



**OFFICE OF THE CLERK
OF THE BOARD OF SUPERVISORS**

REGULAR AGENDA REQUEST

Print

MEETING DATE January 10, 2023

Departments: County Counsel

TIME REQUIRED 15 minutes

PERSONS APPEARING BEFORE THE BOARD Stacey Simon, County Counsel

SUBJECT Teleconference Rules for the Board of Supervisors and Other County Legislative Bodies

AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

Presentation by County Counsel regarding modified rules applicable to teleconference participation in meetings under the Brown Act by members of the Board of Supervisors and of other legislative bodies of the County, such as the Planning Commission, Tourism and Film Commission, Community Corrections Partnership, Behavioral Health Advisory Board, Regional Planning Advisory Committees, Treasury Oversight Committee, etc.

RECOMMENDED ACTION:

None (informational only). Provide any desired direction to staff.

FISCAL IMPACT:

None noted.

CONTACT NAME: Stacey Simon

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SEND COPIES TO:

MINUTE ORDER REQUESTED:

YES NO

ATTACHMENTS:

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Staff report

History

Time	Who	Approval
1/5/2023 8:52 AM	County Counsel	Yes
1/4/2023 1:12 PM	Finance	Yes

1/5/2023 5:31 PM

County Administrative Office

Yes

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Risk Manager
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Paralegal
Kevin Moss

To: Board of Supervisors

From: Stacey Simon

Date: January 10, 2023

Re: Teleconference Rules for Members of the Board of Supervisors and other
Legislative Bodies

Recommended Action

None. Informational only.

Strategic Plan Focus Areas Met

A Thriving Economy Safe and Healthy Communities
 Sustainable Public Lands Workforce & Operational Excellence

Discussion

The Ralph M. Brown Act (the “Brown Act”) is a California law designed to ensure public access to and transparency regarding the business of local government – as carried out by elected Boards of Supervisors and City Councils, and also by other advisory or decision-making bodies such as Planning Commissions, RPACs, special district boards and commissions, etc. These entities are all referred to in the Brown Act as “legislative bodies”.

The Brown Act has historically allowed meeting participation by members of legislative bodies using remote technology such as video or phone (called “teleconferencing” in the Brown Act), with limitations designed to maintain the open and public nature of such meetings, including a requirement that the public be allowed to attend and participate from each remote location.

The traditional Brown Act rules related to teleconferencing were temporarily modified (some might say “relaxed”) during the COVID-19 state of emergency first by executive order and then by state legislation referred to as AB 361. Assembly Bill 361 eliminated the requirement that remote locations be listed on the agenda and open to the public, and made other temporary changes to the law, effective only during the proclaimed state of emergency.

With the Governor’s emergency proclamation anticipated to end on February 28, 2023, it is important to revisit the traditional Brown Act teleconference rules (which will now, again, govern most remote participation). Additionally, in anticipation of the termination of AB 361,

the legislature enacted AB 2449 in September of 2022. Assembly Bill 2449 provides another option for remote participation in those circumstances where it is not appropriate or possible to open the remote location to the public.

1. Traditional Brown Act Teleconference Rules

The Brown Act has historically required that legislative bodies meet together in public, in a single location and pursuant to a posted and advertised agenda which informs the public of any matters to be heard, discussed or decided -- unless a specific exception applies. One of those exceptions authorizes teleconference participation by a member (or members) of a legislative body, provided that the location from which the member participates is listed on the meeting agenda and made open to the public, among other things. The specific requirements are as follows:

<i>“Traditional” Brown Act Teleconference Rules</i>
The meeting agenda must list all teleconference locations
The meeting agenda must be posted at all teleconference locations
The public must be able to access and provide public comment from all teleconference locations
Each teleconference location must be accessible to individuals with disabilities
At least a quorum of the board (3 members) must participate from a location that is within the jurisdiction of the legislative body (e.g., within Mono County for the Board of Supervisors)
Votes must be taken by rollcall
The meeting must comply with all other Brown Act requirements and meetings must be conducted in a manner that protects the constitutional rights of persons appearing before the board

2. AB 361 – Modified Brown Act Teleconference Rules During COVID-19

In September of 2021, the legislature enacted AB 361, which authorizes a legislative body to meet by teleconference without listing the remote location on the meeting agenda, posting the agenda at the remote location, or opening that location to the public during the meeting.

