

**OFFICE OF THE CITY ATTORNEY
CITY OF OAKLAND**

Frequently Asked Questions (FAQs)

Regarding the City Council’s (and Other Local Legislative Bodies’) Return to In-Person Meetings and Their Members’ Participation by Teleconference under the Ralph M. Brown Act, California’s Open Meeting Law

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I. INTRODUCTION

On February 28, 2023, California Governor Gavin Newsom [issued a proclamation](#) terminating the statewide COVID-19 State of Emergency that had been in effect since March 4, 2020. The termination of the State of Emergency impacts the ability of members of the Oakland City Council and other local bodies covered by the California Ralph M. Brown Act, California Government Code section 54950 et seq. (hereinafter the “Brown Act”) to attend meetings by teleconference.

Assembly Bill (“AB”) 361, signed by the Governor on September 15, 2021, and the Governor’s prior emergency orders, temporarily suspended the Brown Act’s restrictions on participation in public meetings via teleconference. Prior to March 2020, members of local bodies could participate in public meetings via teleconference only if, among other things:

1. Notices and agendas were posted for each teleconference location from which members of the local body intended to participate;
2. Teleconference locations were accessible to the public, including persons with disabilities;
3. The public could participate in the meeting from each teleconference location; and
4. A quorum of the legislative body participated from within the boundaries of the jurisdiction.¹

AB 361 modified these requirements, providing that members of local bodies could participate in public meetings without complying with the public notice of and access to the teleconference location when, among other things, a state of emergency exists and the local body or the state recommends social distancing as a safety measure.² A state of emergency refers specifically to the authority of the Governor of California to invoke a state of emergency, and not to states of emergency declared by local bodies.³ As set forth above, the termination of the

¹ Cal. Gov’t Code § 54953(b)(3).

² Cal. Gov’t Code § 54953 (e)(1).

³ Cal. Gov’t Code § 54953(j)(5).

Governor’s State of Emergency means that, effective March 1, 2023, local bodies may no longer rely upon AB 361 to participate in meetings via teleconference.

The termination of the Governor’s State of Emergency leaves two options for teleconference participation by members of local legislative bodies:

1. the traditional teleconference rules; and
2. the limited exceptions provided by Assembly Bill (“AB”) 2449.

Effective January 1, 2023, AB 2449 preserves, under very limited circumstances, an option for members of bodies subject to the Brown Act to participate in meetings via teleconference without complying with the public notice and public access to a member’s remote teleconference location. The AB 2449 exceptions to the standard teleconference rules are very limited and, among other things, only apply to meetings that provide a teleconference option for public participation, and can be invoked only for a maximum of 20% of the regularly scheduled meetings per calendar year.⁴

To ensure that the public, City of Oakland (“City”) employees, and City officials have the same information, the City Attorney is issuing this FAQ to provide answers to common questions regarding AB 2449 and the ability of members of local bodies to participate in public meetings via teleconference going forward. For additional questions regarding the Brown Act see our recent FAQ [here](#).

This FAQ is a general guide and does not constitute legal advice as the specific facts and circumstances must be evaluated on a case-by-case basis.

II. FREQUENTLY ASKED QUESTIONS REGARDING TELECONFERENCE MEETINGS UNDER BROWN ACT

1. Why Are Members of Local Bodies Returning to In-Person Meetings?

Answer: Since March 4, 2020, California has been in a COVID-19 State of Emergency that Governor Newsom. AB 361 declared and prior emergency orders allowed members of local bodies to conduct and participate in public meetings without complying with the notice of and public access to the teleconference locations when, among other things, a proclaimed state of emergency existed.⁵ On February 28, 2023, California Governor Gavin Newsom [issued a proclamation](#) terminating the statewide COVID-19 State of Emergency. As a result, local bodies

⁴ Cal. Gov’t Code § 54953(f)(1); Cal. Gov’t Code § (f)(2)(A)(i) and (ii).

