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January 23, 2023

Board of Directors  
Triunfo Water & Sanitation District  
Ventura County, California

**CALIFORNIA ASSEMBLY BILL 2449: TELECONFERENCING BY MEMBERS OF LEGISLATIVE BODIES**

**Summary**

On September 16, 2021, as a result of the COVID-19 pandemic, Governor Gavin Newsom signed Assembly Bill (AB) 361 to temporarily suspend certain requirements of the Brown Act and change the requirements for public meetings held by teleconference. Additionally, on September 13, 2022, Governor Newsom signed AB 2449 to amend the Brown Act by removing and adding certain requirements for remote meetings. In contrast to AB 361, the applicability of AB 2449 is very narrow, and the requirements are very strict.

- Board Member must show “Just Cause” for the request to be attending remotely
- Limited teleconference use of not more than 3 consecutive months or 20% of the regular meetings within a calendar year
- With both audio and visual telecasting, any disruption causes all Board action to cease until the problem is remedied
- Posting at teleconference location is not required and public access is waived at said location

On October 17, 2022, Governor Newsom announced the COVID-19 state of emergency would end on February 28, 2023 and, therefore, the provisions of AB 361 would no longer be applicable. At that time, public agencies will need to comply with the traditional Brown Act requirements unless the modified AB 2449 provisions are adopted. Given the narrow applicability of AB 2449, staff recommends that the Board resume compliance with following traditional Brown Act requirements: (1) posting the agenda at all teleconference locations; (2) having a quorum of the Board appear and present within the District’s boundary; (3) identifying all teleconference locations on the Agenda; and (4) making each teleconference location accessible to the public.

Board Members may however contact the Clerk of the Board in advance if circumstances arise that may warrant their remote participation for a public meeting pursuant to the provisions of AB 2449. At which time, certain requirements stated above would be implemented.


Please contact me at 805-658-4621 or email [marknorris@trunfowsd.com](mailto:marknorris@trunfowsd.com) if you have any questions or need additional information.

**Fiscal Impact:**

There is no fiscal impact for adhering to the Brown Act requirements.

**Recommendation:**

It is recommended the Board resume compliance with traditional Brown Act requirements beginning in February 2023 and utilize AB 2449 only when specific conditions warrant its use, unless a state of emergency is declared.

REVIEWED AND APPROVED:   
Mark Norris - General Manager

Attachment: 2023 Brown Act memo



## MEMORANDUM

TO: Board of Directors Triunfo Water and Sanitation District

FROM: Dennis McNulty

DATE: January 4, 2023

RE: 2023 Brown Act Updates

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California recently passed three significant bills amending the Brown Act, all of which took effect on January 1, 2023. The amendments relate to (1) teleconferencing by members of legislative bodies; (2) rules regarding the public availability of agenda-related materials within 72 hours; and (3) removal of members of the public who are disrupting meetings. This memo summarizes each of these legislative developments:

**1. Assembly Bill 2449: Teleconferencing by Members of Legislative Bodies.**

*Synopsis: New rules for teleconferencing which take effect after the Governor's State of Emergency expires on February 28, 2023. Board members may participate remotely for "emergency circumstances" or other "just cause". The frequency of a member's remote appearances is subject to limits, a quorum must still meet in person, and certain remote access rules apply.*

Previously in 2021 (in response to the COVID-19 pandemic), the State Legislature adopted AB 361 to ease the requirements for holding virtual meetings under the Brown Act during Governor-declared emergencies. AB 361 remains in effect through January 1, 2024. However, Governor Newsom's State of Emergency related to COVID-19 will expire February 28, 2023. Thus, unless the State of Emergency is extended, all meetings after February 28<sup>th</sup> will need to be conducted using the newly adopted AB 2449 rules or the impractical original Brown Act teleconference rules.<sup>1</sup>

The new AB 2449 rules provide for relaxed teleconferencing rules that are a middle ground between the traditional Brown Act rules but not as lenient as the expiring AB 361 rules which

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<sup>1</sup> Prior to AB 361 the Brown Act permitted teleconferencing but mandated but included rules that were impractical during a pandemic. These impractical rules include: (1) the agenda must identify each teleconference location; (2) the agenda must be posted at each teleconference location; (3) each teleconference location must be open to the public; (4) members of the public must be allowed to address the legislative body at each location; and (5) at least a quorum of the members of the legislative body must participate from locations within the boundaries of the local agency's jurisdiction. Given these requirements it is unlikely that these original procedures will be utilized in the future.

placed few limits on teleconferencing. Under the new rules of AB 2449, a legislative body may hold a hybrid (partial teleconference/partial in-person) meeting under the following circumstances:

- One or more members of the legislative body (but less than a quorum) have notified the body at their earliest opportunity of a need to attend remotely for just cause. “Just Cause” is defined as (i) childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner, (ii) a contagious illness, (iii) a need related to a physical or mental disability, or (iv) travel while on official business of the legislative body or another state or local agency.
- One or more members of the legislative body (but less than a quorum) experience an emergency circumstance. An “emergency circumstance” is defined as a physical or family medical emergency that prevents in-person attendance. The member must make his or her request under this provision as soon as possible. The member must provide a general description of the emergency circumstance; however, the description need not exceed 20 words and shall not require the member to disclose any medical diagnosis or disability or any other confidential medical information. The legislative body must act on the request at the earliest opportunity. If there is not sufficient time to be placed on the posted agenda for the meeting for which the request is made, the legislative body may act on it at the beginning of the meeting.

