



Transparency, Public Access & Trust Keeping Local Government Open & Accessible Through Social Distancing

Presented to: CALCOG

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Presenter



Michael Maurer, Partner
Best Best & Krieger LLP

213-787-2557

michael.maurer@bbklaw.com



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Stay-at-Home and Social Distancing Orders

- Local Government remains open as an essential service.
- Remember – this is unprecedented
 - No legal precedent
 - No guidelines to follow
- Operations change, but the important values remain the same:
 - Transparency
 - Ethics
 - Responsiveness
 - Public Involvement



Brown Act Background: Original Teleconferencing Rules

The Brown Act allows teleconferencing, but only if:

1. Identify each teleconference location on agenda
2. Agendas posted at all teleconference locations
3. Each teleconference location must be accessible
4. Members of public must be able to address board at each location
5. Quorum participates within jurisdiction boundaries
6. All votes taken by roll call



Suspension of Brown Act

- **California Emergency Services Act gives Governor authority to suspend State law**
- **Interest groups requested Governor suspend Brown Act**
- **Executive Orders suspend the teleconference rule:**
 1. N-25-20 (March 12)
Suspends teleconference rules provided that there is a physical location where public can make comments
 2. N-29-20 (March 17)
Eliminates requirement for a physical location
- **Applies until state or local health officials are no longer requiring or recommending social distancing**



Virtual Public Meetings

- **Executive Orders N-29-20**
- **Requirements for Teleconference/Electronic Meetings:**
 1. Public can “observe and address” board
 2. Agenda is timely posted
 3. Notice says how public can observe and comment
 4. Implement and advertise a procedure for “receiving and swiftly resolving” ADA accommodation requests
 5. Make reasonable efforts to adhere to Brown Act as closely as possible to maximize transparency



Agenda Notices

- **Posting requirements are same**
 - 72 hours for regular / 24 hours for special
 - Physical posting technically still required (What if that location is closed?)
 - Post agenda on website (recommend posting all supporting materials as well)
- **Contents – be thorough and detailed**
 - How to observe
 - How to comment
 - How to request accommodations
- **Caveats?**
- **Other outreach?**



“Observe and Address”

- **I.e., watch the meeting and make public comments.**
 - Can be telephonic or otherwise electronic
- **How to observe?**
 - Telephonic (e.g., conference call line)
 - Streaming video/audio
 - Web application (e.g., Zoom, Microsoft Teams, etc.)
- **How to comment?**
 - Same as above
 - E-mail
 - Voicemail



“Observe and Address”

- **Considerations in selecting a method:**
 - Know your board – what will work best for your board members?
 - Tech preferences, capabilities, etc.
 - Know your community – how do they generally observe meetings?
 - Control of meeting
 - Can you control who is able to speak?
 - Can you mute participants?
 - Security concerns
 - Cost



Public Comments

- **Rules are still the same:**
 - E.g., 3 minutes for public comment
 - Tips for e-mail comments:
 - Notice should identify time limit or word count
 - Require “Public Comment” in subject line
 - Cannot limit participants, but can ask for one “spokesperson”
 - Allow anonymous participation, but can request that name and other information be given
 - Only comments under subject jurisdiction or on topic
 - Must allow criticism but can enforce decorum
 - Be flexible if necessary



Meeting Procedures (General Decorum)

- All votes *must* be by roll call
- Procedure and decorum can be more challenging
 - Number 1 Rule: Mute your line
 - Tips – do a trial run with board members using software features
 - Get everyone on and sound-tested prior to start of meeting
- **Best Advice: Be Prepared!**
 - Prepare a script for the chair
 - Stick to decorum / only speak when called on
 - Identify speaker
 - Chair calls on other members
 - Chair calls for motions
 - Consider standard backgrounds for video meetings (Agency logo?)



Meeting Procedures (Public Hearings)

- **Consider how to provide advanced notice**
 - E.g., identify “telephonic or electronic access information will be posted prior to the public hearing date”
- **Be descriptive – especially with visual aids**
 - Provide all materials where they can be accessed by the public
- **Ensure that applicants/others have opportunity and ability to respond to questions from the board**
 - If using a separate line for board, may need to consider using line for applicants as well
- **Make sure that action is clear**



Meeting Procedures (Nightmare Scenarios)

- **Remember that you're on video and might be recorded – act as you would at a physical board meeting**
- **Technical difficulties**
 - It could happen – mention it at start of meeting
 - Have a Plan B
 - Recess/adjourn meeting
 - Do not continue with meeting if there are technical difficulties (may violate Brown Act)
- **Interruptions** (Zoom Bombs, inappropriate comments, etc.)
 - Try to plan to avoid it
 - If possible, remove the interruptor
 - Recess or adjourn if necessary
 - “Clear the room”



Accommodation Requests

- **Tips:**
 - Include contact information for requesting accommodations on agenda
 - Provide reasonable opportunity for making requests
 - Be flexible and accommodating – remember that this is new for everybody
 - If you can't meet a request, engage in customer service – how can you resolve the problem?
 - Consider accommodations beyond the ADA
 - E.g., alternatives for citizens without computer access
 - Review website accessibility
- **Considerations:**
 - Closed captions
 - Interpreters
 - Transcripts



Closed Sessions

- **No closed session to generally discuss COVID-19**
 - Other closed sessions very limited:
 - Conf with labor negotiators
 - Security of public facilities
 - Anticipated litigation
- **Have a dedicated closed session line**
 - Do NOT publicly advertise the line; ensure that it's only board and necessary staff
- **Remember to report out any reportable actions and votes**



Public Records Act

- **To date, Governor has not suspended Public Records Act**
 - Responses still due within 10 days from when a request is received
 - Extensions?
 - Production?
- **Best Practices**



Conflicts of Interest

Ethics rules still applicable.

- How do you declare a conflict in a telephonic or electronic meeting?

Form 700 filing
Deadline
June 1



Best Practices During COVID-19 Emergency

Remember - this is unprecedented; we can only do our best

Show good faith if operational changes are made

- *Is the change serving the public interest?*

Have a (electronic) paper trail

- *Be transparent and open; and document your good faith*

Consider what can be done electronically rather than in person and what requires face-to-face interactions

- *Uniform Electronic Transactions Act
(Civil Code sections 1633.1, et seq.)*



Resources

BB&K COVID-19 Resources page which includes legal alerts and webinars including:

[Webinar] – “Leveraging FEMA and Other Federal Grant Funding Opportunities for COVID-19 Response”

[Webinar] – “Part Two: Leveraging FEMA and Other Federal Grant Funding Opportunities for COVID-19 Response”

[Legal Alert] - “Public Records Requests During COVID-19 Crisis”

[Legal Alert] – “COVID-19 Safety Orders v. the First Amendment”



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Questions & Answers



Contact Information



Michael Maurer, Partner
Best Best & Krieger LLP
213-787-2557
michael.maurer@bbklaw.com



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