



# MEMORANDUM

September 15, 2022

**TO:** All Clients

**FROM:** Raquel Ayala Vargas, Esq.  
Reeb Government Relations, LLC

**SUBJECT:** Open Meeting Legislation

This year, in an attempt to provide additional flexibility and protections to legislative bodies when conducting meetings, the legislature sent three bills to the Governor's desk for his signature which further modifies the Brown Act's provisions relating to open meetings. Two of those bills have already been signed into law, with one still on the Governor's desk awaiting action.

## **ASSEMBLY BILL 2449: Open meetings: local agencies: teleconferences**

AB 2449, by Assemblymember Blanca Rubio (D-Baldwin Park), was signed into law on September 13, 2022. (Chapter No. 285) The bill would provide members of a local agency's legislative body with increased flexibility when needing to meet remotely outside of a state of emergency.

The bill would, until January 1, 2026, authorize a local agency to use teleconferencing without complying with the teleconferencing requirements that each teleconference location be identified in the notice and agenda and that each teleconference location be accessible to the public if at least a quorum of the members of the legislative body participates in person from a singular physical location clearly identified on the agenda that is open to the public and situated within the local agency's jurisdiction. Under this exception, the bill would authorize a member to participate remotely for just cause or due to emergency circumstances.

In order to use the flexibility, the bill requires the legislative body to meet the following requirements:

1. Provide a two-way audio-visual platform or a two-way telephonic service and a live webcasting of the meeting by which the public may remotely hear and visually observe the meeting and also remotely address the legislative body;
2. Give notice of the means for the public to access the meeting and offer public comment in each instance the legislative body notices the meeting or posts the agenda;

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3. Identify and include an opportunity for all persons to attend and address the legislative body directly via a call-in or internet-based service option, and at the in-person location of the meeting;
4. Not require that public comments be submitted in advance of the meeting and provide an opportunity for the public to address the legislative body and offer comment in real time; and
5. Stop the meeting until public access is restored in the event of a service disruption that (1) prevents the local agency from broadcasting the meeting to the public using the call-in or internet-based service option, or (2) is within the local agency's control and prevents the public from submitting public comments. *Any actions taken during such a service disruption can be challenged under the Brown Act's existing challenge provisions.*
6. Have and implement a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and resolving any doubt in favor of accessibility.
7. In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body must also give notice of the procedure for receiving and resolving requests for accommodation.
8. Requires the legislative body to conduct meetings subject to the Brown Act consistent with applicable civil rights and nondiscrimination laws.

### Just Cause

The measure requires a member of a legislative body needing to participate remotely for *just cause* to:

- 1) Notify the legislative body at the earliest opportunity possible, including at the start of a regular meeting, of their need to participate remotely for just cause.
- 2) Including in the request a general description of the circumstances relating to their need to appear remotely at the given meeting.
- 3) Participate through both audio and visual technology.
- 4) Publicly disclose whether any other individuals 18 years of age or older are present at the teleconference location and the member's relationship with any such individuals.

*[The provision relating to remote participation for just cause cannot be used by any member of the legislative body for more than two meetings per calendar year.]*

The bill defines "just cause" as any of the following:

1. Childcare or caregiving need that requires them to participate remotely;
2. A contagious illness that prevents a member from attending in person;
3. A need related to a physical or mental disability not otherwise accommodated; and
4. Travel while on official business of the legislative body or another state or local agency.

Emergency Circumstances

The measure requires a member of a legislative body needing to participate in a meeting remotely due to emergency circumstances to do the following:

- 1) Request the legislative body to allow them to participate in the meeting remotely due to emergency circumstances;
- 2) Provide the legislative body with a general description of the circumstances relating to their need to appear remotely at the given meeting. *A general description of an item generally need not exceed 20 words and does not require the member to disclose any medical diagnosis or disability, or any personal medical information that is already exempt under existing law.*
- 3) The legislative body takes action to approve the request *[The legislative body may decide to allow the member to participate remotely at the earliest opportunity. 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.]*
- 4) Participate through both audio and visual technology.
- 5) Publicly discloses whether any other individuals 18 years of age or older are present at the teleconference location and the member's relationship with any such individuals.

