

375 - 11th Street, Oakland, CA 94607

Office of the Secretary: (510) 287-0440

AGENDA <u>REGULAR CLOSED SESSION</u> Tuesday, February 11, 2025 11:00 a.m. Boardroom 375 11th Street Oakland, CA 94607

*****Please see appendix for public participation instructions**

ROLL CALL:

<u>PUBLIC COMMENT</u>: The Board of Directors is limited by State law to providing a brief response, asking questions for clarification, or referring a matter to staff when responding to items that are not listed on the agenda.

BROWN ACT BRIEFING:

• Presentation on the Ethics Policy of the EBMUD Board of Directors and Updates to the Brown Act and Ethics Laws

ANNOUNCEMENT OF CLOSED SESSION AGENDA:

- 1. Initiation of litigation pursuant to Government Code section 54956.9(d)(4): one matter.
- 2. Significant exposure to litigation pursuant to Government Code section 54956.9(d)(2):
 - a. Alcatraz Premium Properties Claim No. 2024-L-148
- 3. Conference with Labor Negotiators Keith Fleming from the Industrial Employers Distributors Association; Clifford C. Chan, General Manager; Sophia D. Skoda, Director of Finance; Cindy R. Charan, Director of Human Resources; Samuel A. Feldman, Manager of Budget; Robert L. Hannay, Treasury Manager; Adam Smyer, Manager of Employee Relations; Lisa A. Sorani, Manager of Employee Services; Vincent L. James, Manager of Recruitment & Classification; Lori L. Worden, Senior Human Resources Analyst; and Valerie R. Weekly, Principal Management Analyst, pursuant to Government Code section 54957.6: American Federation of State, County and Municipal Employees, Locals 444 and 2019; International Union of Operating Engineers, Local 39; and International Federation of Professional and Technical Engineers, Local 21.

(The Board will discuss Closed Session agenda items in Conference Room 8)



Closed Session and Regular Business Meetings 11:00 a.m. and 1:15 p.m.

EBMUD public Board meetings will be conducted in person and accessible via Zoom. These meetings are recorded, live-streamed, and posted on the District's website.

Online*

https://ebmud.zoom.us/j/97065086667?pwd=eUdZSGh5SG82akZiRDF2UDg2b0IyUT09 Webinar ID: 970 6508 6667 Passcode: 238500

<u>By Phone</u>* **Telephone:** 1 669 900 6833 Webinar ID: 970 6508 6667 Passcode: 238500 International numbers available: https://ebmud.zoom.us/u/adMXn1VnPp

*To familiarize yourself with Zoom, please visit https://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Meeting

Providing public comment - *The EBMUD Board of Directors is limited by State law to providing a brief response, asking questions for clarification, or referring a matter to staff when responding to items that are not listed on the agenda.*

- Each speaker is allotted 3 minutes to speak; the Board President has the discretion to amend this time based on the number of speakers
- The Secretary will track time and inform each speaker when the allotted time has concluded
- Comments on **non-agenda items** will be heard at the beginning of the meeting
- Comments on agenda items will be heard when the item is up for consideration
- The Secretary will call each speaker in the order received

In person

• Fill out and submit a blue speaker card which is available in the meeting room

Via Zoom

- Use the raise hand feature in Zoom to indicate you wish to make a public comment https://support.zoom.us/hc/en-us/articles/205566129-Raising-your-hand-in-a-webinar
- If you participate by phone, press *9 to raise your hand
- When prompted by the Secretary, please state your name, affiliation if applicable, and topic

Submitting written comments or materials

- Email written comments or other materials for the Board of Directors to SecOffice@ebmud.com
- Please indicate the meeting date and agenda item number or non-agenda item topic in the subject line of the email. Contact information is optional.
- Please email by 4 p.m. the day prior to the scheduled regular meeting; written comments and other materials submitted to the Board of Directors will be filed in the record.

To view the livestream of Board meetings, please visit: <u>https://www.ebmud.com/about-us/board-directors/board-meetings/</u>

EAST BAY MUNICIPAL UTILITY DISTRICT Office of the General Counsel

DATE: February 11, 2025

MEMO TO: Board of Directors

FROM: Derek McDonald, General Counsel

SUBJECT: Reference Documents for the Annual Brown Act and Ethics Update Presentation

Before adjourning for closed session at the February 11, 2025 Board meeting, the Office of General Counsel will provide the Board with a presentation of its annual Brown Act and Ethics Update. The attached packet of documents is provided for reference during this presentation.

- 1. Power Point Presentation Annual Brown Act and Ethics Update
- 2. Policy 6.04 Ethics of the EBMUD Board of Directors
- 3. Government Code § 54953 (as amended by Assembly B 2302)
- 4. Government Code § 54957 (as amended by Assembly B 2715)
- 5. Two Attorney General Opinions
 - a. Attendance at Paid Event 2024 WL 1812958 (2024)
 - b. Americans with Disabilities Act 2024 WL 3627281 (2024)
- 6. Government Code § 54952.2
- 7. Government Code § 1091 (effective January 1, 2026, as amended by Senate Bill 1111)
- 8. Government Code § 84308 (as amended by Senate Bill 1243)

DM:ctd

Attachments

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2025 Annual Brown Act and Ethics Update Presentation Attachment 1

Annual Ethics Policy Review and Brown Act Update

February 11, 2025



Agenda

- Review of Board Ethics Policy 6.04
- Update on Legal Developments in 2025
 - o The Ralph M. Brown Act
 - Conflicts of Interest under Government Code § 1090
 - Conflicts of Interest under the Political Reform Act



Board Ethics Policy Review



Policy 6.04 Ethics of the EBMUD Board of Directors

 Purpose: "This policy promotes awareness of ethics, integrity and fidelity as critical elements in Board members' conduct and in achievement of the EBMUD mission."

• Source:

- Based on numerous relevant laws, including the California Constitution, the Political Reform Act, Government Code § 1090, the Penal Code, the Elections Code and the MUD Act.
- Also based on policy decisions of the Board in furthering ethics and transparency.



Responsibilities of Public Office

- Uphold the State and Federal Constitutions;
- Comply with applicable open government, conflict and disclosure laws;
- Fulfill all legally-required training requirements, including ethics and sexual harassment prevention; and
- Work in full cooperation with other public officials, unless legally prevented from doing so.



Fair and Open Processes Involving the Public

- Fully comply with Ralph M. Brown Act open meeting requirements; and
- Disclose any oral or written communications with persons regarding adjudicatory or quasi-adjudicatory agenda matters.



Fair and Equal Treatment

- Promote diversity, equity, inclusion and equality in personnel and contracting matters;
- Not engage in discrimination or harassment in performance of official duties;
- Not grant special consideration to any person or group; and
- Cooperate in achieving the District's equal opportunity objectives.



Proper Use and Safeguarding of District Property and Resources

- Safeguard District property;
- Not ask or require District employees to perform services for personal benefit or profit;
- Protect and properly use any District asset within their control, including information recorded on paper or electronically;
- Maintain accurate written records, including expense accounts; and
- Adhere to District policies.



Use of Confidential Information

- Safeguard confidential information;
- Not disclose information that legally qualifies as confidential, including:
 - Information received for or during a closed session meeting;
 - Attorney-client privileged information; and
 - Information exempt from disclosure under the Public Records Act.
- Board members may make complaints to a grand jury or district attorney and disclose facts necessary to establish the alleged violation of law, after bringing the matter to the President or full Board and providing an opportunity to cure the violation.



Conflicts of Interest

A Board member will not:

- Have a financial interest in a contract before the District;
- Participate or use their position to influence a Board decision in which they have a legally prohibited interest;
- Accept any honoraria;
- Accept gifts exceeding legal limits or fail to report gifts, contributions and income as required by law; or
- Recommend the employment of a relative to the District or a District contractor.



Soliciting Political Contributions

A Board member will not:

- Solicit or direct political contributions or in-kind services from District officers, employees, consultants or contractors;
- Solicit or direct political contributions or in-kind services from vendors or consultants with a material financial interest in a matter pending before the District; or
- Use the District's seal, trademark, stationary or other District indicia in soliciting political contributions.



Incompatible Offices

Board members must resign from the District if they are elected or appointed to a public office for which the duties of the office may legally require action contradictory or inconsistent with the interests of the District.

Candidate's Statement

A Board member will not include false or misleading information in a candidate statement for a general District election.



Exercise Responsible Fiscal Management

- The Board ensures the District maintains a system of auditing and accounting that shows a financial condition compliant with accounting principles and the law.
- Auditor retention provisions:
 - Finance/Administration Committee will interview and recommend independent auditor to conduct annual audit and period single audits of federal funds received;
 - Independent auditor will provide reports and recommendations to Finance/Administration Committee;
 - Auditor reports will be provided to Board upon completion; and
 - Staff will respond to audit recommendations and provide periodic updates to Board.



Violation of Ethics Policy

- A perceived violation should be referred to President for investigation and consideration of appropriate action.
- Violations may be addressed by legal remedies, including:
 - Board resolution of disproval;
 - Injunctive relief; or
 - Referral of the violation to the Fair Political Practices Commission, District Attorney or Grand Jury.



Ralph M. Brown Act Updates and Clarifications

Recent Legal Developments in the Brown Act

- Purpose: Guarantees the public's right to attend and participate in meetings of local governmental agencies.
- Underlying philosophy: Local agencies exist for the purpose of conducting the public's business, and the public has a right to know how its business is being conducted.



Overview

New laws that take effect in 2025

- o AB 2715
- o AB 2302

Attorney General Opinions of note from 2024

- Reasonable Accommodation under the Americans with Disabilities Act for Board Members
- Attendance at paid events
- Social Media & the Brown Act Refresher



- AB 2715 amends Government Code § 54957 to clarify that a permitted closed session may include discussion on a threat to critical infrastructure controls or critical infrastructure information related to cybersecurity.
- AB 2715 allows a legislative body to receive, confidentially discuss, and learn about cybersecurity risks, vulnerabilities and threats facing the agency to enable a legislative body to make fully informed cybersecurity related decisions in open session.



 AB 2302 amends Government Code § 54953 to clarify limitations on the number of times a member of a legislative body may appear remotely.



