

Governing Board Communication

Agenda Item B-9

TO: MERA Governing Board
FROM: Trisha Ortiz, General Counsel
**SUBJECT: Brown Act Meeting Requirements after Termination of State of
Emergency for COVID-19**

Background:

Governor Newsom has recently announced that he will lift the COVID-19 State of Emergency on February 28, 2023, which affects relaxed teleconferencing provisions for public meetings subject to the Brown Act. During the pandemic, public agencies have operated under relaxed teleconferencing rules, which facilitated remote attendance of public meetings during a time when public gatherings presented personal and public health risks. Once the Governor lifts the State of Emergency declaration, the traditional rules for teleconferencing, which predate the pandemic, will apply to public meetings. This will create significant changes with respect to Governing Board members' ability to attend public meetings remotely by teleconference (including videoconference platforms like Zoom). Therefore, MERA should prepare for a return to in-person Governing Board Meetings, with limited exceptions as described further below.

Traditional Teleconferencing Under the Brown Act:

The Brown Act requires that all meetings of a local agency legislative body be open and public and that all persons be permitted to attend and participate.¹ The Brown Act allows for meetings to occur via teleconferencing subject to certain requirements:

- The agency must **identify the teleconference location of each legislative body member** that will be participating in the meeting;
- each teleconference location must be **accessible to the public**;
- Members of the public must be allowed to **address the legislative body at each teleconference location**;
- The meeting **agenda must be posted at each teleconference location**; and
- At least a **quorum** of the legislative body must participate from locations within the boundaries of the agency's jurisdiction.²

¹ Gov. Code § 54953(a).

² Gov. Code § 54953(b).

AB 361: Relaxed Teleconferencing Requirements During a State of Emergency

AB 361, adopted as urgency legislation in 2021 and effective until January 1, 2024, amended the Brown Act to relax teleconferencing requirements during Governor-proclaimed emergencies. The AB 361 relaxed teleconferencing requirements only apply when a Governor-proclaimed emergency exists and either (a) state or local officials have imposed or recommended measures to promote social distancing, or (b) the legislative body determines that as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.³ Under AB 361's relaxed teleconferencing provisions, a legislative body may meet via teleconference:

- without a quorum of members physically present;
- without having to post agendas at all teleconference locations; without identifying each teleconference location; and
- without making each teleconference location accessible to the public.

Since the enactment of AB 361, the MERA Governing board has been making the required findings every 30 days to utilize the relaxed teleconferencing rules.⁴ However, the Governor has announced his intention to lift the COVID-19 state of emergency on February 28, 2023. At that time, the Governing Board could no longer make the required findings to meet remotely and would be required to comply with traditional Brown Act teleconferencing rules.

AB 2449: New Teleconferencing Rules for Limited Circumstances

The legislature adopted AB 2449 to provide local agency legislative bodies an additional, but very limited, teleconferencing option starting January 1, 2023. However, under AB 2449, MERA must have a physical meeting space because a quorum of members must participate in-person from a singular location.⁵

AB 2449 is not intended to allow for frequent teleconferencing under relaxed requirements, but rather provides an option for a member of the legislative body to participate remotely under limited very circumstances, without following the traditional Brown Act teleconferencing rules. Specifically, AB 2449 only allows for remote participation by legislative body members in two specified circumstances: (1) "just cause" or (2) "emergency circumstances."

³ Gov. Code § 54953(e)(1).

⁴ Gov. Code § 54953(e)(3).

⁵ Gov. Code § 54953(f)(1).

“Just Cause” is defined as:

- a childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires remote participation;
- a contagious illness that prevents a member from attending in person;
- a need related to a physical or mental disability not otherwise accommodated by the agency’s procedures for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, consistent with the Americans with Disabilities Act; or
- travel while on official business of the legislative body or another state or local agency.⁶

In order to participate remotely for just cause, a Governing Board member must notify the Board “at the earliest opportunity possible, including at the start of a regular meeting,” and provide a general description of their circumstances supporting the need to appear remotely.⁷ A Board member may only appear remotely due to “just cause” twice per year.

“Emergency Circumstances” are defined as a physical or family emergency that prevents a member from attending a meeting in person.⁸ A legislative body member should request to participate remotely at a meeting due to emergency circumstances as soon as possible, and a separate request is required for each meeting in which they seek to participate remotely.⁹ The legislative body considers the request and if the legislative body does not approve it, the member may not participate via teleconference under AB 2449 at that meeting. If the request does not allow sufficient time to place proposed action on the posted agenda for the meeting, the legislative body may take action on the request at the beginning of the meeting.¹⁰

Under AB 2449, Governing Board members may not participate 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 legislative body within a calendar year, or more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year.¹¹

AB 2449 specifies public access requirements for noticing, agendas, and conducting public meetings by teleconference. Meeting agendas must identify and include an opportunity for all persons to attend and address the legislative body directly via a call-in

⁶ Gov. Code § 54953(j)(2).

⁷ Gov. Code § 54953(f)(2)(A)(i).

⁸ Gov. Code § 54953(j)(1)

⁹ Gov. Code § 54953(f)(2)(A)(i)(I).

¹⁰ Gov. Code §§ 54953(f)(2)(A)(ii)(II).

¹¹ Gov. Code § 54953(f)(3).

option, via an internet-based service option, and at the in-person location of the meeting.¹² The legislative body may not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time.¹³

For a member participating remotely under AB 2449, the participation must be through both audio and visual technology so that the public can remotely hear and visually observe them.¹⁴ Members of the legislative body participating remotely pursuant to AB 2449 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 individuals.¹⁵

In sum, utilizing AB 2449 only supports remote participation in a public meeting a few times per year and will result in new Brown Act compliance burdens for the Board Members who wish to appear remotely. Additionally, MERA staff will need to track requests for remote attendances, prepare teleconferencing technology for the meeting, and facilitate remote public access to the meeting, which is not required when the meeting is held under traditional Brown Act rules. Because AB 2449 does not authorize the full Governing Board to conduct meetings via teleconferencing and the Governor has announced his intention to lift the state of emergency on February 28, 2023, MERA should prepare for returning to traditional Brown Act meeting rules in March 2023.

¹² Gov. Code § 54953(f)(1)(C).

¹³ Gov. Code § 54953(f)(1)(E).

¹⁴ Gov. Code § 54953(f)(2)(C).

¹⁵ Gov. Code § 54953(f)(2)(B).