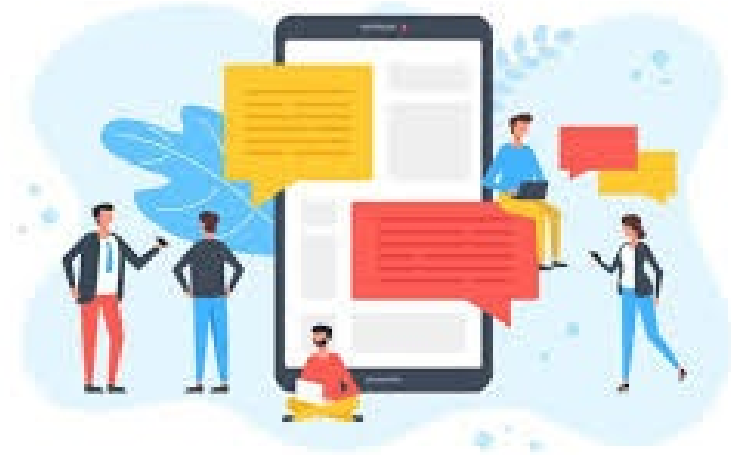


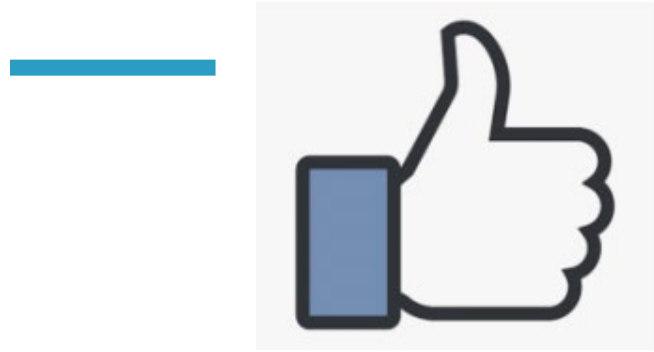
What is a Legislative Body?

- A commission, committee, board, or other body of a local agency whether permanent or temporary, decision making or advisory, created by charter, ordinance, resolution or formal action of the legislative body.

NO Serial Meetings

A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action

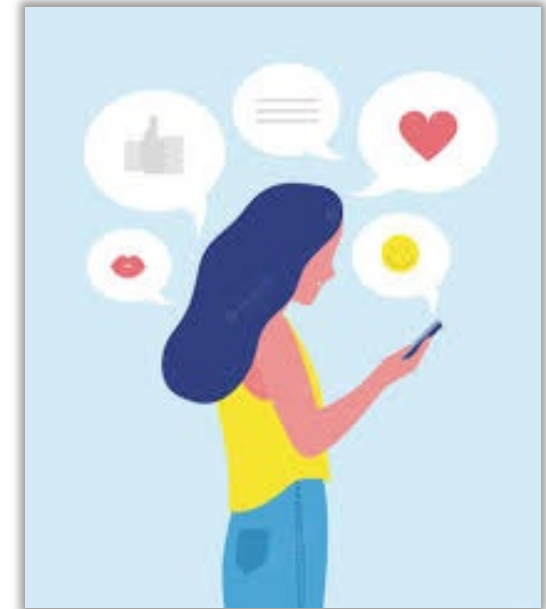




- Majority of members may not use the social media platform to discuss among themselves business within the subject matter jurisdiction
- Members may not make, post, “like” or share communications on social media platforms between members, including comments or use of digital icons that express reactions to communications made by other members

OK - Separate Information Sharing

- A member may communicate separately on social media to answer questions, provide information to the public, or to solicit information from the public, but only if the member does not discuss business with other members



Not a Serial Meeting

- Individual contacts between members and staff, counsel or others, e.g. staff meeting with a member to answer questions or provide information.
- But: staff should not ask and member should not answer questions about concerns or positions of other members.



Not a Meeting



- Attendance at social or ceremonial events where no business of the Board is discussed.
- Community forums and meetings of other government bodies
- Attendance at public conferences if Board Members do not discuss among themselves the business of their jurisdiction



Notice & Posting Agendas



- Agenda must be posted 72 hours in advance (if a special meeting is called, 24 hour notice must be given)
- Brief description of items of business
- Agendas must be publicly accessible and distributed in advance to those who request copies



Public Comment



- Every agenda for a regular meeting must allow members of the public to speak on any item of interest, so long as the item is within the subject area of the legislative body.
- Public must be allowed to speak on a specific item of business before or during the legislative body's consideration of it.
- May adopt a policy to limit public comment on a topic (such as 1 minute per speaker).
- Whenever the time for public comment is limited, at least twice the allotted time must be provided to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity.