 Under existing law, provisions allowing remote participation shall not serve as a means for any member to participate in meetings solely by teleconference from a remote location for a period of more than three consecutive months or 20 percent of the regular meetings for the local agency within a calendar year, or more than two meetings if the legislative body meets fewer than 10 times per calendar year.



• As of January 1, 2025 a member may participate remotely:

- Two meetings per year if the legislative body meets once per month or less.
- Five meetings per year if the legislative body meets regularly twice per month.
- Seven meetings per year, if the legislative body regularly meets three or more times per month.

For purposes of counting meetings attended by teleconference, a "meeting" shall be any number of meetings of the legislative body that begin on the same day.



- Attorney General Opinion 2024 WL 3627281 was issued on July 24, 2024.
- Overturns a 2001 Attorney General Opinion, which held that inperson participation is an essential function of the job of a member and therefore, remote participation is not a reasonable accommodation under the Americans with Disabilities Act (ADA).



Question Presented:

Whether the Americans with Disabilities Act requires that a local agency's legislative body allow remote participation for a member with a qualifying disability that precludes their in-person attendance at meetings of the legislative body.



Answer:

Yes. The ADA requires the legislative body to allow remote participation as a reasonable accommodation, provided that remote participation simulates in-person attendance by (1) using two-way video and audio streaming in real time, and (2) the member discloses the identity of any adults present with the member at the remote location



- The COVID-19 pandemic and improved technology in allowing two-way participation has demonstrated that in-person participation is no longer an essential function and therefore, remote participation is a reasonable accommodation that must be provided under the ADA.
- EEOC Guidance provides if an elected city council member has a disability that prevents them from attending a city council meeting in person, allowing participation by phone or videoconferencing would enable them to carry out their duties.



 Attorney General Opinion does not address whether remote participation as a reasonable accommodation would be subject to the limitations set forth in AB 2302, however, any doubts shall be resolved in favor of accessibility (see Cal. Govt. Code § 54953(g)).



Attorney General Opinions – Paid Events

- Attorney General Opinion 2024 WL 1812958 was issued in April 2024.
- Clarifies events that constitute "conferences" and "community gatherings," which are exempt as "meetings" for purposes of the Brown Act.



Attorney General Opinions – Paid Events

Questions Presented:

- Whether the attendance of a majority of the city council at a paid event hosted by the city's chamber of commerce constitutes a "meeting" within Section 54952.2(a) of the Brown Act?
- 2. Would the exception for conferences or similar gatherings apply to such event?
- 3. Would the exception for "community meetings" apply?



Attorney General Opinions – Paid Events

Answers:

- Attendance by a majority of the members of the city council at a paid event would constitute a meeting subject to the open-meeting requirements of the Brown Act.
- 2. The event does not constitute a conference or similar gathering because the event involves a single speech by a single official regarding the state of a single city.
- 3. The event is not a community gathering because it is open only to those willing and able to pay the attendance fee.



Social Media Use and the Brown Act



Social Media Use

• General Rule:

A majority of the members of a legislative body shall not, outside a meeting authorized under the Brown Act, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body. (Cal. Govt. Code § 54952.2(b)(1)).



Social Media Use

Limited Permissible Use

The Brown Act does not prevent a member of a legislative body from engaging in separate conversations or communications on social media to:

- 1. Answer questions;
- 2. Provide information to the public; or
- **3**. Solicit information from the public

With regards to a matter that is within the subject matter jurisdiction of the legislative body, *provided that...*



Social Media Use

Limited Permissible Use

A *majority* of the members do not use social media to *discuss among themselves* business of a *specific nature* that is within the subject matter jurisdiction of the legislative body.

"Discuss among themselves" means communications made, posted or shared on social media between members, including **comments** or **use of digital icons** that express reactions to communications made by other members.



Social Media Use

Prohibited Use

A member shall not *respond directly* to any communication on social media regarding a matter within the subject matter jurisdiction of the legislative body that is *made, posted or shared by any other member.*



Government Code § 1090 Review of 2024 Updates

SB 1111: Amending Definition of "Remote Interest"

- Government Code § 1090 generally prohibits the Board from approving a contract in which a Board member has a "financial interest."
- Unless the financial interest is a "remote interest."
- A Board member with a "remote interest" may announce the interest and recuse themselves from consideration of the matter.



SB 1111: Amending Definition of "Remote Interest" (Cont.)

 SB 1111 amends Government Code § 1091's definition of a "remote interest" to include:

"That of a public officer if the public officer's child is an officer or director of, or has an ownership interest of 10 percent or more in, a party to a contract entered into by the body or board of which the officer is a member, if this information is actually known to the public officer."

• SB 1111 is effective January 1, 2026.



Political Reform Act Review of 2024 Updates



SB 1243: Updates to the Levine Act

- Levine Act prohibits an officer from accepting, soliciting or directing contributions from any party or "participant" with a financial interest that the officer knows or has reason to know has a matter pending before the agency involving a "license, permit, or other entitlement for use."
- Under Senate Bill 1439, prohibition applied to both appointed and elected officials, effective January 1, 2023.



SB 1243: Updates to the Levine Act (Cont.)

- Raises contribution threshold from \$250 to \$500.
- Increases the "cure" period during which a contribution may be returned from 14 days to 30 days.
- Exempts from the definition of a "license, permit, or other entitlement for use":
 - Contracts valued under \$50,000;
 - Contracts between government agencies; and
 - Contracts that do not include financial compensation.



• Ethics laws are many, multi-layered, and complex.

 Consult early with the Office of General Counsel and/or FPPC

(1-866-ASK-FPPC)



Questions?



2025 Annual Brown Act and Ethics Update Presentation Attachment 2



Policy 6.04

EFFECTIVE 26 SEP 23

ETHICS OF THE EBMUD BOARD OF DIRECTORS

IT IS THE POLICY OF THE EAST BAY MUNICIPAL UTILITY DISTRICT BOARD OF DIRECTORS TO:

Promote ethical behavior in the conduct of District business.

Purpose and Scope	The proper operation of EBMUD requires that Board members remain objective and responsive to the needs of the public, make decisions within the proper channels of governmental structure, and not use public office for personal gain. To further these objectives, certain ethical principles govern the conduct of each member of the EBMUD Board of Directors.
	This policy promotes awareness of ethics, integrity and fidelity as critical elements in Board members' conduct and in achievement of the EBMUD mission. It references relevant policies, practices, and procedures that provide the legal framework and operational guidelines for addressing ethical issues.
Responsibilities of Public Office	EBMUD Board members are dedicated to the concepts of effective and democratic government by responsible elected officials. Board members:
	 Uphold the Constitution of the United States and the Constitution of the State of California, and carry out the laws of the nation, the state and local governmental agencies;
	 Comply with applicable laws regulating their conduct, including open government, conflict of interest, and financial disclosure laws;
	 Fulfill all applicable training requirements, including attending two (2) hours of ethics training (AB 1234) and two (2) hours of sexual harassment prevention training and education (AB 1661) every two (2) years; and
	• Work in full cooperation with other public officials, unless they are legally prohibited from doing so.
	[California Government Code Section 1360; California Government Code 53235; California Government Code Section 87200; California Government Code Section 53237; Article 20, Section 3 of the California Constitution.]
Fair and Open Processes Involving the Public	EBMUD Board members promote fair and open public processes. Board members, and persons elected but who have not yet assumed office as members of the Board, fully comply with California's open meeting law for public agencies (the Brown Act).
	Disclosure of Communications
	 Board members shall publicly disclose any oral or written communications they have had with persons, including, but not limited to, employees, legislators, legislative staff, public officials, developers, vendors and consultants, that relate to matters at a Board meeting or Committee meeting in which the Board is performing an adjudicatory or quasi-judicial function.

Ethics Of The	NUMBER	6.04
EBMUD Board Of Directors	PAGE NO.:	2
	EFFECTIVE DATE:	26 SEP 23

- The disclosure may be made orally or in written form and may be made at the start of the meeting or may be made prior to consideration of the agenda item at the meeting.
- The Board shall make a good faith effort to comply with these Disclosure provisions of this Policy. A good faith failure to comply with these provisions shall not be construed to be a violation of this Policy.

[California Government Code Section 54950 and following; California Government Code Section 54952.1; California Government Code Section 54959.]

Fair and EqualEBMUD Board members promote diversity, equity, inclusion, and equality in personnelTreatmentmatters and in contracting, consistent with state and federal laws.

- Board members, in performance of their official duties and responsibilities, will not discriminate against or harass any person on the basis of race, color, religion, creed, sex, gender (including breastfeeding), gender identity (including transgender status), gender expression, marital or registered domestic partnership status, age for individuals forty or older, national origin, ancestry, disability (mental and physical), medical condition (cancer and genetic characteristics), genetic information, sexual orientation, military and veterans status, family or medical leave status, pregnancy (including childbirth or related medical condition), pregnancy disability leave status, or any other status protected by federal, state and/or local laws.
- Board members will not grant any special consideration, treatment, or advantage to any person or group beyond that available to every other person or group in similar circumstances.
- Board members will cooperate in achieving the equal opportunity objectives of EBMUD.

[See, e.g., Article 1, Section 31 of the California Constitution; Age Discrimination in Employment Act of 1967; Americans with Disabilities Act Amendments Act of 2008; Fair Employment and Housing Act; Rehabilitation Act of 1973; Title VII of the Civil Rights Act of 1964; California Labor Code Section 1102. See also EBMUD's Policy 6.06, Equal Employment Opportunity (EEO); Policy 6.08, Contract Equity Program; Policy 6.07, Prevention of Workplace Harassment; and Policy 2.02, Accommodation for Individuals with Disabilities in the Workplace.]

Proper Use and Safeguarding of EBMUD Property and Resources EBMUD Board members exercise responsible management of District property and resources in the conduct of District business.

- Board members will safeguard EBMUD property, equipment, moneys, and assets against unauthorized use or removal, as well as from loss including criminal acts or breach of trust.
- A Board member will not ask or require an EBMUD employee to perform services for the personal benefit or profit of a Board member or employee.
- Each Board member will protect and properly use any EBMUD asset within his or her control, including information recorded on paper or in electronic form.

