

Brown Act Presentation to COC Members

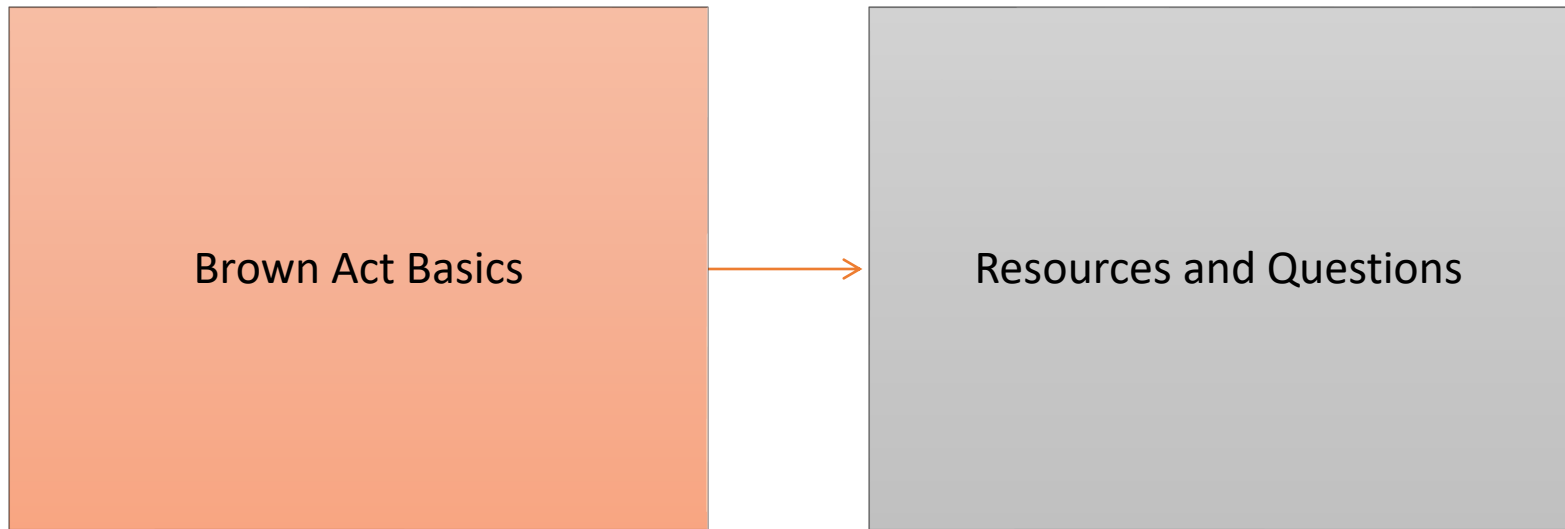
March 22, 2023



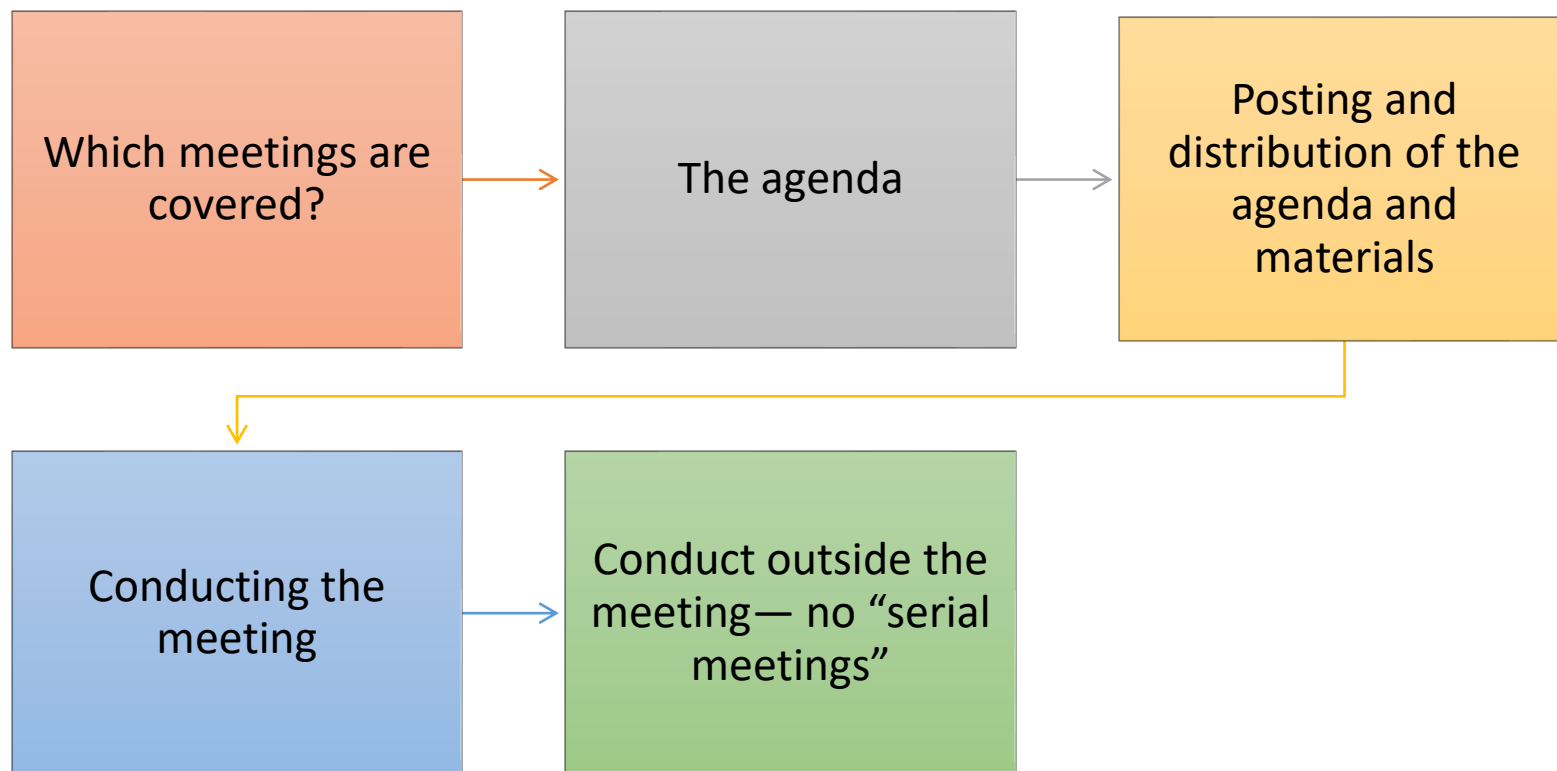
Meetings under Brown Act: New Rules Effective March 1, 2023



MEETINGS UNDER THE BROWN ACT: AGENDA FOR PRESENTATION



BROWN ACT BASICS: Topics to be Covered



What Meetings are Subject to the Act?



Meetings Defined

- Meeting = “any congregation of a majority of the members of a legislative body at the same time and location . . . to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.” (Gov’t Code §54952.2(a).)
- Meetings with only deliberation – even if no action will occur – are subject to the Brown Act.
- Includes “workshops,” “study sessions,” and retreats.

Meetings Defined – Con't



- Exceptions (Section 54952.2(c):
 - Individual conversations (but see “serial” discussion below)
 - Certain public conferences
 - Community meetings open to the public
 - Attendance at other entities’ public meetings
 - Certain social events

Regular Meetings



Practice Tip:

Set the time and place of regular meetings in the organizational rules (such as by-laws)

Special Meetings

Meetings held at a time or location different than regular meetings. *Examples:*

- COC s regular meeting time is 9:00 a.m. The commission calls a meeting for 8:00 a.m. Different start time makes it a “special meeting.”
- Site visit/”field trip” attended by a majority of the members of a committee

Special Meeting Limitations

- The notice must specify the time and place of the special meeting and the business to be transacted.
- Agendas for special meetings must be posted at least 24 hours in advance.
- No other business may be conducted at the special meeting.

