



## **Executive Order Provides Brown Act Flexibility for Local Board Meetings**

On March 17, 2020, Governor Gavin Newsom issued [Executive Order N-29-20](#), which follows the [March 4 declaration](#) of a State of Emergency in California as a result of the threat of COVID-19. This updated order supersedes [Executive Order N-25-20](#), issued on March 12, which also relaxed certain provisions of the Brown Act. The provisions of the N-29-20 order apply during the period in which state or local public officials impose or recommend measures to promote social distancing, including limitations on public events.

Among other items, the order states that “a local legislative body or state body is authorized to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body[.]” Section 3 of the executive order waives or relaxes several requirements related to teleconferencing of board meetings, while still seeking to strike a balance between public health and the public’s interest in the conduct of their government and their right to access. In particular, the March 17 executive order states that a legislative body “need **not** make available any physical location from which members of the public may observe the meeting and offer public comment.” (Emphasis added). However, local agencies must ensure that they have complied with the Americans with Disabilities Act (ADA) accessibility requirements and the notice requirements outlined in the executive order.

This means that during the time the Governor’s State of Emergency remains in effect, the members of a board of directors are permitted to each teleconference (or web-conference) from a remote location without the requirement to include the board members’ remote location on the agenda, or open that location to the public, or post an agenda at that location. The executive order urges all local governments to “use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the provisions of...the Brown Act, and other applicable local laws regulating the conduct of public meetings, in order to maximize transparency and provide the public access to their meetings.”

Although the provisions of the executive order may be in effect for a limited time, the Brown Act provides local governments a degree of flexibility in determining the time, place, and manner in which meetings are conducted. Additional steps special districts may seek to take in the effort to reduce the potential for exposure to COVID-19 for board members, staff, and the public include:

1. **Increasing Sanitation Efforts:** Many businesses, including airlines and hotels, are dedicating increased resources to sanitizing frequently touched spaces. Special districts may seek to adopt similar procedures for public meetings.
2. **Adjusting Meeting Space:** According to the Centers for Disease Control and Prevention (CDC), COVID-19 is thought to spread mainly between people who are in close contact with one another (within about 6 feet). Therefore, special districts may seek to adjust board meeting space to allow for greater physical distance between participants. This may require changing to a different meeting location within the boundaries of the district. In doing so, districts must meet all notification standards. (Government Code § 54954).
3. **Affording Virtual Public Engagement:** Special districts may choose to provide alternative means for viewing proceedings and submitting public input, such as using an Internet-based livestream and dedicated email address or text line. Taking such steps could encourage vulnerable populations, and residents who may have been exposed to COVID-19, to engage the board without physically attending the meeting.



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4. **Allowing Board Members to Teleconference:** Depending on the meeting space available, board members within identified vulnerable populations may feel more comfortable participating from an alternative location via teleconference. The Brown Act permits such participation so long as:
  - a. The agenda specifies all teleconference locations and is posted at each teleconference location;
  - b. Public access is provided at each teleconference location;
  - c. Public opportunity to speak is provided at each teleconference location;
  - d. All votes are taken by roll call; and
  - e. At least a quorum of the members of the legislative body participate within the boundaries of the district.

(Note that some requirements have been suspended pursuant to Executive Order N-29-20 during such time the order remains in effect).

5. **Communicating Proactively with the Public:** One of the best tools for public health remains active communication with residents. Some businesses, arenas, places of worship, and other venues are sharing the steps they are taking regarding COVID-19, and are also proactively encouraging those who are experiencing symptoms, or who believe they may have been exposed, to stay home and not visit public spaces. Such communication, in combination with the availability of online or virtual public engagement, may help reduce the potential COVID-19 risk at public meetings.
6. **Providing Staff with Flexibility to Operate and Inform the Board:** Special district boards may choose to delegate enhanced authority permitted under the law to their general manager to handle district business on an interim basis in a manner that could reduce the frequency and duration of board meetings.
7. **Cancelling or Delaying Non-Essential Business:** A last resort for special districts may be to simply cancel or delay non-essential board-related business as necessary. However, districts should be careful to monitor their respective minimum meeting requirements and understand that all applicable statutory requirements remain in effect.

As conditions evolve regarding COVID-19 it may be appropriate for special districts to reassess these steps and consider other approaches. **This communication is not intended as medical or legal advice and all districts are encouraged to consult their legal counsel when developing policies.** Special district officials may also wish to obtain a copy of CSDA's [Brown Act Compliance Manual](#) for Special Districts for a more detailed analysis of California's open meeting laws.

The California Department of Public Health (CDPH) is actively working with the White House, CDC, local governments, health facilities, and health care providers across the state to prepare and protect Californians from COVID-19. For the latest information and updates, please visit [CSDA's Novel Coronavirus/COVID-19 Resources](#) page at [www.csdanet.net](http://www.csdanet.net).