However, in order to utilize these modified rules, AB 361 requires that the meeting take place during a proclaimed state of emergency and either: that health officials have recommended or imposed measures to promote social distancing; or the state of emergency directly impacts the ability of the legislative body to meet safely in person. In addition, the legislative body must confirm these findings every thirty days in order for the modified rules to continue to apply. Assembly Bill 361’s modifications to the Brown Act will no longer be available upon termination of the Governor’s Emergency Proclamation – likely February 28, 2023.

3. New “Modified” Brown Act Teleconference Rules under AB 2449

The state’s collective experience during COVID and under AB 361 led to the enactment of AB 2449, which adds an additional avenue for teleconference participation by members of a

legislative body in the event it is not feasible or desirable to open the remote location to the public and list it on the agenda. AB 2449 is not nearly as flexible as AB 361, and only applies in certain, well-defined circumstances and, even then, only when specified procedures are followed. Key provisions of the new law are as follows:

<i>Assembly Bill 2449 Teleconference Rules</i>
There is not a requirement to list teleconference location(s) on the agenda, to post the agenda at the remote location, or to make the remote location accessible and open to the public.
At least a quorum of the board (3 members) must participate in person from a singular physical location clearly identified on the agenda and open to the public.
Members participating remotely must comply with one of the following: <i>Just cause exception:</i> <ul style="list-style-type: none"> • Notify the board at earliest opportunity of need to participate remotely • Describe “just cause*” for remote participation (*defined in the statute) • Can only do this for 2 meetings each calendar year, <u>OR</u> <i>Emergency exception:</i> <ul style="list-style-type: none"> • Notify the board of an emergency and the board must take action to approve the request • Provide a general description of the emergency circumstances • Request must be remade for each meeting (i.e., no standing requests) • Disclose whether any person aged 18 or older is present with them during the meeting • Participation must be both audio and visual • May be used for no longer than 3 consecutive months or more than 20% of regular meetings of the board.
Either: use a two-way audiovisual platform; or a two-way telephonic service and a live webcasting of the meeting. Board Members must have video.
Votes must be taken by rollcall.
The meeting must comply with all other Brown Act requirements and meetings must be conducted in a manner that protects the constitutional rights of persons appearing before the board.
In the event of a disruption, no further action may be taken.
The agency must have a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities. How to request this procedure must be listed on the agenda.

If you have any questions regarding this item prior to your meeting, please call me at 760-924-1704.

TELECONFERENCE OPTIONS UNDER THE BROWN ACT 2023

Mono County Counsel



WHAT WE'LL COVER

1. Traditional Brown Act teleconference rules
2. Modified AB 361 rules, which apply during periods of proclaimed emergency where public health officials recommend/require social distancing
3. AB 2449 hybrid rules, which will come into play when emergency proclamation terminates





INTRODUCTION

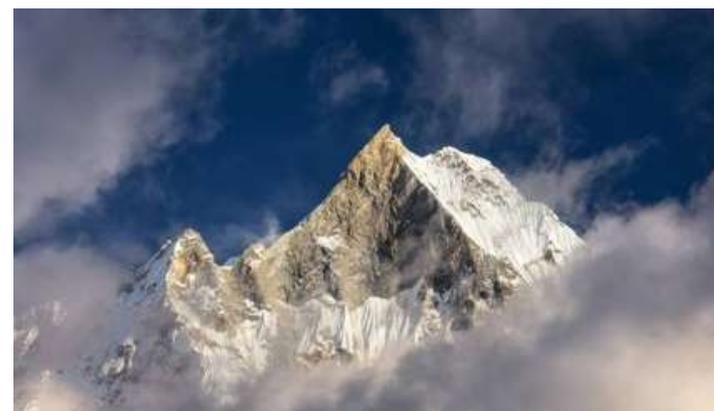
Traditional teleconference rules (in effect long before COVID) allow for remote participation by members of legislative bodies, requiring that public access be provided at all remote locations.

COVID-19 caused California to modify its traditional rules for teleconference meeting participation by board members – remote locations do not need to be publicized or open to the public. (AB 361)

Those modified rules will not be available after the COVID emergency proclamation terminates, but the legislature has taken some of the key concepts, made them more burdensome and confusing, and left a narrow window for remote participation without public access to the remote location. (AB 2449)

1. TRADITIONAL TELECONFERENCE RULES UNDER THE BROWN ACT

Public access to teleconference locations



TRADITIONAL BROWN ACT RULES

What do the “traditional” rules require?

