

Governor Eases Brown Act Requirements in Consideration of COVID-19 Virus

March 13, 2020

On Thursday, Governor Newsom issued Executive Order N-25-20 to ease certain Brown Act requirements given concerns about the COVID-19 virus. The Executive Order allows board members to call into a meeting from any location without providing notice of that location or opening that location to the public. It also allows, but does not require, boards to allow members of the public to provide comment electronically. While the Executive Order loosens the Brown Act requirements, districts will still need to determine, in consultation with local health officials, whether other restrictions on meeting attendance, such as limiting the number of the attendees, are appropriate.

The focus of the Executive Order is on the telephonic/electronic attendance of board members at board meetings. It suspends the requirements to notice the location of a member attending by phone, to post an agenda at that location, and, perhaps most importantly, to ensure that the location is open and accessible. In other words, board members may call into a board meeting from their homes without having to notice the location or open the location to the public. Further, the Executive Order waives the requirement that a quorum of the board be physically located within the district boundaries during a meeting.

The only conditions the Executive Order places on such meetings is that the district must provide public notice of the meeting as normally required by the Brown Act and that the district “notice at least one publicly accessible location from which members of the public shall have the right to observe and offer public comment at the public meeting.” This requirement could be satisfied by allowing members of the public to attend a board meeting as they otherwise would do; however, if all board members attend by telephone, the district would still need to provide a location for members of the public to hear the meeting and provide public comment that could be heard by the board.

If there are public health concerns regarding the physical presence of members of the public at a meeting, the district should work with local public health officials to determine appropriate steps. This may include broadcasting the meeting to another location where it could be observed by the public and they could provide comment to the board. This situation may also motivate boards to live stream their meetings so that members of the public can observe from their homes – although the district would still need to provide a location for members of the public to observe and provide comment.



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Finally, to the extent a board seeks to hold a meeting under these relaxed requirements we would recommend the following language be added to the top of the agenda:

This meeting is being held pursuant to Executive Order N-25-20 issued by California Governor Gavin Newsom on March 12, 2020. Any or all board members may attend the meeting by phone. Members of the public may attend at [location] in order to observe and provide public comment during the meeting.

Where applicable, a board may also include any/all of the following information.

The meeting will be live-streamed on [web address]. The board meeting room will remain open during the meeting for those members of the public who wish to attend the meeting in person and/or make public comment. However, the Board may limit the number of individuals in the board meeting room at any one time pursuant to guidance from public health officials.

Finally, although not part of the Governor's order, provisions of the Brown Act also allow for emergency meetings of boards to be called without the usual advance notice requirements. If you need more information about how to schedule and hold board meetings during this challenging time, please contact an attorney in our Board Ethics Transparency and Accountability practice group.

PRACTICE AREAS

- Board Ethics, Transparency and Accountability