

BOARD TELECONFERENCING RULES
EFFECTIVE AS OF MARCH 1, 2023

With the recent announcement that the COVID-19 State of Emergency will be lifted by the Governor in California effective February 28, 2023, local public agencies are considering their next steps for returning to their boardrooms in the coming year.

Back on September 16, 2021, Governor Newsom signed Assembly Bill 361 (AB 361), which incorporated into California state law some aspects of the teleconferencing rules that had applied by Executive Order to local public agencies during the COVID-19 pandemic. However, AB 361 provides that it sunsets on January 1, 2024.

Benefits of operating under AB 361 during the COVID-19 pandemic, as opposed to under the normal open meeting laws, included the following:

- Agendas did not need to be posted at all remote teleconference locations;
- Each teleconference location did not need to be identified in the notice and agenda of the meeting;
- Each remote teleconference location did not need to be accessible to the public; and
- A quorum of the members of the Board did not need to participate in the meeting from locations within the boundaries of the territory over which the board exercised jurisdiction.

[Note: The above four “normal” pre-Covid-19 teleconference requirements under the Brown Act have remained in effect and will continue to be available to board members under appropriate circumstances.]

With the COVID-19 State of Emergency in fact ending on February 28, 2023, AB 361 may only continue to be invoked if:

- State of local officials have imposed or recommended measures to promote social distancing; and
- The Board has continuously made the 30-day renewal findings and continues to do so going forward.

In the interim, Assembly Bill 2449 (AB 2449) was signed by the Governor on September 16, 2022, and it amends the Brown Act further, effective from January 1, 2023 through the end of 2025 (when its special teleconferencing rules will expire).

AB 2449 authorizes local public agencies to use teleconferencing under more rigorous requirements than under AB 361, but the rules are still more flexible than those in effect prior to the COVID-19 pandemic. For example, under AB 2449, members of a public

agency board may continue to use teleconferencing without complying with the standard requirements that (a) the agency notice each remote teleconference location of each member who will be participating in the meeting; (2) each remote teleconference location be accessible to the public; and (3) members of the public be allowed to address the board at each remote teleconference location.

However, to use the AB 2449 teleconferencing rules, at least a quorum of the board members must be present together physically within the jurisdiction of the board. Also, a board member may participate by teleconference only if there is “just cause” or an “emergency circumstance,” both of which are defined by law and are further outlined below. Further, unlike with “just cause,” the board must by majority vote affirm that an “emergency circumstance” situation does exist.

AB 2449 defines “just cause” as restricted to only the following situations:

- A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse or domestic partner that requires them to participate remotely.
- A contagious illness that prevents a member from attending in person.
- A need related to a physical or mental disability, as defined; or
- Travel while on official business of the board’s agency or another state or local agency.

In addition to meeting the statutorily required criteria, a board member who intends to participate via teleconference must notify the legislative body at the earliest opportunity possible, including at the start of a regular meeting, of the need to participate remotely for just cause and provide a general description of the circumstances relating to their need to appear remotely at the given meeting. AB 2449 prohibits a board member from participating via teleconference for “just cause” for more than two meetings in a calendar year.

AB 2449 defines an “emergency circumstance” as “a physical or family medical emergency that prevents a member from attending in person.” To invoke the “emergency circumstance” situation, the following procedural requirements must also be satisfied:

1. “The member requests the legislative body to allow them to participate in the meeting remotely due to emergency circumstances and the legislative body takes action to approve the request. The legislative body shall request 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 shall not require the member to disclose any medical diagnosis or disability or any personal medical information that is already exempt under existing law.”

2. A member shall make a request to participate remotely at a meeting pursuant to this clause as soon as possible. The member shall make a separate request for each meeting in which they seek to participate remotely.
3. The board must take action on a request to participate remotely at the earliest opportunity. If the request does not allow sufficient time to place the proposed action to such a request on the posted agenda for the meeting for which the request is made, the board may take action at the beginning of the meeting.

In addition, two other conditions apply under AB 2449 if a board member is permitted to teleconference for either “just cause” or “emergency circumstances”:

1. “The member shall 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.”
2. “The member shall participate through both audio and visual technology.” That is, a board member who attends by teleconference must be both audible and visible to those attending.

Additionally, AB 2449 does not permit its teleconferencing rules to be invoked by any board member for more than three consecutive months or 20 percent of the regular meetings of the board within a calendar year if the board meets at least 10 times per calendar year (in addition to the limitation on “just cause” exceptions invoked by a board member to no more than two meetings per calendar year).

Finally, to invoke AB 2449 teleconferencing rules, the agency must:

1. Provide at least one of the following means by which the public may remotely hear and visually observe the meeting and remotely address the board;
 - A two-way audiovisual platform
 - A two-way telephonic service and a live webcasting of the meeting.
2. In the agenda, identify how to provide public comment and identify and include an opportunity for all persons to attend and address the board directly “via a call-in option, via an internet-based service option and at the in-person location of the meeting”;
3. Pause the meeting when there is a teleconference disruption; and
4. Implement a procedure for receiving and swiftly resolving requests for reasonable accommodations for individuals with disabilities and provide notice of this procedure in notifications and agendas for the meeting.

As noted above, the State of Emergency due to the COVID-19 pandemic is scheduled to end on February 28, 2023. This will significantly impact the ability for boards to continue to meet under the authorization and procedures established by AB 361 before it sunsets at the end of 2023. As such, board members of local public agencies should prepare to return to their boardrooms and should also evaluate their ability and set up procedures to comply with the new AB 2449 requirements should a board member need to participate via teleconference because there is “just cause” or an “emergency circumstance.”