The Agenda



Role of the Agenda

- In general, the body is limited to considering the items listed on the posted agenda.
- “No action or discussion shall be undertaken on any item not appearing on the posted agenda” (Gov’t Code §54954.2(a)(2).)
- Agenda provides notice to the public of the items under consideration and actions that may be taken.

Agenda Preparation

- Agenda must provide “a brief general description of each item of business to be transacted or discussed at the meeting.” (Gov’t Code §54954.2(a)(1).)
- The description must provide enough information to inform the public, but the description need not exceed 20 words.
- Practice tip: Pay attention to the wording of the agenda because it defines what can be discussed and what actions can be taken.

Examples: “Discussion Only” limits the board/commission from taking action.

Other Agenda Requirements



- Agenda must specify time and location of the meeting.
- Agenda must list the location (with address) where the public is able to inspect public documents related to an agenda item when such documents were distributed to the public less than 72 hours prior to the meeting. (Gov't Code §54957.5)

Exceptions to Agenda Rule

Board Members may speak to items **not** on the agenda to:

- Make a brief response to public testimony;
- Ask a question for clarification;
- Make brief announcement or report on his/her activities;
- Make a referral to staff to report back at a subsequent meeting; or
- Direct staff to place a matter on a future agenda.

Agenda Additions after Posting



Rare!!! The body may take action on an item not appearing on the posted agenda if it is added as “urgency” item.

Urgency add-on requires:

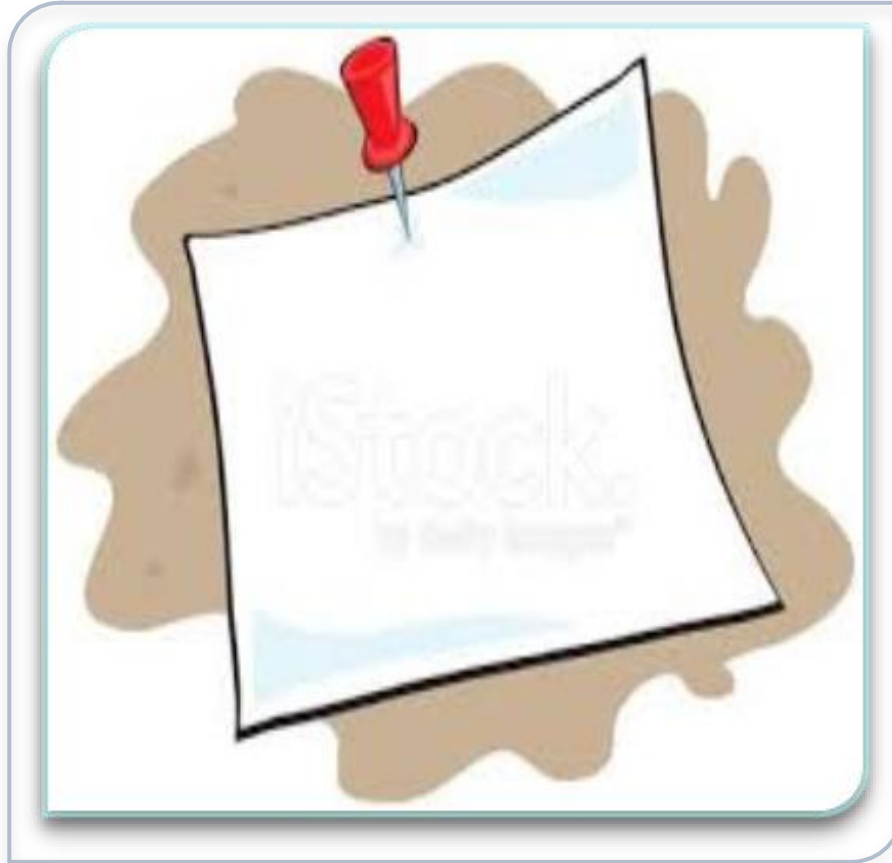
- There is a need to take immediate action; (Unlikely to occur with COC)
- The need to take action came to the attention of the body, subsequent to the posting of the agenda.

The Agenda and Public Participation



- The public has a right to comment on every item on the agenda before action is taken.
- Every agenda for regular and special meetings must provide an opportunity for the public to comment on agenda items before or during consideration of the item.
- Regular meeting agenda must allow time for public testimony on matters not on the agenda that are under the body's jurisdiction.

