

Teleconferencing Under the Brown Act

SHIRI HOFFMAN, ACTING CHIEF DEPUTY
OFFICE OF COUNTY COUNSEL

NOVEMBER 8, 2022

Teleconferencing Under the Brown Act

The following teleconferencing options are set forth in Government Code § 54953:

- ▶ Default Rules
- ▶ State of Emergency
 - ▶ Ending February 28, 2023
- ▶ A.B. 2449
 - ▶ Effective January 1, 2023

Default Rules of Teleconferencing

A member of CLERB may participate by teleconference if:

- ▶ Agendas are posted at all teleconference locations
- ▶ Each teleconference location is identified on the agenda
- ▶ Each teleconference location is accessible to the public
- ▶ Public is given opportunity to address CLERB from each teleconference location
- ▶ At least a quorum participates from locations within the County

Teleconferencing in a State of Emergency

The default teleconferencing requirements do not apply if there is a proclaimed state of emergency and:

- ▶ State or local officials have imposed or recommended measures to promote social distancing; or
- ▶ CLERB is meeting to determine whether meeting in person would present imminent risks to health or safety; or
- ▶ CLERB has determined that meeting in person would present imminent risks to health or safety

Teleconferencing in a State of Emergency

Requirements that *do* apply:

- ▶ Agenda must identify and include options for the public to attend via a call-in or internet-based option
- ▶ CLERB may not proceed if there is a disruption in the broadcast or the ability of the public to comment
- ▶ CLERB must make findings every 30 days to continue this teleconferencing option

COVID-19 State of Emergency set to expire February 28, 2023.

Teleconferencing Under A.B. 2449

(effective January 1, 2023)

The default teleconferencing requirements do not apply to members appearing remotely for “just cause” or due to “emergency circumstances.”

“Just Cause”

- ▶ A caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires a member to participate remotely
- ▶ A contagious illness that prevents a member from attending in person
- ▶ A need related to a physical or mental disability
- ▶ Travel while on official business of CLERB or another state or local agency

“Emergency Circumstances”

- ▶ A physical or family medical emergency that prevents a member from attending in person

Teleconferencing Under A.B. 2449

(effective January 1, 2023)

Requirements

- ▶ Just Cause:
 - ▶ The member must notify CLERB at the earliest opportunity of their need to participate remotely
 - ▶ The member must include an explanation of the circumstances surrounding their need to appear remotely
 - ▶ No more than two meetings per calendar year

Teleconferencing Under A.B. 2449

(effective January 1, 2023)

Requirements :

- ▶ Emergency Circumstances
 - ▶ The member must request CLERB's approval to participate remotely
 - ▶ Separate request required for each meeting
 - ▶ CLERB must request a general description of the circumstances relating to the need to appear remotely
 - ▶ CLERB may take action at the earliest opportunity, or at the beginning of the meeting if the request cannot be timely agendized

Teleconferencing Under A.B. 2449

(effective January 1, 2023)

Requirements :

- ▶ At least a quorum must participate from a single physical location
- ▶ Member must publicly disclose before any action is taken whether anyone 18 years of age or older is present and the nature of the member's relationship to those individuals
- ▶ Member must participate through both audio and visual technology
- ▶ Cannot be used for more than 3 consecutive months, 20 percent of the regular meetings in a calendar year, or 2 meetings if the body meets fewer than 10 times per calendar year
 - ▶ (effectively 2 meetings for CLERB)

Key Takeaways

After end of state of emergency:

- ▶ No 30-day findings requirement
- ▶ Quorum must appear in person
- ▶ Under A.B. 2449:
 - ▶ Reason must be given publicly
 - ▶ Camera must be on
 - ▶ For CLERB's purposes, up to 4 times per year (each option may only be used twice)
- ▶ Public may still participate virtually even if CLERB meets in person