	NUMBER	6.04
Directors	PAGE NO.:	3
	EFFECTIVE DATE:	26 SEP 23
sufficient detail to reflect accurately and completely expenditures made on EBMUD's behalf.		in
board members will adhere to District policies.		
EBMUD Policy 7.04, Access to District Property for Tour Conference and Lodging Facility Use; Policy 7.11, Use of	rs; Policy 7.06, Pardee of District Bay Area Faci	
Board members will safeguard confidential information.		
unauthorized persons without approval of a quorum of th information that (1) has been received for, or during, a cl (2) is protected from disclosure under the attorney/client	ne Board. This includes losed session Board me or other evidentiary priv	eting,
grand jury concerning a perceived violation of law, includ attorney or grand jury necessary to establish the alleged Prior to disclosing confidential information, however, a B matter to the attention of either the President of the Boar	ding disclosing facts to a illegality of a District ac oard member will first bi rd or the full Board, in a	district tion. ring the
[California Government Code Section 54963; California 1098]	Government Code Sect	ion
Board members avoid both actual conflicts of interest an interest with the District.	d the appearance of cor	nflicts of
be purchaser at a sale by the District or a vendor a	t a purchase made by th	
matter before the Board, or in any way attempt to u	se his or her official pos	ition to
• A Board member will not accept any honoraria.		
California law. Board members will report all gifts, or and financial information as required under the Dist	campaign contributions, trict's Conflict of Interest	income
	 Board members will maintain written records, includ sufficient detail to reflect accurately and completely expenditures made on EBMUD's behalf. Board members will adhere to District policies. [Article 16, Section 6 of the California Constitution; Pena EBMUD Policy 7.04, Access to District Property for Tour Conference and Lodging Facility Use; Policy 7.11, Use of Policy 4.14, Reimbursement of Director Expenses; Polic Technology Resources] Board members will safeguard confidential information. Board members will not disclose information that legally unauthorized persons without approval of a quorum of the information that (1) has been received for, or during, a cl (2) is protected from disclosure under the attorney/client (3) is not disclosable under the California Public Records: A Board member may make a confidential inquiry or com grand jury concrining a perceived violation of law, includ attorney or grand jury necessary to establish the alleged Prior to disclosing confidential information, however, a B matter to the attention of either the President of the Board and appropriate manner, to provide an opportunity to cu [California Government Code Section 54963; California 1098] Board members avoid both actual conflicts of interest an interest with the District. A Board member will not participate in the discussimatter before the Board, or in any way attempt to u influence a decision of the Board, if he or she has a to the matter under California law. A Board member will not accept any honoraria. A Board member will not accept gifts that exceed the California law. Board members will report all gifts, ca and financial information as required under the District and the provisions of the Fair Political Practices Ac A Board member will not accept gifts that exceed the California law. Board members will report all gifts, ca and financial information as required under the Dist	 EFFECTIVE DATE: Board members will maintain written records, including expense accounts, sufficient detail to reflect accurately and completely all transactions and expenditures made on EBMUD's behalf. Board members will adhere to District policies. [Article 16, Section 6 of the California Constitution; Penal Code Section 424. See EBMUD Policy 7.04, Access to District Property for Tours; Policy 7.06, Pardee Conference and Lodging Facility Use; Policy 7.11, Use of District Bay Area Faci Policy 4.14, Reimbursement of Director Expenses, Policy 4.20, Use of District Technology Resources] Board members will adfeguard confidential information. Board members will adfeguard confidential information. Board members will adfeguard confidential information. Board members will adfeguard confidential inquiry or complaint to a district attorn grand jury concerning a perceived for, or during, a closed session Board me (2) is protected from disclosure under the attorney/client or other widentiary priv (3) is not disclosure under the attorney/client or other member will first b matter to the attention of law, including disclosing facts to a torney or grand jury necessary to establish the allegad illegality of a District and and appropriate manner, to provide an opportunity to cure an alleged violation. [California Government Code Section 54963; California Government Code Sect 1098] Board members avoid both actual conflicts of interest and the appearance of cointerest with the District. A Board member will not participate in the discussion, deliberation or vote e matter before the Board, if he or she has a prohibited interest with to the matter under California law. A Board member will not accept gifts that exceed the limitations specified in California law. A Board member will not accept gifts that exceed the limitations specified in California law. Board member

Ethics Of The		NUMBER	6.04
EBMUD Board O	f Directors	PAGE NO.:	4
		EFFECTIVE DATE:	26 SEP 23
	[California Government Code Section 87100 and foll Section 1090 and following; California Government C California Government Code Section 87105; Californ 89502; Penal Code Sections 68 and 70, and EBMUE	Code Section 81000 and foll nia Government Code Section	lowing;
Soliciting Political Contributions	Board members will not solicit political funds or contr EBMUD facilities or use EBMUD equipment.	ibutions of in-kind services a	at
	• A Board member will not solicit or direct a politic from District officers, employees, consultants or consultants that have a material financial interest that matter is pending before EBMUD.	r contractors, or from vendo	rs or
	• A Board member will not use EBMUD's seal, tra of EBMUD's identity or facsimile thereof in any contributions.		r indicia
	[California Government Code Section 3205 and EBN Ordinance.]	1UD Campaign Finance Ref	orm
Incompatible Offices	Except as expressly permitted by law, Board membe public office, the duties of which may legally require a with the interests of the first entity, will resign from the	action contradictory or incon	
	(See, generally, 73 Cal. Op.Atty.Gen. 357 (1990). See Section 53227, under which a special district employed elected or appointed member of the same special distr employee.)	e may not be sworn into offic	e as an
Board Member- General Manager Relationship	The Board sets District policy and the General Mana policy.	ger is responsible for execu	tion of
Relationship	The Board provides policy direction and instruct matters within the authority of the Board by maj convened Board and Board committee meeting	ority vote of the Board durin	
	 Members of the Board deal with matters within Manager through the General Manager, except the General Counsel. 		
	[Municipal Utility District Act (MUD Act) Sections 118	83, 11937 and 11939.]	
Exercise Responsible	The Board ensures the District exercises responsible	financial management.	
Financial Management	 The Board ensures that EBMUD maintains a sy that completely and at all times shows the finan accordance with generally accepted accounting 	icial condition of the District	in
	• The Finance/Administration Committee will inter independent auditor to conduct an annual audit financial affairs, and periodic single audits of fee	of the District's books, reco	

Ethics Of The	NUMBER	6.04
EBMUD Board Of Directors	PAGE NO.:	5
	EFFECTIVE DATE:	26 SEP 23

- The independent auditor will provide reports and present the results of their audits, including recommendations made to the Board's Finance/Administration Committee. Reports from the auditor will be provided to the Board upon completion as part of the next Board mailing.
- Staff will respond to audit recommendations and provide periodic updates to the Board on the status of the responses to the recommendations.

[MUD Act Section 11889.]

Improper Activities and the Reporting of Such Activities; Protection of Whistleblowers The Board ensures that EBMUD maintains a healthy and transparent work environment.

- The General Manager has primary responsibility for ensuring compliance with the District's personnel policies and procedures, and ensuring that District employees do not engage in improper activities, for investigating allegations of improper activities, and for taking appropriate corrective and disciplinary actions. The Board ensures that the General Manager is operating the District according to law and the policies approved by the Board.
- Board members will disclose to the General Manager, to the extent not expressly
 prohibited by law, improper activities within their knowledge. Board members will
 not interfere with the General Manager's responsibilities in identifying,
 investigating and correcting improper activities, unless the Board determines the
 General Manager is not properly carrying out these responsibilities.
- A Board member will not directly or indirectly use or attempt to use the authority or influence of his or her position to intimidate, threaten, coerce, command or influence any other person for the purpose of preventing such person from acting in good faith to bring to the attention of the General Manager or the Board any information that, if true, would constitute: a work-related violation by a Board member or District employee of any law or regulation, gross waste of District funds, gross abuse of authority, a specified and substantial danger to public health or safety due to an act or omission of a District official or employee, use of a District office or position or of District resources for personal gain, or a conflict of interest of a District Board member or District employee.

[Labor Code Section 1102.5 and following; California Government Code Section 53298 and 53298.5; and EBMUD Equal Employment Opportunity (EEO) Policy 6.06.]

Directors' Compensation and Expense Reimbursement EBMUD Board members receive a monthly stipend for their public service and the amount of that stipend is reviewed annually. EBMUD reimburses Board members for actual reasonable and necessary expenses incurred in the performance of duties authorized or requested by the Board.

• EBMUD Board members receive monthly compensation in an amount set at a public meeting of the Board of Directors. Board members must attend a minimum of 50 percent of their assigned meetings. Meetings include regular business meetings, standing committee meetings, special meetings, joint powers authority meetings, retirement board meetings, and closed session meetings. Salary shall not be paid to a Board member for any month in which he or she has not attended the minimum number of meetings unless the Board President excuses the absence(s) for good cause. Good cause includes, but is not limited to, a Board member's illness, family emergency, or schedule conflict directly related to the business and interests of the District.

Ethics Of The	NUMBER	6.04
EBMUD Board Of Directors	PAGE NO.:	6
	EFFECTIVE DATE:	26 SEP 23

- Any Board member arriving 15 or more minutes late for a Board or Committee meeting will be considered absent from that meeting. Such absences will be taken into account when determining the minimum number of meetings attended for compensation during that period. Committee chairs or presiding officers may excuse late arrivals, at their discretion, due to unforeseen circumstances.
- Each Board member is encouraged to participate in outside activities and organizations that further the interests of the District. Board members do not receive compensation for attendance at non-District activities. Expenses incurred by Board members in connection with such activities are reimbursable, where authorized in advance or subsequently ratified by the Board President. No personal gain or loss to a Board member is intended. The following rules apply:
 - a) All expenses must be incurred in compliance with Policy 4.14, *Reimbursement* of *Director Expenses*. Any expense that is not specified in Policy 4.14 must be approved in a public meeting by the Board, before it is incurred.
 - b) All expenses must be reasonable and necessary and Board members will exercise prudence in all expenditures, including transportation, food, lodging, telephone, and technology-related charges.
 - c) Each Board member must use government and group rates offered by a transportation or lodging provider when available.
 - d) EBMUD does not provide credit cards to Board members. Upon incurring expenses, Board members will submit a reimbursement request, accompanied by evidence of payment of such expenses that will meet the District's requirements.
 - e) At the next Board meeting, each official shall briefly report on meetings attended at District expense. If multiple officials attended, a joint report may be made.