Posting and Distribution of Agenda and Materials



Posting the Agenda

- The agenda must be posted “in a location that is freely accessible to the public.” (Gov’t Code §§ 54954.2(a)(1), 54956)
 - Example: post hard copy in protected bulletin board outside meeting location
- Regular meetings: post at least 72 hours ahead.
- Special meetings: post at least 24 hours ahead.
- If the agenda is posted in a building that is locked to the public over the weekend, that time does not count toward the required 72 or 24 hours.

Posting the Agenda on the Web

- A regular or special meeting agenda must be posted on the local agency's web site, if it has one, if either:
 - The agenda is for the agency's governing body; or
 - The agenda is for a committee, commission or board of the local agency, the members are compensated for their appearance, and one or more of the members are also members of the governing body.
- Practice tip: post agendas on the agency website if feasible, even if not required.
- Note: web posting is not a substitute for posting the hard copy.

Conducting the Meeting



Public Participation

- Must allow the public to comment on matters on the agenda before or during consideration of the item.
- Agency may adopt “reasonable regulations” on time allotted for public testimony, such as limiting the time per speaker or limiting the total time allotted to public testimony.
- Reasonable time regulation must, however, ensure intent of allowing public testimony on matters on agenda is carried out.

Loss of Quorum

- When there is no quorum, there is no meeting. No action can be taken.
- Do not prepare minutes if the meeting did not have a quorum.
- Practice tip: can we still have a discussion if less than a quorum show up? If less than a body elects to continue to have a discussion, they are doing so outside of a meeting of the board/commission.

Voting



- Secret ballots prohibited
- The body must publicly report any vote taken and the vote or abstention of each member present for that action.

Conducting Outside the Meeting



Prohibition on Serial Meetings



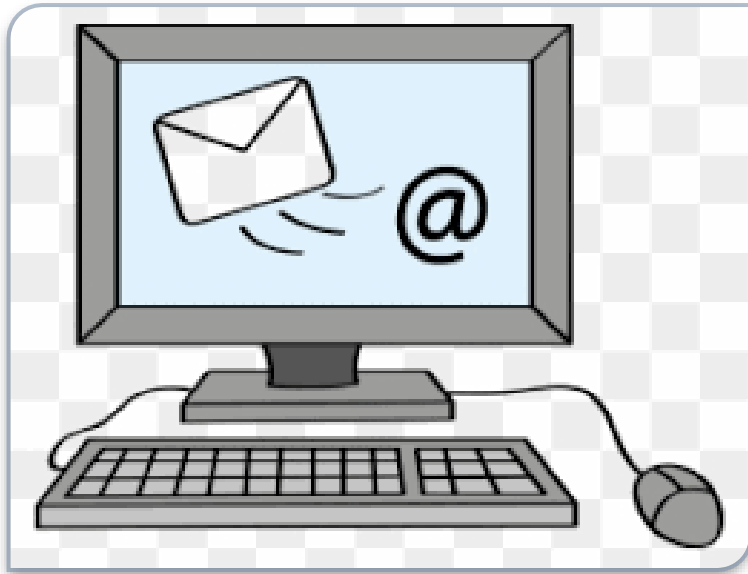
- Basic principle: Deliberations of public bodies should be conducted openly, and their actions should be taken openly
- “A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, **to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.**” (Gov’t Code §54952.2 (b)(1), emphasis added.)

Examples of Serial Meeting

- “Daisy chain” (A to B, B to C, C to D)
- “Hub and spoke” (e.g. use of staff to communicate with members one by one for deliberation or a decision.)
- Avoid converting permitted communications into serial meeting.

Example: A member of the public meets individually with each member about an issue. The member should avoid making inquiries about what the other members thought or said.

Beware of e-mail



- Prohibited: use of e-mail among a majority of the members of a body to reach a shared view.
- E-mail may not be used among a majority of the members to discuss, deliberate, or take action.
- Practice tips:
 - “reply all” + substantive discussion = Brown Act violation. Beware of potential for serial meetings via “reply all” or email chains.
 - Use of email for scheduling is ok

E-mail example

Case study: e-mail among a majority of the members and sent to the chairperson and secretary of the agency. The emails were also posted on the agency website and a printed version reported at the next open meeting. Permissible?

- No. Per an Attorney General opinion, the emailing violates the Brown Act because the deliberations among a majority of the body are conducted outside the public view, and debate could be over before the public had the opportunity to participate. Safeguards insufficient.

(84 Ops. Cal. Atty. Gen. 30 (2001).)

Role of Staff



Staff of the agency may have separate communications with members in order to answer questions or provide information, if staff does not communicate to members of the body the comments or position of any other member of the body.

Bonus!! Effective Meetings

When a public meeting is well-conducted, it instills public confidence and encourages public engagement. A bit of formality and decorum can set the tone for an orderly and effective meeting. A few tips:

- Address remarks and debate to the chair or presiding officer of the meeting, rather than engaging in cross-talk with other members.
- Wait for recognition from the chair or presiding officer before speaking, and adhere to time limits for debate or comment.
- Keep the discourse civil and impersonal, even when there are negative comments toward the body from the public.

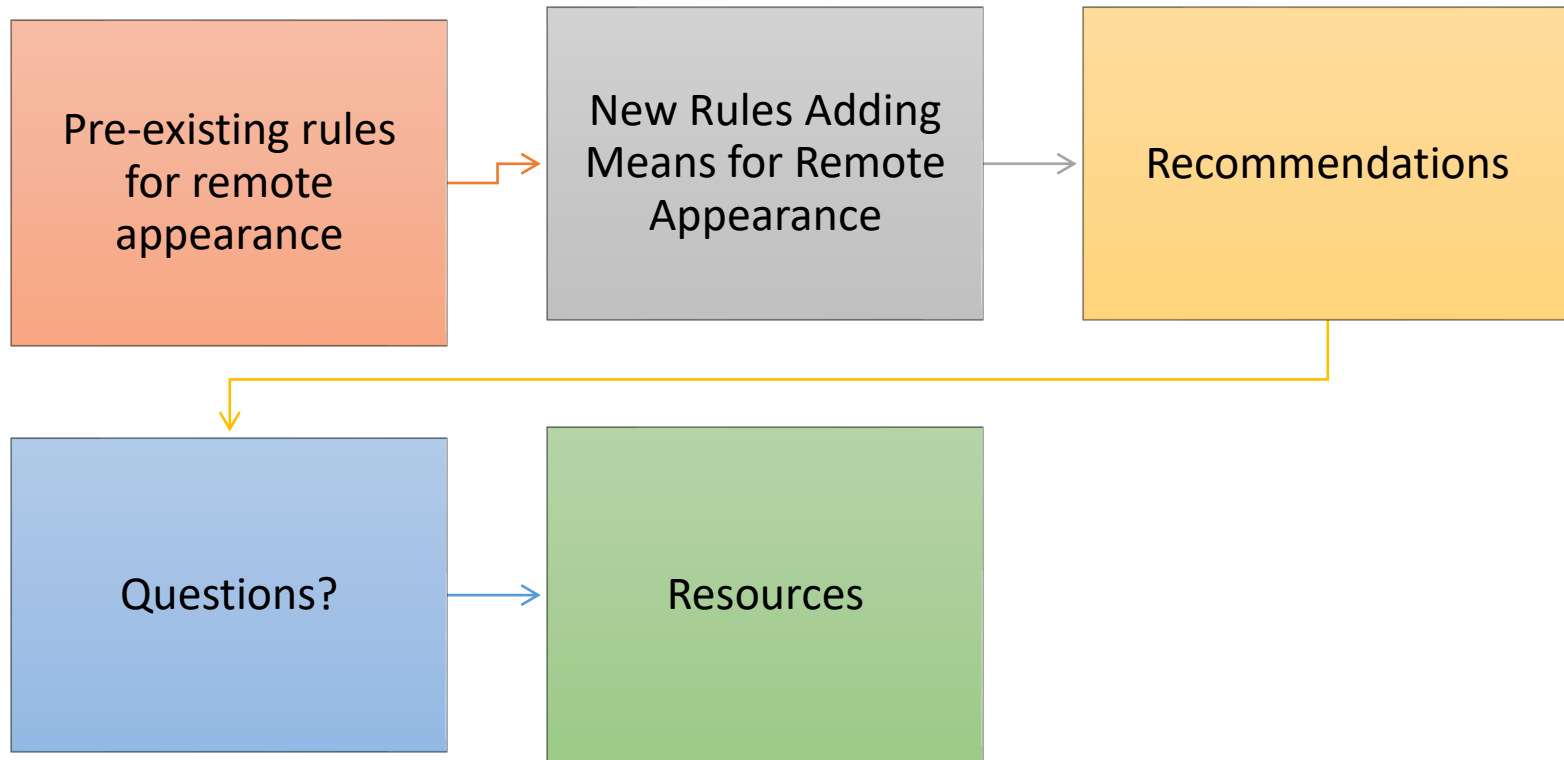
Bonus!! Effective Meetings

Follow common structures:

- Receive Staff Report
- Questions from the Board/Commission
- Receive Public Comment
- Discuss/deliberate
- Motions/action (if necessary)

Look for areas of agreement.
Enjoy!

DEVELOPMENTS TO THE BROWN ACT IN 2023: Topics to be Covered



The end of the Emergency: What Now?

- The COVID-19 state of emergency ended on February 28, 2023. When the official state of emergency ends, Brown Act boards will be required to adhere to state laws regarding remote meetings.
- **GENERAL RULE:** All Brown Act body members must resume meeting onsite in person.