Teleconference Rules





Teleconference Options

March 1, 2023

- Assuming the Governor's Emergency Proclamation is rescinded as announced, the County's boards and commissions should plan now to be prepared by March 1, 2023 to return to meeting in person.
- The ability of any member to participate remotely after that date will require either
 - (1) full compliance with the Brown Act's traditional rigid teleconferencing requirements — including posting all members' remote locations on agendas and making all of those locations publicly accessible; or
 - (2) following new complex teleconferencing provisions added by Assembly Bill 2449 which go into effect on January 1, 2023.



Option 1

Traditional Brown Act Teleconference Requirements:

- allow a board or commission to use any type of teleconferencing in connection with any meeting.
- defines teleconference as a meeting of individuals in different locations, connected by electronic means, through either audio or video, or both.
- To conduct a meeting with a member participating by teleconferencing, the Brown Act requires the following:
 - At least a quorum of the commission or board members must participate from locations within the jurisdictional boundaries of the County.
 - Each teleconference location must be identified in the notice and agenda of the meeting.
 - Agendas must be posted at each teleconference location in addition to the standard posting location.
 - Each location 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.



Option 2

Assembly Bill 2449:

- On September 13, 2022, Assembly Bill 2449 was signed into law adding an alternative teleconferencing provisions to the Brown Act effective January 1, 2023 until its sunset (or extension) on January 1, 2026.
- AB 2449 provides complex alternative teleconference procedures to allow a minority of members to participate remotely without having to post agendas at all teleconference locations, identify all teleconference locations in the meeting agendas, or make each teleconference location open to the public under very specific circumstances:
 - At least a quorum of the members of the legislative body must participate in person from one physical location identified on the agenda, which location must be open to the public and within the boundaries of the local agency.
 - A member may only teleconference for publicly disclosed "just cause" or in "emergency circumstances" approved by the legislative body.
 - The public must be able to participate remotely.
 - A member may only teleconference for a limited number of meetings.
 - All votes must be by roll call.

Option 2

AB 2449 – Teleconferencing Requirements

“Just Cause”

Timing and Procedure

The member notifies the legislative body at the earliest opportunity possible (can be as late as the start of a regular meeting) of their need to participate remotely for “just cause,” including a general description of the circumstances justifying their need to appear remotely.

Qualifying Reason

“Just cause” means any of the following:

- A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely
- A contagious illness that prevents a member from attending in person
- A need related to a physical or mental disability not otherwise accommodated for
- Travel while on official business of the legislative body or another state or local agency

Note: A member is limited to two virtual attendances based on “just cause” per calendar year.

“Emergency Circumstances”

Timing and Procedure

The member requests the legislative body as soon as possible to allow them to participate in the meeting remotely due to “emergency circumstances” and provides a general description of the circumstances justifying their need to appear remotely.

and

The legislative body takes action to approve the request. If the request does not allow sufficient time to place proposed action on such a request on the posted agenda for the meeting for which the request is made, the legislative body may take action at the beginning of the meeting in accordance with existing Brown Act provisions to add an item to the agenda.

Qualifying Reason

“Emergency circumstances” means a physical or family medical emergency that prevents a member from attending in person (does not require disclosure of any medical diagnosis or disability, or any personal medical information that is already exempt under existing law).

Note: The member must make a separate request for each meeting in which they seek to participate remotely.

Option 2

AB 2449 – Teleconferencing Requirements

Other Requirements

Under either “just cause” or “emergency circumstances”:

- The member 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 any such individual(s).
- The member must participate through *both* audio and visual technology (cannot turn off camera).
- Teleconferencing by a member may not be for a period of
 - more than three consecutive months or 20 percent of the regular meetings for the local agency within a calendar year, *or*
 - more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year
- The public must be able to participate remotely through either:
 - A two-way audiovisual platform (defined to mean an online platform that provides participants with the ability to participate in a meeting via both an interactive video conference and a two-way telephonic function); and/or
 - A two-way telephonic service *and* a live webcasting of the meeting (defined to mean a telephone service that does not require internet access, is not provided as part of a two-way audiovisual platform, and allows participants to dial a telephone number to listen and verbally participate).

All votes must be by roll call.



Remote Public Participation May Continue

- State law continues to allow (and AB 2449's alternative procedures require) remote public participation.
- If there are sufficient staff resources to allow this option, boards and commissions may choose to hold a hybrid meeting with all board members present (or teleconferenced using applicable Brown Act rules) plus a call in and/or a Zoom-type option for members of the public to participate remotely.

Open and Accessible Requirements

- Social media platforms used to communicate on matters within the legislative body's jurisdiction should be open and accessible to the public, free of charge, and do not require approval for participation from the social media site or a third party.
 - Nextdoor is not open and accessible because it requires approval to join.
 - Private groups on Facebook that require approval of a moderator to join are not open and accessible.



Resources



- The Ralph M. Brown Act – Government Code Sec. 54950-54963
- Assembly Bill 2449 (Open Meetings: Local Agencies: Teleconferences) – https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2449
- Assembly Bill 992 (Open Meetings and Social Media) – https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB992