

UPDATE! The Brown Act: Teleconference Requirements

End of Pandemic Allowances for Teleconferencing

Because of the end of the COVID Emergency, effective March 1, 2023, the prior emergency authorizations for meetings via teleconference are no longer in effect. The ability of any board or commission member to participate remotely will now require either (1) full compliance with the Brown Act's traditional rigid teleconferencing requirements — including posting all members' remote locations on agendas and making all of those locations publicly accessible; or (2) following new complex teleconferencing provisions added by Assembly Bill 2449 which went into effect on January 1, 2023. However, LAFCO is currently not resourced to facilitate hybrid meetings, which are required for Assembly Bill 2449.

Brown Act Teleconference Options Available after March 1, 2023

Option 1 – Traditional Brown Act Teleconference Requirements: The Brown Act allows a board or commission to use any type of teleconferencing in connection with any meeting. The Brown Act defines teleconference as a meeting of individuals in different locations, connected by electronic means, through either audio or video, or both. To conduct a meeting with a member participating by teleconferencing, the Brown Act requires the following:

- At least a quorum of the commission or board members must participate from locations within the jurisdictional boundaries of the County.
- Each teleconference location must be identified in the notice and agenda of the meeting.
- Agendas must be posted at each teleconference location in addition to the standard posting location.
- Each location must be accessible to the public.
- The agenda must provide the opportunity for the public to address the legislative body directly at each teleconference location (i.e., through the teleconference technology at the location).
- All votes must be by roll call.
- If you wish to participate in a meeting remotely under this provision, you should notify Drew Nichols by 5:00 PM eight (8) days prior to the meeting so that the address of your remote location can be added to the meeting agenda.

Option 2 – Assembly Bill 2449: Utilization of this option would require LAFCO to implement hybrid meetings.

On September 13, 2022, Governor Newsom signed Assembly Bill 2449 (Rubio) into law adding an alternative teleconferencing provisions to the Brown Act effective January 1, 2023 until its sunset (or extension) on January 1, 2026.

AB 2449 provides complex alternative teleconference procedures to allow a minority of members of a legislative body to participate remotely without having to post agendas at all teleconference locations,

identify all teleconference locations in the meeting agendas, or make each teleconference location open to the public under very specific circumstances:

- At least a quorum of the members of the legislative body must participate in person from one physical location identified on the agenda, which location must be open to the public and within the boundaries of the local agency.
- A member may only teleconference for publicly disclosed “just cause” or in “emergency circumstances” approved by the legislative body.
- The public must be able to participate remotely.
- A member may only teleconference for a limited number of meetings (see table for specific limits for “just cause” and “emergency circumstances”).
- All votes must be by roll call.

See attached Table for more details on AB 2449’s specific requirements.

AB 2449 – Teleconferencing Requirements

“Just Cause”	“Emergency Circumstances”
<p><i>Timing and Procedure</i></p> <p>The member <u>notifies</u> the legislative body at the earliest opportunity possible (can be as late as the start of a regular meeting) of their need to participate remotely for “just cause,” including a general description of the circumstances justifying their need to appear remotely.</p> <p><i>Qualifying Reason</i></p> <p>“Just cause” means any of the following:</p> <ul style="list-style-type: none"> • 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 not otherwise accommodated for • Travel while on official business of the legislative body or another state or local agency <p>Note: A member is limited to two virtual attendances based on “just cause” per calendar year.</p>	<p><i>Timing and Procedure</i></p> <p>The member <u>requests</u> the legislative body as soon as possible to allow them to participate in the meeting remotely due to “emergency circumstances” and provides a general description of the circumstances justifying their need to appear remotely.</p> <p><i>and</i></p> <p>The legislative body takes action to approve the request. 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 at the beginning of the meeting in accordance with existing Brown Act provisions to add an item to the agenda.</p> <p><i>Qualifying Reason</i></p> <p>“Emergency circumstances” means a physical or family medical emergency that prevents a member from attending in person (does not require disclosure of any medical diagnosis or disability, or any personal medical information that is already exempt under existing law).</p> <p>Note: The member must make a separate request for each meeting in which they seek to participate remotely.</p>
<p>Other Requirements</p> <p>Under either “just cause” or “emergency circumstances”:</p> <ul style="list-style-type: none"> • The member 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 any such individual(s). • The member must participate through <i>both</i> audio and visual technology (<u>cannot turn off camera</u>). • Teleconferencing by a member may not be for a period of <ul style="list-style-type: none"> ○ more than three consecutive months or 20 percent of the regular meetings for the local agency within a calendar year, <i>or</i> ○ more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year • The public must be able to participate remotely through either: <ul style="list-style-type: none"> ○ A two-way audiovisual platform (defined to mean an online platform that provides participants with the ability to participate in a meeting via both an interactive video conference and a two-way telephonic function); and/or ○ A two-way telephonic service <i>and</i> a live webcasting of the meeting (defined to mean a telephone service that does not require internet access, is not provided as part of a two-way audiovisual platform, and allows participants to dial a telephone number to listen and verbally participate. • All votes must be by roll call. 	