The frequency with which a member can appear remotely under these two provisions is limited. Specifically, a member may not appear remotely for more than (1) three consecutive months, (ii) 20% of the regular meetings for that agency within a calendar year, or (3) two meetings if the legislative body regularly meets fewer than 10 times per calendar year.

A quorum of the legislative body is still required to meet in-person at a single location within the district boundaries.

Finally, the meeting format must meet the following remote access rules:

- The public must be able to access using either a two-way audiovisual system or a two-way phone service with live webcasting. Mere phone conferencing is not sufficient.
- Members of the legislative body appearing remotely must participate by using both audio and visual technology.
- Members participating remotely must disclose at the meeting, before any action is taken, whether any other individuals 18 years of age or older are present in the room at the remote location, and the general nature of the member’s relationship with any such individuals.

- The agenda shall identify and include an opportunity for the public to attend and address the legislative body via a call-in option, an internet-based option, and the in-person meeting location.
- If a disruption occurs which prevents broadcasting or public participation using the call-in option or internet-based option, the body shall take no further action on agenda items until public access is restored.
- The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the body in real time.
- All votes must be taken by roll call.

**2. Assembly Bill 2647: Posting of Agenda Materials.**

*Synopsis: A legislative body may now make agenda-related documents distributed to its Board less than 72 hours before a meeting available on its website rather than immediately physically available at its public office. Certain conditions apply and the documents must still be physically available the next business day, no less than 24 hours prior to the meeting.*

Previously when a legislative body distributed materials to a majority of its members less than 72 hours before a meeting, the legislative body was required to make such materials available for inspection at its public office without delay. Although such materials could also be posted on a website, physical copies must also be immediately available at the public office.

AB 2647 slightly modifies these Brown Act requirements by now permitting the legislative body to post the agenda-related materials on its website, without making them immediately physically available, provided all the following conditions are satisfied:

- An initial staff report containing an executive summary and the staff recommendation, if any, relating to that agenda item is made physically available for inspection at the public office at least 72 hours before the meeting.
- The website posting makes it clear the writing relates to an agenda item for the upcoming meeting.
- The agency's website is listed on all agendas.
- The local agency makes physical copies available beginning the next regular business hours, and such regular business hours must commence at least 24 hours before the meeting.

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In short, AB 2647 ensures an agency can distribute agenda-related materials to its board in timely fashion, as long as they are immediately posted on its website and made physically available the next business day at least 24 hours prior to the meeting. As a practical matter, this alternative method allows an agency to distribute these documents to its board after hours and wait until the next business day to make them physically available to the public, as long as the four above conditions are met.

Note, this does not alter existing rules providing that writings distributed during a public meeting must be available for public inspection at the public meeting if prepared by the agency, or after the meeting if prepared by some other person.

### **3. Senate Bill 100: Removal of Disruptive Members of the Public**

*Synopsis: The presiding member of a legislative body may have disruptive individuals removed from a public meeting.*

Currently, the Brown Act authorizes a legislative body to adopt reasonable regulations, such as limiting the total amount of time allocated for public comment on issues and individual times for each speaker. (Gov. Code § 54954.3.) The Brown Act also authorizes a legislative body to order the room cleared and continue in session without the public if a group willfully interrupts the orderly conduct of the meeting and order cannot be restored by the removal of the disruptive individuals.

Senate Bill 1100 adds additional clarity and provides that the presiding member of the legislative body may have any individual removed for disrupting a meeting. Before removing the individual, however, the presiding member shall warn such individual that their behavior is disrupting the meeting and failure to “promptly cease” their behavior will subject them to removal. No such warning is required if the individual is engaging in or threatening the true use of force.

“Disruptive behavior” is defined as engaging in behavior that “actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting,” which includes, but is not limited to, “a failure to comply with reasonable and lawful regulations adopted by a legislative body ... or any other law,” or “engaging in behavior that constitutes use of force or a true threat of force.” A “true threat of force” means sufficient evidence of intent or seriousness so that a reasonable observer would perceive the behavior to be an actual threat to use force by the person making the threat.

The legislation is silent as to how a legislative body is to go about removing a disruptive individual and assistance from local law enforcement may be needed for enforcement of this provision.