- Rules permitting remote appearance will still exist, but they are significantly more restrictive than pandemic rules. Note that a Brown Act body is not required to facilitate remote proceedings.



Remote Appearances by Members Two Paths



TRADITIONAL TELECONFERENCING RULES

The pre-existing rules for teleconferencing under the Brown Act are still available.



REMOTE APPEARANCES AUTHORIZED BY AB2449

Authored during the pandemic, AB2449 provides several more options for remote appearance by individual members under specific circumstances.

Teleconferencing – “Traditional” Brown Act Rules



Teleconferencing allowed only if specific criteria are met, including:

- At least a quorum must participate from locations within the boundaries of the agency (exceptions in limited circumstances)
- Agenda must be posted at all teleconference locations;
- Teleconference locations must be provided in notice and agenda of meeting;
- Each teleconference location must be publicly accessible, and public must be able to comment at every teleconference locale.
- Votes must be by roll call.

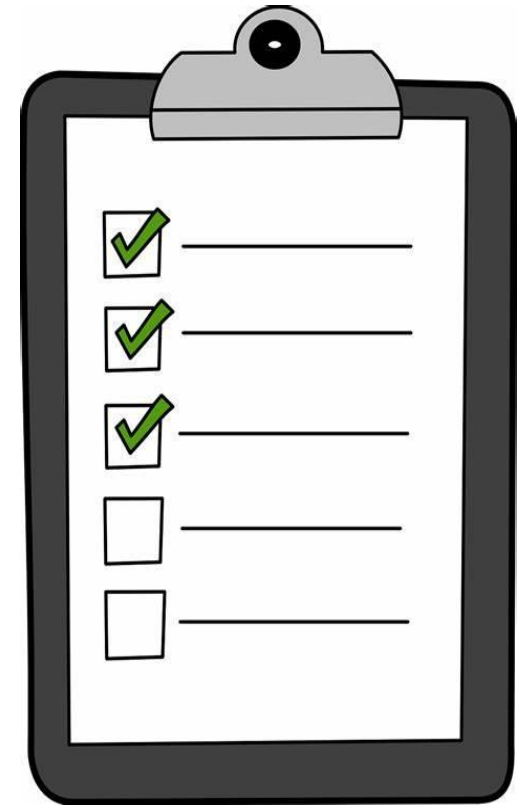
AB 2449: New Options for Remote Appearance by Individual Members

The new options for remote appearance are available ONLY if the following threshold conditions are met:

- 1) A majority of the legislative body is meeting on site at a single physical location within the body's jurisdiction identified on the agenda and open to the public;
- 2) The meeting provides a means by which the public may remotely hear and visually observe the meeting and remotely address the legislative body with opportunity to comment in real time; and
- 3) The agenda for the meeting identifies the audio/visual call-in option for the public by which the public may access the meeting and provide comment.