[MUD Act Sections 11908 and 11908.1; Resolution No. 35000-16, August 9, 2016; Policy 4.14, Reimbursement of Director Expenses; California Government Code Section 53232.2.]

Candidate's Statement	A Board member will not include false or misleading information in a candidate's statement for a general District election filed pursuant to Section 13307 of the Elections Code.
	[Elections Code Sections 13307 and 13313; EBMUD Campaign Finance Reform Ordinance.]
Violation of Ethics Policy	A perceived violation of EBMUD's ethics policy by a Board member should be referred to the Board President for investigation and consideration of any appropriate action warranted. In the case of a perceived violation by the Board President, the matter should be referred to the Board Vice President. A violation of this policy may be addressed by remedies available by law, including but not limited to:
	 Adopting a resolution expressing disapproval of the conduct of the Board member who has violated this policy,
	Injunctive relief, or
	 Referral of the violation to the California Fair Political Practices Commission,

District Attorney and/or the Grand Jury.

Ethics Of The EBMUD Board Of Directors		NUMBER PAGE NO.:	6.04 7
		EFFECTIVE DATE:	26 SEP 23
Authority	Resolution No. 33414-04, March 23, 2004. As amended by Motion No. 041-05, March 8, 2005 As amended by Resolution No. 33577-07, January 9, 2 As amended by Resolution No. 33883-12, June 26, 201 As amended by Resolution No. 35008-16, October 25, As amended by Resolution No. 35132-19, February 26, As amended by Resolution No. 35221-21, April 27, 202 As amended by Resolution No. 35302-22, July 12, 2022 As amended by Resolution No. 35364-23, September 2	12 2016 , 2019 21 2	
References	See footnotes in above sections. References are available for public review in the Office Resolution No. 35000-16, August 9, 2016	of the District Secretary.	

2025 Annual Brown Act and Ethics Update Presentation Attachment 3

KeyCite Yellow Flag - Negative Treatment Proposed Legislation

West's Annotated California Codes Government Code (Refs & Annos) Title 5. Local Agencies (Refs & Annos) Division 2. Cities, Counties, and Other Agencies (Refs & Annos) Part 1. Powers and Duties Common to Cities, Counties, and Other Agencies (Refs & Annos) Chapter 9. Meetings (Refs & Annos)

West's Ann.Cal.Gov.Code § 54953

§ 54953. Meetings to be open and public; attendance; teleconferencing

Currentness

<Section operative until Jan. 1, 2026 and repealed on that date. See, also, § 54953 operative Jan. 1, 2026.>

(a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b)(1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. If the legislative body of a local agency elects to use teleconferencing, the legislative body of a local agency shall comply with all of the following:

(A) All votes taken during a teleconferenced meeting shall be by rollcall.

(B) The teleconferenced meetings shall be conducted in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency.

(C) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(D) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivisions (d) and (e).

(c)(1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d)(1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e)(1) The legislative body of a local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in either of the following circumstances:

(A) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(B) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (A), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:

(A) In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option.

(B) In the event of a disruption that prevents the legislative body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption that prevents the legislative body from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(C) 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 legislative body and offer comment in real time.

(D) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(E)(i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (D), to provide public comment until that timed public comment period has elapsed.

(ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (D), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (D), until the timed general public comment period has elapsed.

(3) If a state of emergency remains active, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 45 days after teleconferencing for the first time pursuant to subparagraph (A) or (B) of paragraph (1), and every 45 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(4) This subdivision shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(f)(1) The legislative body of a local agency may use teleconferencing without complying with paragraph (3) of subdivision (b) if, during the teleconference meeting, at least a quorum of the members of the legislative body participates in person from a singular physical location clearly identified on the agenda, which location shall be open to the public and situated within the boundaries of the territory over which the local agency exercises jurisdiction and the legislative body complies with all of the following:

(A) The legislative body shall provide at least one of the following as a means by which the public may remotely hear and visually observe the meeting, and remotely address the legislative body:

(i) A two-way audiovisual platform.

(ii) A two-way telephonic service and a live webcasting of the meeting.

(B) In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment.

(C) The agenda shall identify and include an opportunity for all persons to attend and address the legislative body directly pursuant to Section 54954.3 via a call-in option, via an internet-based service option, and at the in-person location of the meeting.

(D) In the event of a disruption that prevents the legislative body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control that

prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption that prevents the legislative body from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(E) 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 legislative body and offer comment in real time.

(F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(2) A member of the legislative body shall only participate in the meeting remotely pursuant to this subdivision, if all of the following requirements are met:

(A) One of the following circumstances applies:

(i) The member notifies the legislative body at the earliest opportunity possible, including at the start of a regular meeting, of their need to participate remotely for just cause, including a general description of the circumstances relating to their need to appear remotely at the given meeting. The provisions of this clause shall not be used by any member of the legislative body for more than two meetings per calendar year.

(ii) The member requests the legislative body to allow them to participate in the meeting remotely due to emergency circumstances and the legislative body takes action to approve the request. The legislative body shall request a general description of the circumstances relating to their need to appear remotely at the given meeting. A general description of an item generally need not exceed 20 words and shall not require the member to disclose any medical diagnosis or disability, or any personal medical information that is already exempt under existing law, such as the Confidentiality of Medical Information Act (Chapter 1 (commencing with Section 56) of Part 2.6 of Division 1 of the Civil Code). For the purposes of this clause, the following requirements apply:

(I) A member shall make a request to participate remotely at a meeting pursuant to this clause as soon as possible. The member shall make a separate request for each meeting in which they seek to participate remotely.

(II) The legislative body may take action on a request to participate remotely at the earliest opportunity. If the request does not allow sufficient time to place proposed action on such a request on the posted agenda for the meeting for which the request is made, the legislative body may take action at the beginning of the meeting in accordance with paragraph (4) of subdivision (b) of Section 54954.2.

(B) The member shall publicly 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 with the member, and the general nature of the member's relationship with any such individuals.

(C) The member shall participate through both audio and visual technology.

(3)(A) The provisions of this subdivision shall not serve as a means for any member of a legislative body to participate in meetings of the legislative body solely by teleconference from a remote location for more than the following number of meetings, as applicable:

(i) Two meetings per year, if the legislative body regularly meets once per month or less.

(ii) Five meetings per year, if the legislative body regularly meets twice per month.

(iii) Seven meetings per year, if the legislative body regularly meets three or more times per month.

(B) For the purpose of counting meetings attended by teleconference under this paragraph, a "meeting" shall be defined as any number of meetings of the legislative body of a local agency that begin on the same calendar day.

(g) The legislative body shall have and implement a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and resolving any doubt in favor of accessibility. In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the procedure for receiving and resolving requests for accommodation.

(h) The legislative body shall conduct meetings subject to this chapter consistent with applicable civil rights and nondiscrimination laws.

(i)(1) Nothing in this section shall prohibit a legislative body from providing the public with additional teleconference locations.

(2) Nothing in this section shall prohibit a legislative body from providing the public with additional physical locations in which the public may observe and address the legislative body by electronic means.

(j) For the purposes of this section, the following definitions shall apply:

(1) "Emergency circumstances" means a physical or family medical emergency that prevents a member from attending in person.

(2) "Just cause" means any of the following:

(A) A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely. "Child," "parent," "grandparent," "grandchild," and "sibling" have the same meaning as those terms do in Section 12945.2.

(B) A contagious illness that prevents a member from attending in person.

(C) A need related to a physical or mental disability as defined in Sections 12926 and 12926.1 not otherwise accommodated by subdivision (g).

(D) Travel while on official business of the legislative body or another state or local agency.

(3) "Remote location" means a location from which a member of a legislative body participates in a meeting pursuant to subdivision (f), other than any physical meeting location designated in the notice of the meeting. Remote locations need not be accessible to the public.

(4) "Remote participation" means participation in a meeting by teleconference at a location other than any physical meeting location designated in the notice of the meeting. Watching or listening to a meeting via webcasting or another similar electronic medium that does not permit members to interactively hear, discuss, or deliberate on matters, does not constitute remote participation.

(5) "State of emergency" means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

(6) "Teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both.

(7) "Two-way audiovisual platform" means an online platform that provides participants with the ability to participate in a meeting via both an interactive video conference and a two-way telephonic function.

(8) "Two-way telephonic service" means a telephone service that does not require internet access, is not provided as part of a two-way audiovisual platform, and allows participants to dial a telephone number to listen and verbally participate.

(9) "Webcasting" means a streaming video broadcast online or on television, using streaming media technology to distribute a single content source to many simultaneous listeners and viewers.

(k) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

Credits

((Added by Stats.1953, c. 1588, p. 3270, § 1. Amended by Stats.1988, c. 399, § 1; Stats.1993, c. 1136 (A.B.1426), § 4, operative April 1, 1994; Stats.1993, c. 1137 (S.B.36), § 4, operative April 1, 1994; Stats.1994, c. 32 (S.B.752), § 4, eff. March 30, 1994, operative April 1, 1994; Stats.1997, c. 253 (S.B.138), § 2; Stats.1998, c. 260 (S.B.139), § 1; Stats.2005, c. 540 (A.B.1438), § 1; Stats.2012, c. 209 (S.B.475), § 1; Stats.2013, c. 257 (S.B.751), § 1; Stats.2016, c. 175 (S.B.1436), § 1, eff. Jan. 1, 2017; Stats.2017, c. 137 (A.B.428), § 1, eff. Jan. 1, 2018; Stats.2021, c. 615 (A.B.474), § 204, eff. Jan. 1, 2022, operative Jan. 1, 2023; Stats.2021, c. 165 (A.B.361), § 3, eff. Sept. 16, 2021; Stats.2022, c. 28 (S.B.1380), § 73, eff. Jan. 1, 2023; Stats.2022, c. 285 (A.B.2449), § 1, eff. Jan. 1, 2023; Stats.2023, c. 131 (A.B.1754), § 88, eff. Jan. 1, 2024; Stats.2023, c. 534 (A.B.557), § 1, eff. Jan. 1, 2024; Stats.2024, c. 389 (A.B.2302), § 1, eff. Jan. 1, 2025.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2023 Amendment

Section 54953 is amended to reflect nonsubstantive recodification of the California Public Records Act. See California Public Records Act Clean-Up, 46 Cal. L. Revision Comm'n Reports 207 (2019). [46 Cal.L.Rev.Comm. Reports 563 (2019)].