⁵ Cal. Gov’t Code § 54953 (e)(1). State of emergency refers specifically to the authority of the Governor of California to invoke a state of emergency, and not to states of emergency declared by local bodies. Cal. Gov’t Code § 54953(j)(5).

can no longer invoke AB 361 and are limited to the pre-pandemic traditional teleconference rules and the limited circumstances allowed by AB 2449. In other words, members of local bodies can participate in public meetings via teleconference after the termination of the COVID-19 State of Emergency but the circumstances are much more restricted.

2. Can Members of Local Bodies Still Participate in Meetings Via Teleconference under the Longstanding Teleconference Rules?

Answer: Yes. The Governor’s termination of the statewide COVID-19 State of Emergency does not impact the longstanding teleconference rules under California Government Code section 54953(b)(3), which provides in pertinent part:

If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction.⁶

Members of local bodies intending to use the longstanding teleconference rules should coordinate with their staff liaison and/or the City Clerk to ensure: 1) Brown Act required noticing of the location of the teleconference meeting; 2) Brown Act required postings of the notice and agenda at the teleconference location; 3) coordination regarding any technical requirements for participating remotely; and 4) a quorum of the body will participate in the meeting within the boundaries of City of Oakland.

3. What is Assembly Bill (“AB”) 2449?

Answer: AB 2449, effective January 1, 2023 and codified in California Government Code § 54953, allows members of local bodies covered by the Brown Act to participate in meetings remotely via teleconference for “just cause” and “emergency circumstances” regardless of whether a state of emergency exists and without providing notice of or public access to the teleconference location.⁷

⁶ Cal. Gov’t Code § 54953(b)(3)

⁷ Cal. Gov’t Code § 54953(f)(2)(A)(i) and (ii) (Just Cause and Emergency Circumstances exception to 54953(b)(3) – the longstanding teleconferencing requirements)

AB 2449 can be used only when members of the public also are allowed to participate remotely (i.e. to listen/observe and provide comment) via teleconference.⁸ AB 2449 does not apply and cannot be used for meetings that are only offered in-person or that are in-person with a teleconference option set to “observation only” such that the public cannot provide comment via teleconference.

4. Is the Public Always Allowed Notice of the Teleconference Location and Access to Participate in Meetings Via the Teleconference Location?

Answer: No. Only the longstanding teleconference rules require public notice of and access to the teleconference location. AB 2449 provides for exceptions to those requirements.

5. How Does AB 2449 Work?

Answer: The procedures vary depending on whether the member asserts “just cause” or “emergency circumstances” as the basis for the need to participate in the meeting remotely.

For Just Cause

- Timing of Notice: The member must notify the legislative body of their need to participate remotely at the earliest opportunity possible, up to the commencement of the meeting.⁹
- What to include in the Notice: The notice must provide a general description of the circumstances relating to their need to appear remotely at the given meeting.¹⁰
- “Just cause” means any of the following:
 - (A) A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely;
 - (B) A contagious illness that prevents a member from attending in person.
 - (C) A need related to a physical or mental disability not otherwise accommodated.
 - (D) Travel while on official business of the legislative body or another state or local agency.¹¹

⁸ Cal. Gov’t Code § 54593(e)(2)(A)

⁹ Cal. Gov’t Code § 54953(f)(2)(A)(i).

¹⁰ Cal. Gov’t Code § 54953(f)(2)(A)(i).

¹¹ Cal. Gov’t Code § 54953(j)(2).

- Per meeting notice is not required: Unlike the emergency circumstances exception, it does not appear that separate notices are required for participating remotely under the just cause exception.¹² Thus, a member could provide notice of remote participation via teleconference for just cause for up to two meetings—the maximum number of times just cause can be used¹³—if the member is aware of the need in advance, such as for childcare or official travel.
- No action by legislative body required: Invoking the just cause exception is self-executing and no further action by the body is required.¹⁴
- No requirement to notice the member’s remote participation on the agenda.