Teleconference location(s) must be listed on the agenda

Teleconference locations must be open to the public and accessible to individuals with disabilities

Meeting agendas must be posted at all teleconference locations

At least a quorum (3 of 5 members) of the legislative body must participate from a location that is within the jurisdictional boundaries of the agency

Takeaway:

If you're going to participate remotely, you are going to invite and welcome the public to join you!

2. MODIFIED TELECONFERENCE RULES UNDER AB 361

During COVID, the public was not invited to participate from teleconference locations



AB 361

What's different about the AB 361 rules?

Teleconference location(s) do not need to be listed on the agenda

Teleconference locations do not need to be open to the public

Agendas do not need to be posted at the teleconference location

There is no requirement that at least a quorum of the members (3 of 5 members) be physically present within the jurisdiction during a meeting

Takeaway:

In a declared public health emergency - where health officials are recommending or requiring social distancing - public access to teleconference locations is not required!

(These rules remain on the books until January 1, 2024, but if there's no declared public health emergency, they cannot be used.)

3. NEW TELECONFERENCE RULES UNDER AB 2449

Hybrid rules after the emergency proclamation
ends



AB 2449 RULES

What's different (and the same) about the AB 2449 rules?

Teleconference location(s) do not need to be listed on the agenda

Teleconference locations do not need to be open to the public

Agendas do not need to be posted at the teleconference location

**SO FAR, JUST LIKE AB 361, BUT . . .
USE OF THESE RULES IS EXTREMELY
LIMITED (SEE NEXT SLIDE)**

HOW AB 2449 DIFFERS FROM AB 361

AB 2449'S LIMITATIONS

At least a quorum of the board (3 of 5 members) must participate in person from a singular physical location clearly identified on the agenda and open to the public.

Members participating remotely must meet/comply with one of the following:

Just cause exception:

Notify the board at earliest opportunity of need to participate remotely

Describe "just cause*" for remote participation (*defined in the statute)

Can only do this for 2 meetings each calendar year, OR

Emergency exception:

Notify the board of an emergency and the board must take action to approve the request

Provide a general description of the emergency circumstances

Request must be remade for each meeting (i.e., no standing requests)

Disclose whether any person aged 18 or older is present with them during the meeting

Participation must be both audio and visual

May be used for no longer than 3 consecutive months or more than 20% of regular meetings of the board.

Compare to traditional rules:

- quorum of members need to be within the jurisdiction (but not in a singular physical location)
- no just cause or emergency is required under old rules

Takeaway:

