

Brown Act Training and Presentation

Citizens Advisory Committee
November 16, 2022
Agenda Item 8



Purpose of the Brown Act

- Government Transparency – Ensure deliberations of local government are open and public; exceptions to right of access narrowly construed to promote meaningful access
- Public Participation – Public notice of items to be considered, public access to materials, and right of public to participate in decision making
- Courts rely heavily upon these purposes when interpreting the Brown Act and determining if violations have occurred

Application of the Act

- Applies to all meetings of “legislative bodies” of local agencies
- Brown Act bodies include the governing bodies, subsidiary bodies and any other body of a local agency created by charter, ordinance, resolution or formal action of a legislative body that is itself a legislative body, including committees
- Specifically applies to the CAC per its authorizing resolution and Article III, Section 2 of its Bylaws

Requirements of the Act

- Notice for agenda posted in publicly accessible location 72 hours before a regular meeting; 24 hours before special meetings and one hour before emergency meetings
- Open and public: all persons must be permitted to attend
- Public has right to address Committee via public comment with reasonable time limitations; cannot prohibit criticism but do not need to allow personal attacks or disruptive comment
- Prohibits serial meetings, i.e. a majority of members of a legislative body outside of a lawful meeting may not directly or indirectly using a series of meetings to discuss, deliberate or take action on any item of business within the subject matter jurisdiction of the body
- Members are generally only permitted to participate remotely if they notice their location and make it publicly accessible

Use of Social Media

- May use social media platforms such as Facebook and Twitter to engage in communications with the public regarding matters within CAC's jurisdiction:
 - Answer questions
 - Provide information
 - Solicit information
- Prohibited from using social media platforms to engage in communications with a majority of their colleagues regarding matters within CAC's jurisdiction, including through the use of emojis
- Members are prohibited from using social media platforms to:
 - Respond to a colleague's post
 - Share a communication posted by a colleague

Amendments to Brown Act

- Assembly Bill 361 (AB 361), enacted in 2021, amended the Brown Act to permit local agencies to meet remotely during a proclaimed state of emergency without having to notice the remote locations from which members participate or make those locations accessible to the public, provided the legislative body makes certain findings regarding health and safety
- Governor announced his intent to withdraw the COVID-19 state of emergency on February 28, 2023
- Assembly Bill (AB 2449) goes into effect January 1, 2023, and allows members to participate remotely in meetings for just cause or due to emergency circumstances for a limited number of meetings per year without having to notice their location or provide public access

Board Meetings Pursuant to AB 361

- Board and Committees may continue to meet remotely without noticing members' locations through the end of February if the Board makes the requisite findings pursuant to AB 361
- Findings must be based on local or state health guidance and must be renewed or re-made every 30 days
- Members will not be able to participate remotely without noticing location after February 2023 unless they satisfy an exception under AB 2449

Board Meetings Pursuant to AB 2449

Starting January 1, 2023, a member of a local legislative body may participate in a meeting remotely without having to identify the member's location in the agenda or make the location accessible to the public if:

- 1) a quorum of members participate in person from a singular physical location;
- 2) the singular location is clearly identified on the agenda, open to the public, and situated within the local agency's jurisdiction; and
- 3) the member participating remotely has just cause or made a request to participate remotely based on emergency circumstances, which must be approved by the legislative body.

Just Cause and Emergency Circumstances

- “Just cause” is defined as 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 a member 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" is defined as a physical or family medical emergency that prevents a member from attending in person

Participation Pursuant to AB 2449

- Allows members to participate in meetings remotely, e.g., when sick or potentially contagious, or other emergency circumstances prevent in-person attendance
- Members may not participate remotely for a period of more than three consecutive months or 20% of the regular meetings of the Board or Committee within a calendar year
- Members may rely upon the just cause exception no more than two times per calendar year
- Members must use both audio and visual technology and must publicly disclose whether any individual over the age of 18 is present at the remote location

Proposed Policy

- Members may participate in Board or Committee meetings: (1) in person; (2) remotely provided location is identified on agenda and is accessible to the public; or (3) remotely under AB 2449 exceptions for just cause and emergency circumstances
- Members of the public will have the opportunity to participate in Board and Committee meetings in person, or via a two-way audiovisual platform, or a two-way telephonic service and a live webcasting of the meeting
- Board Secretary or Staff Liaison will alert the Board or Committee Chair and members if it appears that a quorum of members will not be physically present at the meeting; the Board or Committee may deny the request for emergency circumstances or cancel the meeting if there will be no quorum

Proposed Policy

- Upon notice of remote participation for just cause or approval of a request for remote participation due to emergency circumstances, the Board Secretary shall post a revised agenda if there is sufficient time to do so given the nature and timing of the emergency or just cause request
- Policy will take effect on February 28, 2023; until then, Board will continue to conduct hybrid meetings and Committees will continue to meet remotely, provided health authorities continue to recommend social distancing and Board adopts AB 361 findings

FOR MORE INFORMATION

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