Assuming the threshold conditions are met, AB2449 permits individual board members to appear remotely under the following two circumstances:

- 1) “Just cause” provision
- 2) “Emergency circumstances” provision



“Just Cause” Provision

- Under the “just cause” provision members may attend up to two meetings remotely each year for “just cause.” The Act defines “just cause” as (1) a childcare or caregiving need for an immediate family member; (2) a contagious disease preventing attendance in person; (3) a need related to a physical or mental disability; or (4) travel while on official business for state or local government.
- The member participating remotely is required to notify the legislative body of the need to participate remotely “at the earliest opportunity,” but can invoke a “just cause” remote appearance as late as at the start of the applicable meeting
- Member may not appear remotely under just cause more than 2 times in a calendar year.

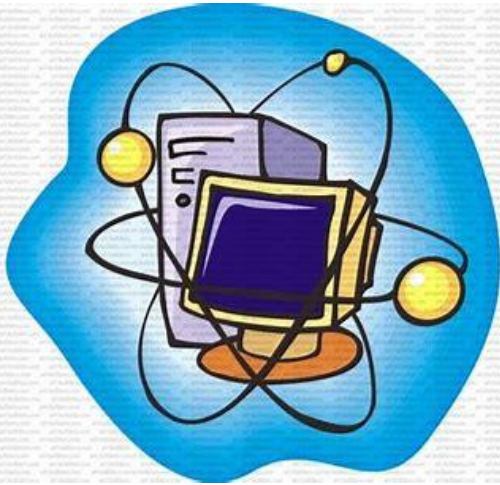
“Emergency Circumstances” Provision

- Members may also make a request to participate remotely due to “emergency circumstances,” which the Act defines as “a physical or family medical emergency that prevents a member from attending in person.”
- Under the emergency circumstances provision, the member’s request must be placed on the agenda and approved by the legislative body.
- The board member is not required to disclose personal medical conditions or disabilities and the description may be brief and general (20 words or less).
- If there is insufficient time to add an emergency circumstances request to the agenda, it can be added orally and should be handled at the beginning of the meeting.

Additional Requirements

- If a member is approved to appear remotely under the just cause or emergency circumstances provision, the member must appear through both audio and visual technology.
- The member must also state if any other persons age 18 or older are present with the member, and the member's relationship to those persons.

Disruption In Service



If a meeting is being conducted remotely under these provisions and a disruption in service prevents the broadcast of the meeting to the public and/or prevents public comment, no further action on agenda items may be taken until the remote service is restored.

Limitations on Remote Appearances



A member may not use either the “just cause” or “emergency circumstances” basis to appear remotely for a period exceeding three consecutive months or more than two meetings per calendar year.

A member must make a separate request to the COC for each meeting at which he/she seeks to appear remotely.

Sunset on New Provisions



- The provisions allowing remote appearance for just cause or emergency circumstances sunset on December 31, 2025.
- As of January 1, 2026, only traditional Brown Act teleconferencing rules will apply.

Recommendations

- Boards and Commissions should decide whether using remote participation options create a net benefit to the entity, balancing considerations such as time and resources needed for providing and documenting remote access, whether increased flexibility would be useful, and other considerations based on the entity's characteristics.
- AB 2449 is new legislation, and its provisions are significantly fact-dependent. You may contact your SMART's General Counsel for guidance.

Resources

- General Counsel (for the SMART board)
- For other agencies, consult your agency counsel
- *The Brown Act: Open Meetings for Local Legislative Bodies* (California Attorney General's Office, 2003) [does not include recent amendments to Brown Act]
- *Open & Public V: A Guide to the Ralph M. Brown Act* (2d ed. 2016) published by the League of California Cities
- *Understanding the Basics of Local Agency Decision-making* (2009) published by the Institute for Local Government (www.ca-ilg.org)

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