Notes of Decisions (69)

West's Ann. Cal. Gov. Code § 54953, CA GOVT § 54953 Current with Ch. 1 of 2023-24 2nd Ex.Sess, and all laws through Ch. 1017 of 2024 Reg.Sess.

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2025 Annual Brown Act and Ethics Update Presentation Attachment 4

KeyCite Yellow Flag - Negative Treatment Proposed Legislation

West's Annotated California Codes Government Code (Refs & Annos) Title 5. Local Agencies (Refs & Annos) Division 2. Cities, Counties, and Other Agencies (Refs & Annos) Part 1. Powers and Duties Common to Cities, Counties, and Other Agencies (Refs & Annos) Chapter 9. Meetings (Refs & Annos)

West's Ann.Cal.Gov.Code § 54957

§ 54957. Closed sessions; definitions; personnel matters; exclusion of witnesses

Currentness

(a)(1) This chapter does not prevent the legislative body of a local agency from holding closed sessions with the Governor, Attorney General, district attorney, agency counsel, sheriff, or chief of police, or other law enforcement or security personnel, or a security consultant or a security operations manager, on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, a threat to the public's right of access to public services or public facilities, or a threat to critical infrastructure controls or critical infrastructure information relating to cybersecurity.

(2) For purposes of this subdivision, the following definitions apply:

(A) "Critical infrastructure controls" means networks and systems controlling assets so vital to the local agency that the incapacity or destruction of those networks, systems, or assets would have a debilitating impact on public health, safety, economic security, or any combination thereof.

(B) "Critical infrastructure information" means information not customarily in the public domain pertaining to any of the following:

(i) Actual, potential, or threatened interference with, or an attack on, compromise of, or incapacitation of critical infrastructure controls by either physical or computer-based attack or other similar conduct, including, but not limited to, the misuse of, or unauthorized access to, all types of communications and data transmission systems, that violates federal, state, or local law or harms public health, safety, or economic security, or any combination thereof.

(ii) The ability of critical infrastructure controls to resist any interference, compromise, or incapacitation, including, but not limited to, any planned or past assessment or estimate of the vulnerability of critical infrastructure.

(iii) Any planned or past operational problem or solution regarding critical infrastructure controls, including, but not limited to, repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to interference, compromise, or incapacitation of critical infrastructure controls.

(b)(1) Subject to paragraph (2), this chapter does not prevent the legislative body of a local agency from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session.

(2) As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of their right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void.

(3) The legislative body also may exclude from the public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

(4) For the purposes of this subdivision, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee but shall not include any elected official, member of a legislative body or other independent contractors. This subdivision shall not limit local officials' ability to hold closed session meetings pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code. Closed sessions held pursuant to this subdivision shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.

Credits

(Added by Stats.1953, c. 1588, p. 3271, § 1. Amended by Stats.1957, c. 1314, p. 2633, § 1; Stats.1959, c. 647, p. 2626, § 2; Stats.1961, c. 1671, p. 3637, § 4; Stats.1971, c. 587, p. 1180, § 1; Stats.1975, c. 959, p. 2241, § 8; Stats.1980, c. 1284, p. 4342, § 21; Stats.1982, c. 298, § 2; Stats.1993, c. 1136 (A.B.1426), § 12, operative April 1, 1994; Stats.1993, c. 1137 (S.B.36), § 12, operative April 1, 1994; Stats.1994, c. 32 (S.B.752), § 14, eff. March 30, 1994, operative April 1, 1994; Stats.2002, c. 1120 (A.B.2645), § 2; Stats.2013, c. 11 (A.B.246), § 1; Stats.2024, c. 243 (A.B.2715), § 1, eff. Jan. 1, 2025.)

Notes of Decisions (93)

West's Ann. Cal. Gov. Code § 54957, CA GOVT § 54957 Current with Ch. 1 of 2023-24 2nd Ex.Sess, and all laws through Ch. 1017 of 2024 Reg.Sess.

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2025 Annual Brown Act and Ethics Update Presentation Attachment 5a

2024 WL 1812958 (Cal.A.G.) Office of the Attorney General State of California Opinion No. 23-102 April 18, 2024

***1** THE HONORABLE ERIK A. NASARENKO VENTURA COUNTY DISTRICT ATTORNEY

The HONORABLE ERIK A. NASARENKO, VENTURA COUNTY DISTRICT ATTORNEY, has requested an opinion on three questions relating to the Ralph M. Brown Act (Gov. Code, § 54950 et seq.), which generally requires that legislative bodies of local government agencies conduct their meetings in a manner that is open and accessible to the public.¹

QUESTIONS PRESENTED AND CONCLUSIONS

The Ventura Chamber of Commerce hosted an annual breakfast at which the mayor, who is a member of the city council, delivered a "State of the City" address. Members of the public could attend the event in person, but only if they purchased a ticket from the chamber of commerce. There was no other way for the public to watch the address in real time. Given this context, the questions presented are:

1. If a majority of the members of the city council were to attend the event described above, would that event constitute a "meeting" of the city council within the scope of the Brown Act under Government Code section 54952.2(a)?

Yes. If a majority of the members of the city council were to attend the event described above, that event would constitute a congregation of a majority of the councilmembers at the same time and location to hear—and potentially discuss—an item within their subject matter jurisdiction. As such, the event would constitute a "meeting" of the city council within the meaning of Government Code section 54952.2(a), and the meeting would have to comply with the open-meeting requirements of the Brown Act, unless a statutory exception applies.

2. Would the Brown Act exception for conferences or similar gatherings set forth in Government Code section 54952.2(c)(2) apply to such an event?

No. The event as described consisted of a single speech by a single official regarding the state of a single city. As such, it would not satisfy the Brown Act exception for conferences and similar gatherings set forth in Government Code section 54952.2(c)(2) because that exception involves a discussion of issues of general interest to the public or to public agencies of the type represented by the city council.

3. Would the Brown Act's exception for "community meetings" set forth in Government Code section 54952.2(c)(3) apply to such an event?

No. The Brown Act exception for community meetings set forth in Government Code section 54952.2(c)(3) requires, among other things, that the event must be open to the public. The event in question would not satisfy that element because members of the public could only attend by purchasing a ticket from the chamber of commerce.

BACKGROUND

The City of Ventura is a charter city with a council-manager form of government.² The city council consists of seven members elected by district for staggered terms of four years.³ After each election, the council appoints one of its members to serve as mayor for a term of two years.⁴ The mayor acts as the official head of city government on public and ceremonial occasions.⁵ The mayor also presides over sessions of the city council and determines the order of business under council rules.⁶ But the mayor has no veto power over the council.⁷

*2 On September 13, 2022, the city announced on social media that the mayor would deliver a "State of the City Address" on September 22 at an event "hosted by the Ventura Chamber of Commerce in the ballroom of the Crowne Plaza Ventura Beach."⁸ The Ventura Chamber of Commerce is a private, voluntary association that promotes commercial interests in and around the city.⁹ The announcement indicated that members of the public could purchase tickets to the event from the chamber.¹⁰ The price of a ticket was \$60 for members of the chamber and \$80 for everyone else.¹¹ The announcement did not mention any other way for the public to watch the mayor's address.¹²

On September 16, the city posted on social media a second announcement regarding the event.¹³ The announcement stated that the mayor's presentation would be "available later online."¹⁴ It also indicated that the mayor would "share this presentation with the public" at a regular meeting of the city council scheduled for October 10.¹⁵

On September 20, the Ventura City Attorney asked the Ventura County District Attorney, our requestor here, whether a quorum of the city council could attend the chamber of commerce event without violating the Brown Act.¹⁶ The district attorney verbally advised the city attorney that "less than a quorum of the city council should attend the address," presumably so that there would not be a "meeting" of the council within the scope of the Act.¹⁷ The mayor ultimately delivered the address during the chamber of commerce event on September 22 as scheduled.¹⁸ We understand from the opinion request that "less than a quorum of the council attended the event."¹⁹

The district attorney and city attorney subsequently exchanged letters with each other regarding whether there would have been a Brown Act violation if a majority of the city council had attended the chamber of commerce event.²⁰ There appears to have been no dispute that, if a majority of the city council had attended, the event would have been a "meeting" of the council as the term is defined in section 54952.2(a) of the Brown Act. But the officials disagreed about whether such an event would qualify for either of two Brown Act exceptions set forth in section 54952.2(c).²¹ Specifically, the city attorney argued that "attendance by a majority of Councilmembers at a State of the City address is not a Brown Act meeting under a plain reading of the conference and community meeting exceptions."²²

*3 The district attorney asked us to resolve the dispute by answering three questions. As phrased by the district attorney, the questions were as follows:

1. Is it a violation of the Brown Act for a mayor to deliver a "State of the City" address to attendees at a fee-only private event specifically held to facilitate the address, where all or a quorum of fellow councilmembers are in attendance? [¶] 2. Does the "conference exception" of the Brown Act apply? [¶] 3. Does the "community meetings exception" of the Brown Act apply?

We have rephrased those questions slightly for ease of analysis. Before presenting that analysis, we pause to note the limited nature of our inquiry. Our task here is to determine whether the posited hypothetical of a majority of councilmembers attending the chamber of commerce event as described herein would constitute a "meeting" as defined in the Brown Act. As such, we express no view on potential secondary questions that might arise in a district attorney's consideration of enforcement options regarding an actual event. With that caveat, we proceed to summarize the established principles of law and then apply those principles to the hypothetical described above.

