

MEMORANDUM

TO: Board of Directors
FROM: General Counsel
DATE: December 7, 2022
RE: Options for Director Virtual Participation in Board Meetings and Legal Requirements for Each Option

With AB 361 set to expire on February 28 with the lapse of the Governor's COVID related state of emergency,¹ I've been asked to provide a summary of the possible options for virtual meetings going forward. The chart below summarizes: (1) requirements for traditional Brown Act teleconferencing, which was authorized prior to COVID, and which remains a viable remote participation option; (2) the requirements of AB 361, which will not be viable after February 28, 2023 absent extension of the state of emergency by the Governor; (3) the requirements of the newly passed AB 2449—which does provide some additional flexibility for directors who can demonstrate “just cause” or “emergency circumstances” for remote participation from a location not available to the public.

	Traditional Brown Act Teleconferencing (Pre-COVID)	AB 361	AB 2449
Term	Available Now—No Expiration	Oct. 1, 2021 – February 28, 2023	Jan. 1, 2023 – Jan. 1, 2026

¹ See <https://www.gov.ca.gov/2022/10/17/governor-newsom-to-end-the-covid-19-state-of-emergency/>.

Agenda Requirements	Teleconference location must be noted on the agenda and the agenda must be posted at the remote location. Additionally, the teleconferencing location(s) must be accessible to the public.	The agenda must include an opportunity for all persons to attend via a call-in option <u>or</u> an internet-based option such as Zoom or Teams.	Agencies not obligated to post agendas at all teleconference locations, not obligated to identify all teleconference locations in meeting agendas, and not obligated to make each teleconference location open to public, provided the criteria for remote participation by board member(s) are met .
Quorum Requirements	At least a quorum of the Board must participate from locations within the agency's boundaries.	No requirement for a quorum of the Board to participate in person or within agency boundaries.	<p>At least a quorum of board must participate <u>in person</u> from a singular physical location identified on the agenda, which location will be open to the public and within the boundaries of the agency.</p> <p>The agenda must identify and include an opportunity for the public to attend via a call-in option, internet-based service option, and at the in-person location of the meeting.</p>
Additional Prerequisites for Teleconferencing		<ol style="list-style-type: none"> 1. There must be a declared state of emergency. 2. The Board must hold meeting and decide (by majority vote) that meeting in person would present and imminent risk to the health and/or safety of those attending the meeting. (The findings must be made every 30 days to continue remote meetings.) 	<ol style="list-style-type: none"> 1. At least a quorum must participate <u>in person</u> from a singular physical location identified on the agenda, which location will be open to the public and within the boundaries of the agency. 2. The Board must provide either: <ol style="list-style-type: none"> i. Two-way audiovisual platform, or

		<p>3. The Board shall not require public comments be submitted in advance of the meeting.</p> <p>4. No votes or decisions can be made if remote/virtual connection is interrupted.</p>	<p>ii. Two-way telephonic service and a live webcasting of the meeting.</p> <p>3. The Board shall not require public comments to be submitted in advance.</p>
Specific Board Member Prerequisites			<p>If participating via teleconference, Board Members must:</p> <p>1. Notify the Board at the earliest opportunity, including at the start of a regular meeting, of the need to participate remotely for <u>just cause</u>, including a general description of the circumstances; <u>or</u>,</p> <p>* Option 1 “just cause” justification may not be used by a Board Member more than two meetings per calendar year.</p> <p>2. Request the Board to allow them to participate remotely due to “emergency circumstances” and the Board may take action to approve the request. The Board must request a general description (that need not exceed 20 words) of the circumstances, but there is no requirement to disclose a medical diagnosis, disability, or personal medical information.</p>

			<p>* A combination of Options 1 and 2 may not be used by a Councilmember for more than three consecutive months or 20 percent of regular Board meetings within a calendar year.</p>
Definitions			<p>“Just cause” is defined as any of the following:</p> <ol style="list-style-type: none"> 1. A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires the Boar Member to participate remotely 2. A contagious illness that prevents the Board Member from attending in person. 3. A need related to a physical or mental disability that is not otherwise accommodated. 4. Travel while on official business of the Board or another state or local agency. <p>“Emergency circumstances” is defined as “a physical or family medical emergency that prevents a member from attending in person.”</p>
Procedures During the Meeting			<p>Once the meeting begins, the Board Member teleconferencing per AB 2449 must disclose whether any other people 18</p>

			<p>years or older are present in the room and the general relationship of the Board Member to that person or people.</p> <p>The teleconferencing Board Member must participate through both audio and visual technology.</p> <p>If there is a disruption that prevents the Board from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the Agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the Board shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored.*</p> <p>*Note that this is similar to the requirement under AB 361 in the event of interruption of virtual public participation.</p>
Accessibility Considerations	Reasonable accommodations must be provided, and procedures for requesting accommodations must be publicized.	(Same.)	(Same.)