

## Alerts & Articles

### AB 2449: New Brown Act Rules for a Zoom-Friendly World

09.16.2022

On September 13, 2022, the Governor signed Assembly Bill 2449 (Rubio) (“AB 2449”) into law, amending certain portions of the Ralph M. Brown Act (“Brown Act”) relating to teleconference participation by members of legislative bodies for and during public meetings. The new law amends existing requirements set forth in Government Code section 54953 to facilitate virtual meetings in the absence of a state of emergency by removing some of the barriers that proved to be burdensome and unrealistic during the COVID-19 pandemic.

Previously, Government Code section 54953 set out various requirements for members of a legislative body participating in public meetings through teleconferencing. It allowed for teleconference meetings under the “traditional rules” and under “AB 361.” To quickly review, the traditional teleconference rules include: (1) posting meeting agendas at all teleconference locations; (2) identifying all teleconference locations in the notice and agenda; and (3) making accessible each teleconference location to the public. AB 361 allowed legislative bodies to conduct their meetings via teleconference without adhering to the requirements listed above; however, AB 361 only applied during a declared state of emergency.

AB 2449 creates an opportunity for less than a majority of the board (up to 2 members of a 5-member board; up to 3 members of a 7-member board) to attend via teleconference under certain conditions when the majority of the board (a quorum) participates from a single physical location open to the public. When a quorum of the legislative body participates in a physical location open to the public, AB 2449 authorizes the remaining board members to participate remotely under two specific circumstances:

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(1) **Just cause:** The member notifies the legislative body at the earliest possible opportunity, including at the start of a regular meeting, of their need to participate remotely for “just cause,” including a general description of the circumstances relating to their need to appear remotely at the given meeting. A member of the legislative body may not use the provisions of this clause for more than two meetings per calendar year.

“Just cause” is defined as any one of the following circumstances: (1) childcare or caregiving of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely; (2) a contagious illness that prevents a member from attending in person; (3) a need related to a physical or mental disability; or (4) travel while on business of the legislative body or another state or local agency.

(2) **Emergency Circumstances:** 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. “Emergency circumstances” means a physical or family medical emergency that prevents a member from attending in person. The legislative body shall request a general description of the circumstances relating to the member’s need to appear remotely at the given meeting. This description 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. For the purposes of this clause, the following requirements apply:

(a) A member shall make a request to participate remotely at a meeting pursuant to this clause as soon as possible.

(b) the legislative body may take action on a request to participate remotely at the earliest opportunity. If the request does not allow sufficient time to place proposed action on such a request on the posted agenda for the meeting for which the request is made, the legislative body may take action by majority vote on the emergency circumstances request at the beginning of the meeting.



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AB 2449 imposes additional teleconferencing requirements, similar to the requirements imposed under AB 361, when less than a majority attends remotely for “just cause” or “emergency circumstances,” as described above. The additional requirements include, but are not limited to:

- The legislative body must provide a way for the public to remotely hear, visually observe, and remotely address the legislative body, either by a two-way audiovisual platform or a two-way telephonic service and a live webcasting of the meeting.
- When providing notice of the time and agenda of a meeting, the legislative body must also provide notice of how the public can access the meeting and offer comments. The agenda must identify and include an opportunity for the public to attend and directly address the legislative body through a call-in option, an internet-based service option, and in-person. The legislative body also may not require public comments to be submitted **prior** to the meeting but must provide an opportunity for the public to address the body in real time.
- The legislative body must implement a procedure for receiving and resolving requests for reasonable accommodations for individuals with disabilities, and must give notice of such procedure in each instance notice of the meeting time is given or an agenda is posted.
- Members participating through remote teleconferencing must participate through both audio and visual technology and members 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 the individual.

Please note that these provisions will only be required if a member of a legislative body is participating by teleconferencing due to “just cause” or “emergency circumstances.” Legislative bodies may always meet via teleconference by following the “traditional rules,” and AB 361’s state of emergency authorization remains valid until January 1, 2024.

AB 2449 provides that a member may not participate in meetings solely by teleconference due to “just cause” or “emergency circumstances” for a period of more than three consecutive months or 20 percent of the regular meetings for the local agency within a calendar year. If the legislative body regularly meets less than 10 times a year, a board member may not participate remotely in more than two meetings.

The provisions of AB 2449 will remain in effect until January 1, 2026.

***Special thanks to Christy Kim, our Irvine law clerk, for her extensive work on this alert.***

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