ANALYSIS

The California Constitution guarantees "public access to the meetings of public bodies."²³ The Brown Act promotes that guarantee by establishing minimum standards of public access at the local level.²⁴ Under the Constitution, each of those standards "shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access."²⁵

As relevant here, the Brown Act states that every meeting of a city council or other legislative body of a local agency "shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter."²⁶ The Act elaborates that a member of the public "shall not be required, as a condition to attendance at a meeting of a legislative body of a local agency, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance."²⁷ Likewise, a legislative body cannot conduct a meeting in a facility "where members of the public may not be present without making a payment or purchase."²⁸

The foregoing rules apply whenever there is a "meeting" of the legislative body of a local agency.²⁹ The Brown Act broadly defines a meeting in section 54952.2(a) as a "congregation of a majority of the members of a legislative body at the same time and location ... to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body." The Act guards against evasion by providing in section 54952.2(b)(1) that a majority "shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item the subject matter jurisdiction of the legislative body."

*4 But section 54952.2(c) tempers the broad definition of a meeting by providing that any number of the members of a legislative body may attend certain events without violating the Brown Act. As discussed in detail below, section 54952.2(c)(2) creates an exception to the Brown Act for "a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body." And section 54952.2(c)(3) creates an exception for "an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency."

Familiar principles of statutory interpretation guide our consideration of the Brown Act and its exceptions.³⁰ "Our primary task in interpreting a statute is to determine the Legislature's intent, giving effect to the law's purpose."³¹ "In examining the language, the courts should give to the words of the statute their ordinary, everyday meaning [citations] unless, of course, the statute itself specifically defines those words to give them a special meaning [citations]."³² "If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute's purpose, legislative history, and public policy."³³

As previously mentioned, however, the California Constitution contains a special rule requiring that language appearing in the Brown Act "shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access."³⁴ Even before the voters adopted that special rule, we had concluded "as a matter of general policy, that 'doubtful cases should be resolved in favor of open and public meetings."³⁵ Indeed, when interpreting open meeting laws, the Attorney General

"has not acted as the protector of the bureaucrat, but rather has consistently prodded the agencies involved to be more open in their activities."³⁶ Our approach here is no different.

1. If a Majority of the City Council Were to Attend the Chamber of Commerce Event, It Would Be a "Meeting" of the Council Within the Scope of the Brown Act

The first question asks whether the given set of facts would constitute a ""meeting" of the city council under section 54952.2(a) if a majority of the council were to attend to the event. The definition of a meeting under the Brown Act can be parsed into three elements. The first element requires there to be a "congregation of a majority of the members of a legislative body at the same time and location." The second element requires a collective intent "to hear, discuss, deliberate, or take action." The third element requires that the object of that collective intent must be an "item that is within the subject matter jurisdiction of the legislative body."

*5 As to the first element, a "congregation" can be simply a "gathering" or an "assembly of persons."³⁷ Although the congregation must include a majority of the members of a legislative body, there is no requirement that the congregation consist of those members exclusively. And because the mayor is a member of the city council, we may include the mayor when calculating whether a "majority" of the council had congregated at the same time and location under section 54952.2(a).³⁸ Video of the event at issue here revealed that attendees were gathered together in a single place to listen to the mayor's speech.³⁹ As such, there would have been a qualifying "congregation of a majority of the members of the legislative body" if a majority of the city councilmembers had attended the event.

As to the second element of section 54952.2(a), we consider whether the city councilmembers would be congregated to "hear, discuss, deliberate, or take action" on an item. Our primary focus is on whether city councilmembers in the audience would be congregated to "hear" an item. In some situations, to hear an item might mean to consider it judicially.⁴⁰ In other settings, to hear an item can simply mean to listen to it with attention or understanding.⁴¹ In this instance, we must adopt a broad interpretation of the term ""hear" pursuant to our duty to construe section 54952.2(a) in favor of public access. Based on that interpretation, we have little doubt that attending the chamber of commerce event to listen to the mayor's speech would constitute "hear[ing]" an item within the meaning of the second element of section 54952.2(a). For this reason alone, we conclude the second element is satisfied.

In addition, because in this case the mayor is also a member of the city council, a mayoral address can also be likened to a "discussion" between the mayor and any councilmembers in the audience. We recognize that to "discuss" an item connotes a degree of reciprocity that is absent in a typical speech. This is particularly true in light of common definition of a "discussion" as meaning the "consideration of a question in open and usually informal debate."⁴² But common definitions of what it means to "discuss" something include simply "to talk about" it or "to present [it] in detail for examination or consideration."⁴³ We believe that delivering a state of the city address reasonably fits within those common definitions, especially when the speaker and members of the audience are part of the same legislative body. As a result, the mayor's delivery of the speech to fellow councilmembers (albeit in the presence of others) supports our view that the councilmembers congregated to "hear" or "discuss" an item under the second element of section 54952.2(a).

*6 Our overall conclusion in this regard is consistent with prior authorities. We have long described a "meeting" under the Brown Act as a gathering that involves the "collective acquisition and exchange of facts preliminary to the ultimate decision."⁴⁴ For example, in 58 Ops.Cal.Atty.Gen. 839 (1975), we observed that "informal luncheon meetings of a city council with members of civil organizations to discuss matters of civic concern would fall within the ambit of [t]he Brown Act even though no action is contemplated or taken."⁴⁵ We concluded that the same would be true if a majority of a county board of supervisors gathers to receive a report from the grand jury "on matters pertaining to the operation of county government."⁴⁶ And there is no

reason why the rule would be different when members of a city council gather at a state of the city address to receive, or perhaps exchange, information on matters pertaining to the operation of city government. In each instance, members of the relevant legislative body are engaging in the collective acquisition or exchange of information that is relevant to the performance of their official duties.

Finally, as to the third element of section 54952.2(a), there appears to be no dispute that the State of the City address involved an "item that is within the subject matter jurisdiction" of the city council. The same terminology appears in the highly analogous Bagley-Keene Open Meeting Act, which applies to state governmental bodies.⁴⁷ In that context, we have already concluded that "it would be inappropriate to adopt a definition of "item' that would be limited to an item on an agenda."⁴⁸ And we have explained that a body has "subject matter jurisdiction" over an item if the body has inherent authority to take action on the item.⁴⁹ Here, the city council is the city's legislative body.⁵⁰ It has broad power to "pass ordinances not in conflict with the Constitution and laws of the State or the United States."⁵¹ As such, the state of a particular city is reasonably understood as an item within the subject matter jurisdiction of its city council.

We thus have little doubt that the event at issue here involved at least one item within the subject matter jurisdiction of the city council.

2. The Chamber of Commerce Event Would Not Satisfy the Brown Act Exception for Conferences or Similar Gatherings

Section 54952.2(c)(2) creates an exception to the Brown Act for "a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body." If an event satisfies those elements, then a majority of the legislative body may attend the event without following the Brown Act's requirements for "meetings," so long as they "do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the local agency."⁵² As discussed below, we conclude that the mayor's State of the City address at issue here would not satisfy this exception.

*7 First we address whether the event in question was "open to the public" as required under section 54952.2(c)(2). The exception for a conference or similar gathering includes unique language stating that "[n]othing *in this paragraph* is intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance."⁵³ That language makes clear that members of a legislative body may attend a qualifying conference even if organizers require members of the public to purchase an admission ticket. But the exception as a whole also makes clear that ticket sales must be open to all members the public. In other words, organizers cannot restrict ticket sales to a particular group of people. Here, the city and the chamber of commerce indicated that anyone could purchase an admission ticket from the chamber, and we have received no information to the contrary. Based on these facts, it appears that the chamber of commerce event would satisfy the openness element of section 54952.2(c)(2).⁵⁴

We next consider the meaning of a "conference or similar gathering" under section 54952.2(c)(2). The Legislature has not defined a "conference" in this context, nor has it identified the elements that would make a gathering sufficiently "similar" to a conference. But common definitions of a ""conference" suggest that there must be multiple presentations facilitating an interchange of views among multiple parties.⁵⁵ This understanding is consistent with the statutory requirement that a qualifying conference or similar gathering must involve a "discussion" of issues.⁵⁶ In contrast, the event as described here consisted of a single speech by a single official regarding the conditions in a single city. As such, the event would not appear to qualify as a conference or similar gathering under section 54952.2(c)(2).

Our understanding of what qualifies as a conference or similar gathering under section 54952.2(c)(2) is consistent with the use of the word ""conference" elsewhere in the Brown Act. In particular, section 54954 uses the same word when providing that

the governing board of a school district may meet outside of the district to "[a]ttend a conference on nonadversarial collective bargaining techniques."⁵⁷ The Legislature appears to have been referring to training workshops like the ones formerly run by the California Foundation for Improvement of Employer-Employee Relations.⁵⁸ Those events typically lasted for several days and included "mock bargaining session[[s], team- building exercises, and other activities designed to make the participants reexamine assumptions about labor-management relations."⁵⁹ As such, the events were readily distinguishable from the chamber of commerce event at issue here.

*8 Our conclusion is also consistent with the legislative history of section 54952.2(c)(2) itself. An earlier version of the exception would have applied to "general conferences, conventions, symposia, speeches, classes, and seminars ... that involve a discussion of broad issues, and that are attended by a broad spectrum of officials from a variety of government agencies."⁶⁰ The Assembly replaced the quoted language with the current reference to a "conference or similar gathering ... that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body."⁶¹ The amendment means that a qualifying event does not need to be attended by a broad spectrum of officials from a variety of government agencies.⁶² But it also means that the exception applies only to conferences and to gatherings that are similar to conferences. That narrowed reference appears to include broadly faceted events like conventions, but not narrowly focused events like the chamber of commerce speech at issue here.

Finally, even if the chamber of commerce event qualified as a conference or similar gathering, we doubt that it involved "a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body" as required under section 54952.2(c)(2). As to the first prong of "general interest to the public," the statutory language refers to ""the public" without any narrowing qualification or modification. As such, an issue "of general interest to the public" is most reasonably read as being of general interest to the public as a whole, not just to those members of the public who happen to live or work within the territorial jurisdiction of the legislative body. Indeed, as discussed further below, the Legislature created a separate exception in section 54952.2(c)(3) for meetings that address a topic of "local community concern." Because the Legislature used different language in different subdivisions of the same statute, we presume that it intended to create a distinction between an issue of "general interest to the public" under section 54952.2(c)(2) and a topic of "local community concern" under section 54952.2(c)(3).⁶³

Here, we have no doubt that the State of the City address delivered during the chamber of commerce event was of general interest within the city. But we suspect that it was of only limited interest outside of the city. As a result, our obligation to construe section 54952.2(c)(2) in favor of open access compels us to conclude that the chamber of commerce event did not involve a discussion of issues of general interest to the public as a whole.