The bill provides that the provisions relating to remote participation due to emergency circumstances cannot serve as a means for any member of a legislative body to participate in meetings of the legislative body solely by teleconference from a remote location 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 bill defines "emergency circumstances" as a physical or family medical emergency that prevents a member from attending in person.

The bill provisions take effect on January 1, 2023. The flexibility provided by the bill will expire on January 1, 2026; after which time, unless extended or otherwise modified by future legislation, local agencies go back to the teleconferencing requirements established under the Brown Act.

**ASSEMBLY BILL 2647: Local government: open meetings.**

The Brown Act states that any writing or document that has been distributed to a majority of a local legislative body less than 72 hours before a meeting must also be distributed to the public at the same time. To meet these requirements, many local governments often post meeting documents and materials online.

In *Sierra Watch v. Placer County*, 69 Cal. App. 5<sup>th</sup> 1, 9, 2021, the Third District Court of Appeal held that neither placing the materials in a public office that is closed, nor posting the materials online at the

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same time the members receive them, satisfy the Brown Acts requirement to make meeting materials available for public inspection.

AB 2647, by Assemblymember Marc Levine (D-Marin County), seeks to clarify that writings distributed to the majority of a local legislative body less than 72 hours before a meeting can be posted online to satisfy the Brown Act requirement if physical copies are made available for public inspection at the beginning of the next regular business hours at a public office or designated location. If signed into law, beginning January 1, 2023, AB 2647 would exempt local agencies from making materials available for public inspection at the time they distribute them to members of the legislative body less than 72 hours before the meeting, if the agency meets the following requirements:

- 1) An initial staff report or similar document containing an executive summary and the staff recommendation, if any, relating to that agenda item is made available for public inspection at the designated office or location at least 72 hours before the meeting;
- 2) The local agency immediately posts any writing on the local agency's internet website in a position and manner that makes it clear that the writing relates to an agenda for an upcoming meeting;
- 3) The local agency lists the web address of that agency's internet website on all meeting agendas;  
AND
- 4) The local agency makes physical copies available for public inspection, beginning the next regular business hours for the local agency, at the designated public office or location. *This clause is satisfied only if the next regular business hours of the local agency commence at least 24 hours before the meeting.*

If all 4 clauses above are not satisfied, then the exemption provided by AB 2647 would not apply and local agency must:

- 1) Make any writing distributed to a majority of a local legislative body less than 72 hours before a meeting available for public inspection at a public office or location that the agency has designated for this purpose; AND
- 2) The local agency must list the address of the office or location designated pursuant to clause (1) on the agendas for all meetings of the legislative body of that agency.

The court has determined that the requirement 1) above is only met if the writing is actually available for public inspection. In the case of *Sierra Watch v. Placer County*, which prompted this legislation, the County clerk placed copies of the materials in question in the County clerk's office at 5:42 p.m., an office which is not open to the public after 5:00 pm. Thus the court ruled that the materials were not actually available for public inspection.

The League of California Cities was the sponsor of this bill.

**SENATE BILL 1100: Open meetings: orderly conduct.**

SB 1100, by Senator Dave Cortese (D-San Jose), authorizes the presiding member of a legislative body conducting a meeting, or their designee, to remove an individual for disrupting the meeting, and defines “disrupting” for these purposes. The bill outlines the following procedure to be followed before an individual can be removed from a meeting:

1. Prior to removing an individual from a meeting, the presiding member or their designee must warn the individual that their behavior is disrupting the meeting, and that their failure to cease such behavior may result in their removal.
2. Remove the individual from the meeting, if individual does not promptly cease their disruptive behavior.

