

## THE BROWN ACT: TELECONFERENCE REQUIREMENTS

### SUSPENSION OF TELECONFERENCE REQUIREMENTS DURING THE PANDEMIC

During the COVID-19 pandemic, Governor Newsom passed a series of executive orders that relaxed the traditional Brown Act requirements for remote public meeting participation to protect public health. The Legislature, through its passage of AB 361, allows local agencies to suspend many of the Brown Act's rigid requirements for teleconferencing when a board or commission meeting is held during a declared state of emergency. Specifically, AB 361 amended the Brown Act to provide additional provisions that allowed far more flexibility to conduct remote public meetings of commissions and boards if the Governor continued to declare a state of emergency due to the COVID-19 pandemic.

The Governor recently announced that he will rescind the Emergency Proclamation related to the COVID-19 pandemic at the end of February 2023. As a result, as of March 1, 2023, the Brown Act's rigid teleconferencing requirements likely will no longer be suspended.

Assuming the Governor's Emergency Proclamation is rescinded as announced, SMART Board and Committee members has return to meeting in person as of March 1, 2023. The ability of any board or commission member to participate remotely after that date will 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.

### BROWN ACT TELECONFERENCE OPTIONS AVAILABLE ON 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.

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- 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 Leticia Rosas ([lrosas@sonomamarintrain.org](mailto:lrosas@sonomamarintrain.org)) 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: On September 13, 2022, Governor Newsom signed Assembly Bill 2449 (Rubio) into law adding an alternative teleconferencing provision 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.

### **REMOTE PUBLIC PARTICIPATION MAY CONTINUE**

State law continues to allow remote public participation (and note that use of AB 2449’s alternative procedures requires remote public participation). SMART will continue to offer remote meeting participation options for the public.