We reach the same conclusion when considering whether the event involved issues of general interest to "public agencies of the type represented by the legislative body" under section 54952.2(c)(2). It is not enough for the issues to be of general interest to the relevant legislative body itself. Rather, the issues must be of interest to other public agencies that are of the same type as the legislative body. The type of public agency at issue here is a city council.⁶⁴ We therefore consider whether the chamber of commerce event involved issues of general interest to other city councils on a categorical basis.

*9 Similar to our conclusion above, we have no doubt that the State of the City address delivered during the chamber of commerce event would be of general interest to members of the Ventura city council. But we doubt whether it would also be of general interest to other city councils on a categorical basis. As such, our duty to resolve doubts in favor of open access compels us to conclude that the chamber of commerce event did not include a discussion of issues of general interest to public agencies of the type represented by the city council under section 54952.2(c)(2).

Our conclusions here are consistent with our longstanding interpretation of nearly identical language in the Bagley-Keene Open Meeting Act. Similar to the Brown Act, the Bagley-Keene Act includes an exception in section 11122.5(c)(2)(A) that allows a majority of the members of a state body to attend "a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the state body." We have long advised state bodies that, if a conference "only focuses on the laws or issues of a particular body it would not be exempt under the Act."⁶⁵

There is no apparent reason why the rule under the Brown Act would be different than it is under the Bagley-Keene Act. We recognize that, as a general rule, the subject matter jurisdiction of a city council is more diverse than the subject matter jurisdiction of a state body.⁶⁶ But the fact that there might be many different issues confronting a particular city council does not mean that those issues are necessarily of general interest to the public as a whole or to other city councils on a categorical basis. This is especially true with regard to a state of the city address, because such an address typically discusses issues only as they relate to the relevant city.

As a result, we conclude that the chamber of commerce event would not have qualified as a conference or similar gathering, much less one that involved a discussion of issues of general interest to the public or to public agencies of the type represented by the city council under section 54952.2(c)(2).⁶⁷

3. The Chamber of Commerce Event Would Not Satisfy the Brown Act Exception for Community Meetings

Section 54952.2(c)(3) creates an exception to the Brown Act for "an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency." If an event satisfies those elements, then a majority of the legislative body may attend the event without the event being a "meeting" subject to the Brown Act's requirements for open meetings so long as they "do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency."⁶⁸ As discussed below, we conclude that the chamber of commerce event would not have been sufficiently "open" to satisfy this exception because attendees had to purchase a ticket to gain access.

*10 The word "open" generally denotes a lack of secrecy, as in a meeting that is "exposed to general view or knowledge."⁶⁹ It can also refer to a meeting that is "not restricted to a particular group or category of participants."⁷⁰ Here, members of the public could attend the chamber of commerce event in person only if they purchased a ticket from the chamber. And there was no other way for them to watch the mayor's address in real time. In other words, the event was necessarily restricted to a particular group or category of participants, that is, those who were financially able and otherwise willing to pay the price of admission. As a result, the event would not have been sufficiently "open" under section 54952.2(c)(3).⁷¹

As discussed above, the conference exception under section 54952.2(c)(2) expressly allows the charging of admission: "[n]othing in *this paragraph* is intended to allow members of the public *free admission* to a *conference or similar gathering*."⁷² No such language appears in section 54952.2(c)(3) regarding community meetings. The absence of such language appears to have been intentional, because the Legislature enacted both exceptions at the same time.⁷³ As a result, under the familiar maxim that the expression of one thing is the exclusion of the other, we presume that the allowance for charging admission in section 54952.2(c)(2) applies only to conferences and similar gatherings, and not to the events termed community meetings under section 54952.2(c)(3).⁷⁴

We reiterate that our conclusion as to this exception is based on the fact that there was no way for members of the public to participate in the Ventura chamber of commerce event free of charge. Although the city told the public that the mayor's address would be available on the Internet, it also indicated that the address would not be available until sometime later, after the event

was over.⁷⁵ In our view, the option of watching a recording of an event sometime "later" is not enough to satisfy the openness requirement of section 54952.2(c)(3).

4. No Other Brown Act Exceptions Apply

Before concluding our analysis, we note that we have received comments suggesting that a state of the city address might satisfy the Brown Act exception for a "purely social or ceremonial occasion" under section 54952.2(c)(5).⁷⁶ That exception allows a majority of a legislative body to attend a purely social or ceremonial occasion so long as they "do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body."⁷⁷ Although our requestor did not ask about that particular exception, it is at least arguably included in his request that we determine whether a Brown Act violation would have occurred here had a majority of councilmembers attended.⁷⁸ As such, and given that the exception is the only remaining Brown Act exception that might conceivably apply to the circumstances, we briefly address it here.

*11 We begin by considering what it means for an occasion to be "purely social or ceremonial" under section 54952.2(c)(5). An occasion is commonly understood as being "social" if it is "marked by or passed in pleasant companionship with friends or associates."⁷⁹ No matter how pleasant an occasion might be, however, it cannot be considered "purely social" under the Brown Act if it is "arranged for pursuit of the public's business."⁸⁰ As for the meaning of a "ceremonial" occasion, a common definition of the term involves something that has "no real power or influence."⁸¹ Examples of a "ceremonial role" under analogous provisions of the Political Reform Act include "throwing out the first pitch at a baseball game; cutting a ribbon at an opening; making a presentation of a certificate, proclamation, award, or other item, such as the key to the city."⁸²

It is notable that the exception in section 54952.2(c)(5) applies only if the "occasion" itself is "purely" social or ceremonial. In other words, the exception applies only if an occasion is completely, exclusively, and genuinely social or ceremonial.⁸³ As such, an occasion that it partially or even predominately social or ceremonial would not qualify.

We conclude that the given facts would not qualify as a purely social or ceremonial occasion under section 54952.2(c)(5). We recognize that a typical state of the city address involves a degree of social interaction and ceremonial pomp. But that does not mean that the entire occasion is *purely* social or ceremonial. Indeed, we have received comments suggesting that a state of the city address can have a significant effect or influence on the local legislative process. For example, the League of California Cities tells us that a state of the city address could "outline the plans and goals for the coming year" and "highlight specific initiatives or projects."⁸⁴ And the California Chamber of Commerce similarly takes the view that a state of the city address can include "upcoming priorities and important projects."⁸⁵ The National League of Cities has likewise published their own guidance stating that a state of the city address may "recognize areas for improvement" and "set the policy agenda for the year ahead."⁸⁶ As a result, we conclude that the chamber of commerce event at issue here would not satisfy section 54952.2(c)(5) or any other exception to the Brown Act.

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Footnotes

1	Statutory citations throughout the body of this opinion are to the Government Code.
2	Ventura City Charter, §§ 800-803; Ventura Municipal Code, §§ 2.315.010-2.315.030.
3	Ventura City Charter, § 507; Ventura Municipal Code, §§ 2.210.010-2.210.030.
4	Ventura City Charter, § 703, subd. (a).
5	Ventura City Charter, § 703, subd. (c).
6	Ibid.
7	Ibid.
8	CityofVentura,Facebook(Sept.13,2022)https://www.facebook.com/CityofVentura/posts/pfbid0QFf1qQNmUBmXKgAnJCEsL2riKiz9S6m7jm (as of Apr. 17,2024).
9	Ventura Chamber of Commerce, Who We Are, https://venturachamber.com/who-we-are (as of Apr. 17, 2024).
10	See note 8, supra; accord, Requestor Letter (Jan. 20, 2023) p. 1.
11	Ventura Chamber of Commerce, 2022 State of the City, https://ventura.chambermaster.com/events/details/2022-state- of-the-city-22700?fbclid=IwAR2qdmAVPvAH8U4Cr93LqUT3KKGSVPpujHhezg (as of Apr. 17, 2024).
12	See notes 8 and 11, supra.
13	City of Ventura, Facebook (Sept. 16, 2022) https://www.facebook.com/CityofVentura/posts/456982029809969 (as of Apr. 17, 2024).
14	Ibid.
15	Ibid.
16	See Letter from Ventura County District Attorney to Ventura City Attorney (Oct. 18, 2022) p. 1.
17	Ibid.
18	See City of Ventura, 2022 State of the City Address, https://www.youtube.com/watch?v=r_nkV7fxnV0 (as of Apr. 17, 2024).
19	Requestor Memorandum (Jan. 20, 2023) p. 2.
20	Letter from Ventura County District Attorney to Ventura City Attorney (Oct. 18, 2022); Letter from Ventura City Attorney to Ventura County District Attorney (Dec. 2, 2022).
21	See Letter from Ventura County District Attorney to Ventura City Attorney, <i>supra</i> , at pp. 2-3; Letter from Ventura City Attorney to Ventura County District Attorney, <i>supra</i> , at pp. 1-2.
22	Letter from Ventura City Attorney to Ventura County District Attorney, <i>supra</i> , at p. 1, citing Gov. Code, §§ 54952.2, subds. (c)(2) & (c)(3).

²³ Cal. Const., art. I, § 3, subd. (b)(7); *see id.* at § 3, subd. (b)(1).

