



COUNTY OF YOLO

Office of the County Council

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MEMORANDUM

TO: All Local Legislative Bodies subject to the Ralph M. Brown Act

FROM: Philip J. Pogledich, County Counsel
Eric May, Senior Deputy County Counsel

DATE: November 30, 2022

SUBJECT: Brown Act Compliance in 2023: Limited Options for Remote Participation

The simplified procedures that many bodies subject to the Ralph M. Brown Act (“Brown Act”) have relied on during the COVID-19 pandemic are set to expire on February 28, 2023. This memorandum provides updated guidance regarding remote meetings pursuant to the Brown Act after those procedures expire.

Since the beginning of the pandemic, many local legislative bodies¹ have been meeting remotely under authority granted by the Governor by executive order (since rescinded) and, more recently, pursuant to the simplified approach included in Assembly Bill 361 (“AB 361”). This will soon change. As described in a previous memo by this Office, AB 361 applies only during a state of emergency proclaimed by the Governor. *See* Gov. Code § 54953(e). A local emergency proclamation is insufficient. Governor Newsom will lift the state of emergency that has been in place since the early days of the COVID-19 pandemic on February 28, 2023.² When that occurs, the simplified procedures authorized by AB 361 will become off-limits.

With the expiration of the Governor’s emergency proclamation, local legislative bodies will have to return to in-person meetings, with limited exceptions discussed herein, by March 1, 2023.

Members will have only two options for participating remotely, each of which has significant drawbacks compared to the current state of affairs.

The first option is for members to participate remotely pursuant to the longstanding teleconference provisions of the Brown Act. A table included as **Attachment A** to this memo outlines how to use this

¹ The Brown Act applies to “legislative bodies,” which the Act defines as including (i) a governing body of a local agency or local body created by state or federal statute, (ii) a commission, committee, board, or other body of a local agency, whether permanent or temporary, decision-making or advisory, created by a legislative body. *See* Gov. Code § 54952.

² <https://www.gov.ca.gov/2022/10/17/governor-newsom-to-end-the-covid-19-state-of-emergency/>.

approach, which has also been addressed in prior Brown Act memos by this office. This approach has long been disfavored and little-used because, among other things, it requires members participating remotely to list the address where they will participate on the agenda, and to accommodate the public at that location. Also, this option requires at least a quorum to be present within the geographic area covered by the legislative body, which further diminishes its practical value.³

The second option is to follow the rules set forth in Assembly Bill 2449 (2022) (“AB 2449”), a recent law that amended the Brown Act to allow remote participation for “just cause” or in an “emergency circumstance.” The circumstances that qualify as “just cause” or an “emergency circumstance” are narrow. A table included as **Attachment B** to this memo summarizes the requirements of AB 2449. AB 2449 also limits how frequently the “just cause” and “emergency circumstance” grounds can be used and imposes a number of other requirements that limit its practical value, including that at least a quorum must meet in the same location and accommodate public participation at that site. If a member joins the meeting remotely pursuant to AB 2449, then the public must also be afforded an opportunity to observe the meeting remotely and remotely address the body. If all members are physically present, then the opportunity for remote public participation is not required, though AB 2449 does not prevent a legislative body from providing the hybrid option to the public if the body so chooses.

Altogether, AB 2449 is most likely to be useful in facilitating participation by a legislative body member who falls temporarily ill or otherwise physically unable to attend meetings for a short period of time, but the new law does not provide the flexibility to meet remotely that many Brown Act bodies have relied on over the last two years. The February 28, 2023 expiration of the Governor’s emergency proclamation will require local legislative bodies to return to in-person meetings, and the exceptions that allow remote participation are of limited practical value. Hopefully the Legislature will further consider ways to ease the barriers to remote participation—particularly for local advisory bodies—and bring the Brown Act into the 21st Century.

Any questions about this memo or can be directed to:

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³ Under the Yolo County Code, a “quorum” is defined as “...a majority of the *appointed* members of any board, commission or committee (i.e., not including vacancies)[.]” (Yolo County Code § 2-2.3606, emphasis added.) This definition does not apply if it is in conflict with a resolution or ordinance adopted by the Board of Supervisors for a specific advisory board, commission, or committee. Also, if the Board has approved bylaws for a General Plan Citizens Advisory Committee that contain a conflicting definition of “quorum,” the bylaws control.

