


# County of Santa Clara

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Tiffany Lennear  
Clerk of the Board

**DATE:** February 4, 2023  
**TO:** Honorable Board of Supervisors  
**FROM:** Tiffany Lennear, Clerk of the Board of Supervisors   
**SUBJECT:** Remote Public Participation at County Brown Act Meetings

At the January 10, 2023 Board of Supervisors meeting (Item No. 10), the Board expressed interest in understanding the feasibility of expanding “hybrid” meeting capacity to meeting groups other than the Board of Supervisors. Additionally, Supervisor Chavez and Vice President Lee requested information relating to resource requirements for expanding hybrid meeting capacity.

## **Brown Act Context**

The Ralph M. Brown Act (Government Code Section 54950 et seq.) regulates the conduct of meetings held by County legislative bodies, such as the Board of Supervisors, Board policy committees, and advisory boards and commissions. During the pandemic, certain requirements of the Brown Act were suspended, initially by a series of executive orders issued by Governor Gavin Newsom, and subsequently under the temporary provisions established pursuant to Assembly Bill (AB) 361. Both the executive orders and AB 361 allowed the County to conduct meetings remotely; AB 361 tied authorization for remote meetings to two conditions:

1. The existence of a proclaimed state of emergency.
2. Requirements or recommended measures from state or local officials to promote social distancing.

Under AB 361, the Board of Supervisors was required to make findings every 30 days to continue authorization for remote meetings. As Governor Newsom has announced the expiration of the proclaimed state of emergency and the local health officer lifted social distancing recommendations for remote meetings, the underlying requirements can no longer be met, and the Board is therefore unable to make the necessary findings to conduct solely remote meetings.

Because the County is no longer operating under emergency provisions, conducting meetings wholly remotely is no longer feasible. Among the previously suspended provisions of the Brown Act is a requirement that every meeting location be listed on the agenda and open to the public. A Commissioner wanting to call in to attend a meeting from home would be required to list their home address on the agenda,

post the agenda at their home, and allow members of the public to attend the meeting from their home.<sup>1</sup> Regardless, a quorum must be physically present in the same location, which means teleconference is not an option for two-person Board committees. The Clerk of the Board does not recommend attempting to utilize the existing teleconference provisions for Commission meetings due to logistical, accessibility, security, and liability concerns.

### **“Hybrid” Meetings vs. Remote Public Participation**

Multiple commissioners have publicly expressed a desire to conduct commission meetings in a “hybrid” model. A hybrid meeting structure would hypothetically allow for commissioners to attend and participate in meetings from outside the official meeting location, without noticing and opening to the public the remote location from which they would attend the meeting. This model is not currently available to the County for any type of meeting due to the Brown Act rules described above.

The County can, however, allow for *remote public participation* without violating the Brown Act, as the Brown Act does not limit the County’s ability to allow remote access to the public and staff. Remote public participation allows members of the public to listen to a meeting, and provide public comment to the meeting body, from a remote location. The Zoom-based public comment provided at the Board of Supervisors meetings on January 10, 17, and 24, 2023, are examples of remote public participation.

### **Remote Public Participation at Board Policy Committee Meetings**

Expansion of remote public participation to Board policy committee meetings is feasible. The Clerk of the Board estimates that remote public participation could be expanded to the five primary Board policy committees (Children, Seniors, and Families Committee; Finance and Government Operations Committee; Health and Hospital Committee; Housing, Land Use, Environment, and Transportation Committee; Public Safety and Justice Committee), as well as the Federal Affairs Advocacy Task Force, with existing staffing levels, at least on a preliminary basis, beginning this month, February 2023.

This expansion is feasible primarily due to the limited number of meetings impacted, and due to the committee meetings taking place in the Board of Supervisors Chambers, which is the only meeting location within the authority of the Clerk of the Board that is fully configured for remote public participation.

For Board of Supervisors meetings, the Clerk of the Board currently relies heavily upon support from the Technology Services and Solutions Department Multimedia Team. The Multimedia Team is small of staff and supports a wide variety of internal meetings in County spaces; regarding Brown Act meetings, the Clerk of the Board has received a commitment from the Multimedia Team to support Board of Supervisors meetings, but other Brown Act meetings have not been included. The Clerk of the Board would need to assume direct management of all teleconference functions for remote public participation at Board policy committee meetings.

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<sup>1</sup> The law as currently stands allows for occasional attendance by teleconference without meeting the requirements of posting and public access but requires an “emergency” or “just cause” and limits its usage per calendar year per member. A quorum must still be physically present even under these “emergency” or “just cause” rules.

## **Remote Public Participation at Other Meetings**

Integrating remote public participation for a broader category of meeting bodies presents significant additional challenges. The Clerk of the Board supports 51 Brown Act meeting bodies at various levels;<sup>2</sup> further expansion would require additional staffing to ensure adequate coverage for peak meeting times, and costs for technological enhancements to additional meeting rooms. While the Clerk of the Board continues to evaluate this topic, including assessing the capital and technology requirements and the number of staff needed, we foresee that expanding capacity beyond Board Chambers would result in rapidly escalating costs correlated with rapidly diminishing returns. It would also take time to complete capital projects and hire and train staff.

## **Alternative Option for Hybrid or Fully Remote Meetings**

Alternatively, the Board could consider working with County Counsel to convert advisory commissions or boards into non-Brown Act bodies. This would mean they could organize themselves and meet fully remotely or in a hybrid manner, without compliance with the Brown Act's teleconference rules. It would also address longstanding concerns with achieving quorum and filling vacancies for several of these bodies. And it would alleviate the Clerk of the Board from staffing support, which could be redirected to better supporting those bodies that legally must remain Brown Act bodies. Nothing prevents these bodies from still posting agendas online and allowing for remote public comment and participation. The Board would, however, be unable to appoint the members of such bodies due to the requirements of the Brown Act.

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<sup>2</sup> There are many dozens of other Brown Act bodies, including subcommittees, that the Clerk of the Board does not support at all.