For Emergency Circumstances

- Timing of Request: The member must request that the legislative body allow them to participate in the meeting remotely due to emergency circumstances as soon as possible, preferably with enough time to place the proposed action on the posted agenda for the meeting for which the request was made. However, if the timing of the request does not allow sufficient time to post the matter on the agenda, the legislative body may take action at the beginning of the meeting.¹⁵
- What to include in the Request: The member need not provide any additional information at the time of the Request to participate in the meeting remotely due to emergency circumstances. However, the legislative body must request a general description of the circumstances relating to the member’s need to appear remotely at the given meeting. The general description 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.¹⁶
- “Emergency circumstances” means a physical or family medical emergency that prevents a member from attending in person.¹⁷
- Per meeting request is required: A member must make a separate request for each meeting in which they seek to participate remotely.¹⁸
- Action by legislative body is required:¹⁹ The legislative body may approve such a request by a majority vote of the legislative body.²⁰

¹² Compare Cal. Gov’t Code § 54953(f)(2)(A)(i) to Cal. Gov’t Code § 54953(f)(2)(A)(ii)(I).

¹³ Cal. Gov’t Code § 54953(f)(2)(A)(i).

¹⁴ Compare Cal. Gov’t Code § 54953(f)(2)(A)(i) to Cal. Gov’t Code § 54953(f)(2)(A)(ii)(II).

¹⁵ Cal. Gov’t Code § 54953(f)(2)(A)(ii)(I)-(II).

¹⁶ Cal. Gov’t Code § 54953(f)(2)(A)(ii).

¹⁷ Cal. Gov’t Code § 54953(j)(1)

¹⁸ Cal. Gov’t Code § 54953(f)(2)(A)(ii)(I)

¹⁹ Cal. Gov’t Code § 54953(f)(2)(A)(ii)(II).

²⁰ Cal. Gov’t Code § 54954.2(b)(4).

6. Are There Any Specific Limitations on the Manner of Voting by Members During a Teleconferenced Meeting?

Answer: Yes. For any meeting in which the legislative body elects to use teleconferencing, whether via the longstanding teleconferencing rules or under AB 2449, all votes during the meeting must be by rollcall.²¹

7. Is There a Limit to the Number of Times a Member of a Local Body Can Participate via Teleconference?

Answer: It depends on which teleconference rules are invoked. No limit exists on the number of times a member of a local body can participate via teleconference using the longstanding teleconference rules. However, AB 2449 does impose strict limits on use of its provisions. AB 2449 has two categories of exceptions that allow use of participation by teleconference: just cause and emergency circumstances.²² Just cause can be used no more than twice in a calendar year.²³ And just cause and emergency circumstances, together, may not be used more than 20% of the regularly scheduled meetings for the calendar year or for more than 3 consecutive months.²⁴

8. Are There Any Other Limitations on the Use of AB 2449?

Answer: Yes.

- AB 2449 can be used only when members of the public are also allowed to participate remotely (i.e. to listen/observe and provide comment) via teleconference. AB 2449 does not apply and cannot be used for meetings that are only offered in-person or that are in-person with teleconference options set to “observation only” such that the public cannot provide comment via teleconference.²⁵
- AB 2449 can be used only if a quorum of members of the legislative body participate in person from the same location within the City, and location must be clearly identified on the agenda and open to the public.
- AB 2449 can be used only for a maximum of 20% of the regularly scheduled meetings for the calendar year or for more than 3 consecutive months.²⁶ “Just cause” cannot be used more than twice in a calendar year.²⁷ For boards or commissions that meet monthly, AB 2449 can only be used a total of two times,

²¹ Cal. Gov’t Code § 54953(b)(2)(A).

²² Cal. Gov’t Code § 54953(f)(2)(A)(i) and (ii) (Just Cause and Emergency Circumstances exception to 54953(b)(3) – Standard (traditional) teleconferencing requirements).

²³ Cal. Gov’t Code § 54953(f)(2)(A)(i).

²⁴ Cal. Gov’t Code § 54953(f)(3).

²⁵ Cal. Gov’t Code § 54593(e)(2)(A).

²⁶ Cal. Gov’t Code § 54953(f)(3).