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While e-mail communications are preferred, you may also call 530-666-8172 and ask to speak with either of the above attorneys.

ATTACHMENT A

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General Brown Act Teleconferencing Requirements [Gov. Code § 54953(b)]	
Summary	<ul style="list-style-type: none">• Can be used any time, but requirements (particularly for public participation) are somewhat impractical
Agendas	<ul style="list-style-type: none">• Agendas must be posted at each teleconference location where a legislative body member is present• All teleconference locations must be listed on the agenda
Public Participation	<ul style="list-style-type: none">• Each teleconference location must be accessible to the public, and the public must be allowed to offer comments from each location• Additional teleconference locations may also be offered for the convenience of participants• All teleconference locations must be ADA-compliant
Quorum	<ul style="list-style-type: none">• At least a quorum of the legislative body must be present within the agency's territory

ATTACHMENT B

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AB 2449 Rules (in effect through December 31, 2025) [Gov. Code § 54953(f)]	
Summary	Can be used only in the event of “ just cause ” or an “ emergency circumstance. ” Though defined in AB 2449, these terms overlap to a degree and it will not always be clear which is more appropriate to use (which in turn, has implications due to the annual caps mentioned below).
Just Cause	<p>“Just cause” is defined as any of the following: (1) childcare or caregiving for a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires remote participation; (2) a contagious illness that prevents the member from attending in person; (3) a need related to a disability not otherwise accommodated; or (4) travel while on official business of the legislative body or a state or local agency.</p> <p>Can be used for no more than two meetings per calendar year. Unlike the “emergency circumstance” exception, approval by the legislative body is not required.</p>
Emergency Circumstance	<p>An “emergency circumstance” is defined as a physical or family medical emergency that prevents a member from attending in person.</p> <p>There is no specific limit on the number of times an “emergency circumstance” can be used, but the annual cap described below limits its use generally. Reliance on the “emergency circumstance” ground for remote participation must be specifically approved by legislative body as an action item. A request can be added to an agenda at beginning of meeting if needed, and must be acted on at the beginning of the meeting.</p>
Annual Caps	A member cannot participate remotely for more than three consecutive months or 20% of the regular meetings in a calendar year (i.e. “just cause” and “emergency circumstances” combined). If the body regularly meets fewer than 10x/annually, member cannot participate remotely in more than two meetings.
Notice and Agenda Requirements	Affected member must notify the legislative body (notice to the Clerk is sufficient) of their need to appear remotely as soon as possible, and no later than the start of the meeting, together with a “ general description ” of the grounds for remote participation. The general description need not exceed 20 words or identify any medical diagnosis or disability, or any

	<p>other personal medical information that is exempt from disclosure under other laws.</p> <p>The request to appear remotely pursuant to the emergency exception should be placed on the posted agenda, if possible. If insufficient time to place the request on the agenda when it is posted 72 hours prior to the meeting, the body can still take action on the request pursuant to Government Code § 54954.2(b)(4).</p> <p>Agendas do not need to be posted at each teleconference location.</p>
<p>Member and Public Participation</p>	<ul style="list-style-type: none"> • A member attending remotely must participate through both audio and visual technology. • When a vote is taken, the member must disclose if someone over the age of 18 is in the same room and their relationship to that person. • Public participation must allow for either a call-in option or an internet-based service option to directly address the body in real-time during public comment. • Local agencies do not need to allow public participation at each (or any) location where members are joining remotely, but instead must “clearly advertise” how members of the public can participate on the agenda. Agencies must, however, allow for public attendance and participation at the primary meeting location where the quorum is present. • In the event the meeting broadcast is disrupted, the meeting must pause until it is restored.
<p>Quorum</p>	<p>A quorum of the legislative body members must participate in person at a single physical location within the body’s territory, as identified on the agenda. The location must be open to the public and ADA compliant.</p>