The bill defines “Disrupting” to mean engaging in behavior during a meeting of a legislative body that actually disrupts, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to:

- 1) A failure to comply with reasonable and lawful regulations adopted by a legislative body. *The Brown Act allows a local agency to adopt reasonable regulations for the conduct of meetings.*
- 2) Engaging in behavior that constitutes use of force or a true threat of force. *A true threat of force is defined as one that a reasonable person would perceive as an actual threat to use force by the person making the threat.*

According to the Author, the bill is intended to prescribe clearer standards around when removal of a meeting participant is warranted and what authority members of a legislative body can exercise. Section 4 of the bill states that “this act is necessary to give legislative bodies clear authorization to restore order to meetings in the event of actual disruptions that are disturbing, disrupting, impeding, or rendering infeasible the orderly conduct of the meeting and, thereby, preserve the rights of other members of the public at the meeting and allow the legislative body to continue its work on behalf of the public.”

The California State Association of Counties (CSAC) and the Urban Counties of California were the sponsors of this measure. The bill was signed into law on August 22. (Chapter 171; Statutes of 2022)

**BACKGROUND: The Ralph M. Brown Act**

The Ralph M. Brown Act generally requires meetings of a legislative body of a local agency be open and public and that all persons be permitted to attend and participate. The Act contains specified provisions regarding the timelines for posting an agenda and providing for the ability of the public to directly address the legislative body on any item of interest to the public. The Act generally requires all regular and special meetings of the legislative body be held within the boundaries of the territory over which the local agency exercises jurisdiction.

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The Act allows for meetings to occur via teleconferencing subject to following requirements:

- (1) The legislative body notice each teleconference location of each member that will be participating in the public meeting;
- (2) Each teleconference location be accessible to the public;
- (3) Members of the public be allowed to address the legislative body at each teleconference location;
- (4) That the legislative body post an agenda at each teleconference location; and
- (5) At least a quorum of the legislative body participate from locations within the boundaries of the local agency's jurisdiction.

### 2021 Enacted Legislation

Last year, the legislature passed and Governor Newsom signed into law Assembly Bill 361. (Chapter 165; Statutes of 2021) The bill authorized a local agency, until January 1, 2024, to use teleconferencing for a public meeting without complying with the Brown Act's teleconferencing quorum, meeting notice, and agenda requirements in any of the following circumstances:

- (a) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.
- (b) The legislative body holds a meeting during a proclaimed state of emergency for purposes of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health and safety of attendees.
- (c) The legislative body holds a meeting during a proclaimed state of emergency and has determined by majority vote [see (b) above] that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

The bill provides that a legislative body holding a teleconferenced meeting pursuant to this Brown Act exception is subject to the following requirements:

1. Give notice of the meeting and post agendas as otherwise required by the Brown Act.
2. Allow members of the public to access the meeting, and provide in the meeting agenda an opportunity for members of the public to address the legislative body directly pursuant to Brown Act requirements.
3. In each instance where notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, give notice of the means by which members of the public may access the meeting and offer public comment.
4. Identify and include in the meeting agenda an opportunity for all persons to attend via call-in option or an internet-based service option. The legislative body need not provide a physical location from which the public may attend or comment.
5. Conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body.

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6. Stop the meeting until public access is restored in the event of a service disruption that (1) prevents the local agency from broadcasting the meeting to the public using the call-in or internet-based service option, or (2) is within the local agency's control and prevents the public from submitting public comments. Any actions taken during such a service disruption can be challenged under the Brown Act's existing challenge provisions;
7. Not require public comments to be submitted in advance of the meeting, and provide an opportunity for the public to address the legislative body and offer comment in real time.
8. The legislative body may use an online third-party system for individuals to provide public comment that requires an individual to register with the system prior to providing comment.
9. If a legislative body provides a timed public comment period, it may not close the comment period or the time to register to provide comment until the timed period has elapsed. If the legislative body does not provide a time-limited comment period, it must allow a reasonable time for the public to comment on each agenda item and to register.

If the state of emergency remains active, or state or local officials have imposed measures to promote social distancing, the legislative body must, in order to continue meeting subject to this exemption to the Brown Act, no later than 30 days after it commences using the exemption, and every 30 days thereafter, make the following findings by majority vote:

- 1) The legislative body has reconsidered the circumstances of the state of emergency; and
- 2) Either (1) the state of emergency continues to directly impact the ability of the members to meet safely in person; or (2) state or local officials continue to impose or recommend measures to promote social distancing.