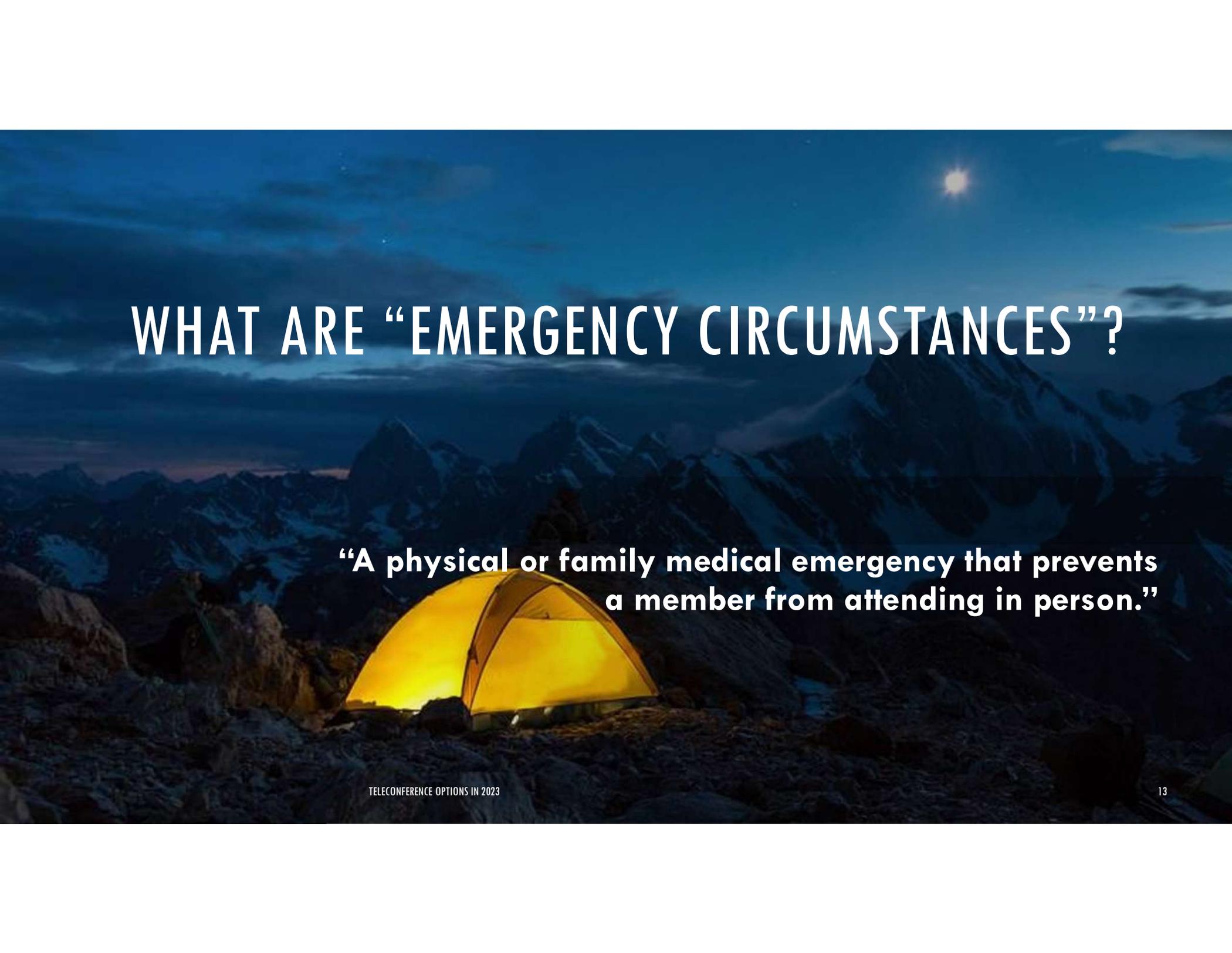
New rules may only be used in specific, narrow circumstances



WHAT CONSTITUTES “JUST CAUSE”?

JUST CAUSE UNDER AB 2449

Caregiver needs	Contagious illness	Disability	County-related travel	PROCESS
The member must care for a child, parent, grandparent, grandchild, sibling, spouse or domestic partner	A contagious illness prevents the member from attending in person	The member has a need related to a physical or mental disability that is not otherwise accommodated under the Brown Act	The member is traveling on official business of the legislative body or another state or local agency	Remember! The member must notify the board at the earliest opportunity of the need to participate remotely for just cause Limit of 2x per calendar year!

A glowing yellow tent is pitched on a rocky mountain peak at night. The tent is illuminated from within, casting a warm light. The background shows dark, jagged mountain peaks under a deep blue night sky with a bright star or moon in the upper right. The overall scene is serene and isolated.

WHAT ARE “EMERGENCY CIRCUMSTANCES”?

“A physical or family medical emergency that prevents a member from attending in person.”



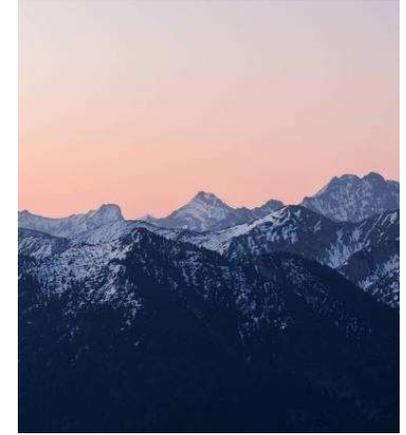
Process for emergency circumstances

1. At the earliest possible opportunity, the member requests that the legislative body allow them to participate remotely due to emergency circumstances.
2. The member provides the legislative body with a general description of the reason for the emergency (without disclosing medical diagnosis, information or disability).
3. The legislative body takes action on the request. It must either be on the agenda or qualify to be added as an urgency item.
4. If any other person (over age 18) is present in the remote location, the member must disclose their presence and the nature of their relationship to the member.

SUMMARY

Remember, the traditional Brown Act teleconference rules are still in effect.

The new AB 2449 rules may only be used if there is an emergency or “just cause” and only if certain procedures are followed.





QUESTIONS? |