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COVID-19 Advisory



Impact on Board Meetings (*Revised March 18, 2020*)

March 17, 2020

As districts work to address the many impacts of COVID-19 on their operations, governing boards are finding it necessary to reschedule or schedule additional board meetings. Further, some of the directives issued to limit the spread of the virus may impact how boards conduct their meetings. Below are some of the more frequently asked questions and answers to how COVID-19 is impacting board meetings.

Q: May a board hold an emergency meeting?

A: Yes, the Brown Act allows governing boards to call “emergency meetings.” Such a meeting may be called where a situation “severely impairs public health, safety, or both, as determined by a majority of the members of the [board].” (Gov. Code, § 54956.5, subd. (a).) The following requirements apply:

- A board may forego the minimum 24-hour notice period, when “prompt action” is necessary. Instead it must notify, at least one hour prior to the meeting, each media outlet (by phone) that has requested notice of the board’s special meetings.
- The top of the agenda should indicate:

Emergency Meeting of the Governing Board The Board is holding an emergency meeting pursuant to Government Code section 54956.5 to address the COVID-19 pandemic that severely impacts public health and safety.

- The first item on the agenda should be: top of the agenda should indicate:

Determination by the Board that COVID-19 severely impacts public health and safety necessitating an emergency meeting of the Board.

As indicated above, a majority of the Board must vote in favor of this determination.

- A board may meet in closed session to discuss items related to the emergency with approval of 2/3 of the members present, or all members if fewer than 2/3 are present.
- The minutes of the meeting, including the list of persons the district notified of the meeting, must be posted, as soon as possible, in a public place for at least ten days after being posted.
- Otherwise, the same requirements which would apply to a special meeting are applicable to an emergency meeting.

A board may also hold a meeting with less than one hour’s notice where the board identifies the existence of a “dire emergency” such that providing the hour notice would endanger the public. (Gov. Code, § 54956.5, subd. (b)(2).)

Q: May board members call in to a meeting?

A: Yes, under Executive Order N-29-20 (issued on March 17, 2020) board members have more flexibility to call into a regular, special, or emergency board meeting. Board members may call from their residence without the need to provide notice of or at the location and do not need to make their location open to the public. Where board members intend to take advantage of this flexibility to call into a meeting, the top of the agenda should note:

This meeting is being held pursuant to Executive Order N-29-20 issued by California Governor Gavin Newsom on March 17, 2020. Any or all board members may attend the meeting by phone. Members of the public may attend at [public location] in order to hear, observe, and provide public comment during the meeting.

More information on these requirements can be found in DWK's Client Bulletin:
www.dwkesq.com/wp-content/uploads/2020/03/2020_BETA2-Advisory_COVID19-031820.pdf

Q: May a board limit public attendance at a meeting?

A: Yes. A board may hold a meeting through electronic means without providing a physical location for the public to observe or comment under Executive Order N-29-20. This may be particularly helpful for those districts located in counties under a shelter-in-place order.

If a board wishes to take advantage of this option, it must still provide notice of its meetings and that notice must indicate the electronic means by which members of the public may observe the meeting and offer public comment. For example, if the board plans to use a videoconference service or teleconference number, that information along with any procedure for organizing public comment should be included in the agenda.

Additionally, the district will need to determine how it will receive and "swiftly" resolve any requests for reasonable modification or accommodation for individuals with disabilities who wish to observe the meeting and offer public comment. At a minimum, this must include language on the agenda providing information regarding how members of the public may request such modification or accommodation.

Alternatively, if a board decides to continue to have a physical location where members of the public may observe and comment on the meeting they should abide by any guidance issued by state and local health officials regarding the number of individuals who may gather at the meeting and encourage social distancing. To this end, the agenda may include the following language:

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.

Q: May a board allow remote public participation?

A: Yes, Executive Order N-29-20 specifically suspends any Brown Act requirement for attendance at a meeting in order to participate. Thus, a board may, but is not required to, allow the public to participate by electronic means. However, as explained above, if there is not a physical location from which members of the public may observe and comment on the meeting, electronic participation is required. Options could include live streaming a meeting as well as allowing individuals to sign up online in advance of the meeting to provide comment on a certain agenda item with the board calling the individual by phone when that item is before the board.

If a board offers such opportunities for remote participation it should include that information on its agenda to ensure that the public is aware of the option to participate without physically attending the meeting.

Q: May a board cancel a meeting?

A: Yes, subject to board policies, a board may cancel a meeting at any time. The Brown Act does not require that meetings be held, but also does not provide a procedure for cancellation of meeting. Some board policies provide direction on when/how a meeting may be cancelled. At a minimum, the public should be notified immediately upon cancellation of the meeting and notice of the cancellation should be posted at the meeting location.

We hope this guidance is helpful in this time of uncertainty. DWK will continue to provide guidance as information becomes available. For more information regarding the impact of COVID-19 on your district's operations, please visit our COVID-19 Resources page at www.dwkesq.com/covid-19-resources-page/.