²⁷ Cal. Gov’t Code § 54953(f)(2)(A)(i).

regardless of the exception (just cause or emergency circumstances) in the whole calendar year.

- Members participating remotely under AB 2449 must participate both on camera and via audio.²⁸
- Additionally, before any action is taken, the member must disclose if anyone 18 or older is in the room at the remote location with them, and the general nature of the relationship with the person or persons.²⁹
- Members of the public must be allowed to remotely hear and visually observe the meeting, and remotely address the legislative body via either 1) a two-way audiovisual platform (e.g. Zoom) or 2) a two-way telephonic service and a live webcasting of the meeting.³⁰
- The agenda must identify the call-in option, internet-based service option and the in-person location of the meeting.³¹

9. Does AB 2449 or the Brown Act Require City Staff or the City Attorney or City Attorney staff to Attend Meetings of Legislative Bodies In Person As Well?

Answer: No. AB 2449 amends the Brown Act to provide additional but limited circumstances under which members of local bodies can participate in public meetings via teleconference after the termination of the COVID-19 State of Emergency. However, neither AB 2449 nor the Brown Act require City staff, City Attorneys or members of the public to participate in public meetings in person.

10. Must the Meeting Stop If the Internet Service Broadcasting the Meeting Goes Down During the Meeting?

Answer: No. The meeting need not stop while such technical difficulties are resolved, however whether the legislative body can take further action on items appearing on the agenda depends on whether any member of the body is participating by teleconference via AB 2449.

The meeting may continue as normal if no member of the legislative body has invoked AB 2449 to participate via teleconference.

However, if a member has invoked AB 2449 and is participating via teleconference, in the event of a disruption that prevents the legislative body from broadcasting the meeting to members of the public, or in the event of disruption within the agency's control that prevents members of the public from offering public comment, the body

²⁸ Cal. Gov't Code § 54953(f)(2)(C).

²⁹ Cal. Gov't Code § 54953(f)(2)(B).

³⁰ Cal. Gov't Code § 54953(f)(1)(A)(i)-(ii).

³¹ Cal. Gov't Code § 54953(f)(1)(C).

must not take further action on items appearing on the meeting agenda until public access to the meeting is restored.³² In-person public comment and discussion by the body may continue.³³ Of course, nothing in AB 2449 or the Brown Act prevents a legislative body from exercising its discretion to pause a meeting while technical difficulties are resolved, even though no law requires them to do so.

11. Do Standing Committees of Local Bodies Have to Meet in Person?

Answer: Yes. The teleconference meeting rules apply to all legislative bodies covered by the Brown Act. The Brown Act defines legislative body to include the governing body of the local agency, as well as any other “body of a local agency, whether permanent or temporary, decision-making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body.”³⁴

For the City, this includes the Oakland City Council, which is the governing body of the City, the City Council’s standing committees, and all other bodies created by the City Charter or by Council action, such as the Public Ethics Commission, the Police Commission, the Housing, Residential Rent and Relocation Board, and the Civil Service Board. Any standing committees of those bodies also would be considered a legislative body covered by the Brown Act.

The Oakland-Alameda County Joint Powers Authority is a local, legislative body that is subject to the Brown Act³⁵.

By contrast, an advisory body composed of less than a quorum of the legislative body that is established for a specific, single purpose and that is temporary in nature is not subject to the Brown Act.³⁶ These temporary advisory bodies sometimes are referred to as ad hoc committees. Ad hoc committees are not considered a legislative body and thus are not subject to the Brown Act. Ad hoc committees are not impacted by the teleconference meeting rules and those committees may continue to meet as they did before the termination of the COVID-19 State of Emergency.

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³² Cal. Gov’t Code § 54953(f)(1)(D).

³³ Cal. Gov’t Code § 54952.6.

³⁴ Cal. Gov’t Code § 54952.

³⁵ *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force*, 134 Cal. App. 4th 354, 362-363 (2005).

³⁶ Cal. Gov’t Code § 54952(b).