

Brown Act Updates: Continued Remote Meetings & Removal of Disruptive Attendees

Takeaways From New Laws AB 2449 and SB 1100 from bbklaw.com

A new bill signed into law in September, AB 2449, provides agencies with long-term permissions to hold remote meetings without having to give the public access to private locations, subject to certain restrictions. A second bill signed into law last month, SB 1100, will provide public agencies the option to remove disruptive meeting attendees after issuing a warning. Both new laws will take effect at the beginning of 2023.

In response to the pandemic, the California Legislature previously passed AB 361 to streamline the requirements for teleconference/virtual meetings under the Brown Act during times of local emergency. Before AB 361, the Brown Act's teleconference rules required posting each teleconference location and making each location open to the public, which proved ineffective during a global pandemic. Over the past two years, public agencies and the general public have become more comfortable with meeting virtually, and many public bodies lobbied to get legislation passed that would extend the remote meeting protections past AB 361's sunset date of Jan. 1, 2024. AB 2449 aims to do just that. Crucially, AB 361 still remains effective until Jan. 1, 2024, and local agencies may continue to make or renew remote meeting findings under that law as appropriate.

AB 2449 – Limited Teleconferencing in Specified Scenarios

AB 2449 reiterates the standard Brown Act teleconference rules, re-codifies the rules set out in AB 361 for times of declared emergency, and also provides for relaxed teleconferencing rules when a member of the legislative body needs to attend remotely for an emergency, or other reasons supported by "just cause."

Newly Added Teleconference Rules Available Jan. 1, 2023

Under the new teleconference rules, a legislative body may hold a "hybrid" (partial teleconference, partial in-person) meeting without having to comply with certain procedural requirements (post agendas at teleconference locations, identify teleconference locations in the agenda, make all teleconference locations open to the public) in the following limited circumstances:

- One or more members of the legislative body (but less than a quorum) have "just cause" for not attending the meeting in person (childcare or family caregiving need, contagious illness, physical or mental disability need, or travel while on official public business); or
- One or more members of the legislative body (but less than a quorum) experience an emergency circumstance (a physical or family medical emergency that prevents in-person attendance).

Members of legislative bodies who wish to use one of the above exceptions should be sure to contact the agency's legal counsel before attending a meeting remotely. There are restrictions on the number of times any one member may attend remotely in a year under one of these exceptions. Further, a quorum of the body must still be meeting in-person, and the body must meet the following relaxed remote access rules:

- Provide either a two-way audio visual system or a two-way phone service in addition to live webcasting;
- Identify a call-in or internet-based access option on the agenda, in addition to the in-person meeting location;
- Ensure that if a disruption to the online meeting occurs, the body takes no further action on agenda items until public access is restored; and
- Avoid requiring public comments to be submitted in advance, and provide a real-time option for the public to address the body at the meeting.

AB 361 Rules In Effect Today & Re-Codified in AB 2449

As a reminder, when a state of emergency is involved, a legislative body may hold teleconference meetings without meeting certain procedural requirements (post agendas at teleconference locations, identify teleconference locations in the agenda, make all teleconference locations open to the public) in the following circumstances:

- The meeting is held during a proclaimed state of emergency and state/local officials have imposed or recommended measures to promote social distancing (including, for example Cal-OSHA or other regulatory guidance requiring employees to be trained in social distancing to reduce exposure);
- The meeting is held during a proclaimed state of emergency for the purpose of determining whether meeting in person during the emergency would present imminent risks to the health or safety of attendees; and/or
- The meeting is held during a proclaimed state of emergency and the body has already determined that meeting in person during the emergency would present imminent risks to the health or safety of attendees.

If the body is relying on the above findings to justify meeting by teleconference, it must:

- Give the public notice of how to access the meeting and offer public comment;
- Ensure that if a disruption to the online meeting occurs, the body takes no further action on agenda items until public access is restored;
- Avoid requiring public comments to be submitted in advance, and provide a real-time option for the public to address the body at the meeting; and
- If the state of emergency remains active or social distancing measures continue to be imposed/recommended by state or local officials, continue to make findings supporting the teleconference meetings at least every 30 days.

Original Brown Act Teleconferencing Rules Remain Available

Local agencies may always rely on the teleconferencing rules that applied pre-COVID – all votes must be

by rollcall, the meeting must be conducted so as to protect the rights of the public appearing before the body or wishing to comment, all members of the public must be able to access the meeting and provide public comment, teleconference locations must be identified in the agenda, copies of the agenda must be posted at all teleconference locations, and teleconference locations must be open to the public. Finally, at least a quorum of the members of the legislative body who are participating remotely must do so from locations within the agency's jurisdiction.

SB 1100 – Removing Disruptive Meeting Attendees

Under SB 1100, recently passed by the Legislature and signed by Gov. Newsom, legislative bodies now have an additional tool to address meeting disruptions. The Brown Act authorizes a legislative body to order the room cleared and continue in session if a group or groups willfully interrupts the orderly conduct of the meeting, provided certain requirements are met. SB 1100 amends the Brown Act to provide that the presiding member of a legislative body may have an individual removed for disrupting a meeting of the body. Before removing any person, the person must be warned that their behavior is disruptive, and that continued disruption may result in the person's removal (however, no prior warning is required if the person is engaging in use of force or threatening to use force against anyone). Behavior is otherwise "disruptive" if it disrupts or impedes the orderly conduct of the meeting.

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