- See Cal. Const., art I, § 3, subd. (b)(7); Gov. Code, § 54950 ("the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly"); see also Gov. Code, § 54953.7 (local bodies "may impose requirements upon themselves which allow greater access to their meetings than prescribed by the minimal standards set forth in this chapter").
- ²⁵ Cal. Const., art. I, § 3, subd. (b)(2).
- ²⁶ Gov. Code, § 54953, subd. (a).
- ²⁷ Gov. Code, § 54953.3; see 36 Ops.Cal.Atty.Gen. 175, 178 (1960).
- ²⁸ Gov. Code, § 54961, subd. (a).
- ²⁹ Gov. Code, §§ 54953, 54953.3, subd. (a), 54961, subd. (a).
- ³⁰ See 103 Ops.Cal.Atty.Gen. 42, 43 (2020).
- ³¹ *Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1037.
- ³² Halbert's Lumber, Inc. v. Lucky Stores, Inc. (1992) 6 Cal.App.4th 1233, 1238.
- ³³ Coalition of Concerned Communities, Inc. v. City of Los Angeles (2004) 34 Cal.4th 733, 737.
- ³⁴ Cal. Const., art I, § 3, subd. (b)(2).
- ³⁵ 57 Ops.Cal.Atty.Gen. 209, 212 (1974); see 61 Ops.Cal.Atty.Gen. 220, 225 (1978).
- ³⁶ Comment, Access to Governmental Information in California (1966) 54 Cal. L.Rev. 1650, 1653, fn. 23.
- ³⁷ Merriam-Webster's Collegiate Dict. (11th ed. 2020) p. 262.
- ³⁸ We may also include the mayor when calculating whether a majority of the city council has engaged in "a series of communications" under section 54952.2(b).
- ³⁹ See note 18, *supra*.
- ⁴⁰ Shorter Oxford English Dict. (6th ed. 2007) p. 1221.
- ⁴¹ *Ibid.*; see Merriam-Webster's Collegiate Dict., *supra*, at p. 574.
- ⁴² Merriam-Webster's Collegiate Dict., *supra*, at p. 358; see Shorter Oxford English Dict. *supra*, at p. 702 ("Examination (of a point) by argument etc.; debate; an exchange of views; a conversation").
- ⁴³ Merriam-Webster's Collegiate Dict., *supra*, at p. 358.
- ⁴⁴ 103 Ops.Cal.Atty.Gen., *supra*, at p. 52, fn. 54 (2020); 94 Ops.Cal.Atty.Gen. 33, 35-36 (2011).
- ⁴⁵ 58 Ops.Cal.Atty.Gen. 839, 840 (1975), citing 43 Ops.Cal.Atty.Gen. 36 (1964).
- ⁴⁶ 58 Ops.Cal.Atty.Gen., *supra*, at p. 843; see Pen. Code, § 925 (grand jury "shall investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county"); Pen. Code, § 928 (a grand jury "may investigate and report upon the needs of all county officers in the county" and "shall cause of copy of such report to be transmitted to each member of the board of supervisors").

- ⁴⁷ Gov. Code, § 11122.5, subd. (a). The Legislature modeled the Bagley-Keene Act after the Brown Act, and we construe their provisions in the same way absent a clear linguistic difference calling for a different result. (103 Ops.Cal.Atty.Gen., *supra*, at p. 44; see *Southern California Edison Co. v. Peevey* (2003) 31 Cal.4th 781, 799; *North Pacifica LLC v. California Coastal Com.* (2008) 166 Cal.App.4th 1416, 1434.)
- ⁴⁸ 103 Ops.Cal.Atty.Gen., *supra*, at p. 45.
- ⁴⁹ *Id.* at pp. 45-46.
- ⁵⁰ Gov. Code, § 34000; see Ventura City Charter, § 700.
- ⁵¹ Gov. Code, § 37100.
- ⁵² Gov. Code, § 54952.2, subd. (c)(2).
- ⁵³ *Ibid.*, italics added.
- ⁵⁴ Our requestor has not asked us to consider whether there are circumstances under which section 54952.2(c)(2) might require organizers to offer members of the public a discount short of the "free" admission disclaimed in the statute. As such, we have no occasion to consider here whether the price of admission charged to members of the public (\$80) was significant either by itself or in comparison to the discounted admission charged to member of the chamber of commerce (\$60).
- ⁵⁵ See Cambridge English Dict., https://dictionary.cambridge.org/us/dictionary/english/conference (as of Apr. 17, 2024) ("an event, sometimes lasting a few days, at which there is a group of talks on a particular subject"); Britannica Dict., https://www.britannica.com/dictionary/conference (as of Apr. 17, 2024) ("a formal meeting in which many people gather in order to talk about ideas or problems related to a particular topic (such as medicine or business) usually for several days"); see also Merriam-Webster's Collegiate Dict., *supra*, at p. 260; Black's Law Dict. (10th ed. 2009) p. 360; Shorter Oxford English Dict., *supra*, at p. 486.
- ⁵⁶ Gov. Code, § 54952.2, subd. (c)(2).
- ⁵⁷ Gov. Code, § 54954, subd. (c)(1).
- ⁵⁸ See Sen. Bill No. 36 (1993-1994 Reg. Sess.) § 11, as introduced Dec. 7, 1992.
- ⁵⁹ Joanna Richardson, Calif. Foundation Urges New Approach to Labor Negotiations, Education Week (May 04, 1994); see Joanna M. Miller, School Districts' Teams Learn Gentle Style of Contract Negotiation, Los Angeles Times (Feb. 7, 1996) p. B6 (teams from Ventura County participated in a three-day event that included "role-playing, brainstorming and group discussions").
- Sen. Bill No. 36 (1993-1994 Reg. Sess.) § 7, as amended Aug. 19, 1993; see 1 Sen. Final Hist. (1993-1994 Reg. Sess.)
 p. 40; 2 Assem. J. (1993-1994 Reg. Sess.) p. 3461.
- ⁶¹ Sen. Bill No. 36 (1993-1994 Reg. Sess.) § 2, as amended Sept. 8, 1993; see 1 Sen. Final Hist. (1993-1994 Reg. Sess.)
 p. 40; 3 Assem. J. (1993-1994 Reg. Sess.) p. 4247.
- ⁶² See California Attorney General's Office, The Brown Act: Open Meetings for Local Legislative Bodies (2003) p. 9 ("the conference need not necessarily be a conference of public agencies to fall within the exemption; rather, the gathering could be a conference of media outlets, environmental organizations, health care entities, [or] social welfare organizations").

- ⁶³ See *Roy v. Superior Court* (2011) 198 Cal.App.4th 1337, 1352.
- ⁶⁴ See Gov. Code, § 54950 (referring to the "public commissions, boards and councils and the other public agencies in this State"); see also Gov. Code, § 54951 ("local agency" includes any board, commission, or agency of a city).
- ⁶⁵ California Department of Justice, Bagley-Keene Open Meeting Act Guide (2023) p. 11; see California Attorney General's Office, A Handy Guide to the Bagley-Keene Open Meeting Act (2004) p. 7.
- ⁶⁶ See Gov. Code, § 37100.
- ⁶⁷ Our requestor has proffered an alternative reason why the given facts would not satisfy the exception in section 54952.2(c)(2). He suggests that the exception allows "only 'passive' attendance at a conference, versus the 'active' participation of the mayor delivering the address about city business to a quorum of the council." (Requestor Letter, *supra*, at p. 3.) But we have already advised that, at a qualifying conference or similar gathering, members of a legislative body "may enter into discussions on issues or business affecting their local agency in a public forum as part of the scheduled program of the conference." (California Attorney General's Office, The Brown Act: Open Meetings for Local Legislative Bodies, *supra*, at p. 9.) There is no reason to reconsider that advice here.
- ⁶⁸ Gov. Code, § 54952.2(c)(3).
- ⁶⁹ Merriam-Webster's Collegiate Dict., *supra*, at p. 868.
- ⁷⁰ *Ibid*.
- Our conclusion regarding admission fees does not necessarily extend to solicitations for donations, sponsorships, or the purchase of goods or services that organizers do not require as a condition of attending a community meeting. It would remain good practice, however, for any such solicitation to include a statement indicating that members of the public may attend the community meeting free of charge. (See Gov. Code, § 54953.3.)
- ⁷² Italics added.
- ⁷³ Stats. 1993, ch. 1137, § 2; Sen. Bill No. 36 (1993-1994 Reg. Sess.) § 2, as amended Sept. 8, 1993.
- ⁷⁴ See *In re J.W.* (2002) 29 Cal.4th 200, 209; *Craven v. Crout* (1985) 163 Cal.App.3d 779, 783 ("Where a statute referring to one subject contains a critical word or phrase, omission of that word or phrase from a similar statute on the same subject generally shows a different legislative intent").
- ⁷⁵ City of Ventura, Facebook (Sept. 16, 2022) https://www.facebook.com/CityofVentura/posts/456982029809969 (as of Apr. 17, 2024).
- ⁷⁶ See, e.g., Comment Letter from League of California Cities (May 25, 2023) pp. 3-4 (some addresses "are purely ceremonial events intended to celebrate the city and its residents and [are] not related to any legislative or policy-making matters"); Comment Letter from California Chamber of Commerce (Mar. 24, 2023) p. 2 (members of a legislative body who merely attend an address perform a "role [that] is strictly ceremonial").
- ⁷⁷ Gov. Code, § 54952.2, subd. (c)(5).
- ⁷⁸ As mentioned above, our requestor phrased the first question as being whether a particular set of facts would amount to a "violation" of the Brown Act. And a "violation" implies that the same set of facts would not satisfy any exception to the Brown Act.

- ⁷⁹ Merriam-Webster's Collegiate Dict., *supra*, at p. 1183; see Shorter Oxford English Dict., *supra*, at p. 2903 ("consisting of people associated together for friendly interaction or companionship").
- ⁸⁰ Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors (1968) 263 Cal.App.2d 41, 50, fn. 8.
- ⁸¹ Merriam-Webster's Collegiate Dict., *supra*, at p. 202.
- ⁸² Cal. Code Regs., tit. 2, § 18942.3.
- ⁸³ Shorter Oxford English Dict., *supra*, at p. 2408; see Merriam-Webster's Collegiate Dict., *supra*, at p. 1010.
- ⁸⁴ Comment Letter from League of California Cities, *supra*, at p. 2.
- ⁸⁵ Comment Letter from California Chamber of Commerce, *supra*, at p. 2.
- ⁸⁶ National League of Cities, How to Deliver an Effective State of the City Address (2016) p. 2.

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2025 Annual Brown Act and Ethics Update Presentation Attachment 5b

2024 WL 3627281 (Cal.A.G.) Office of the Attorney General State of California Opinion No. 23-1002 July 24, 2024

***1** HONORABLE ELENI KOUNALAKIS LIEUTENANT GOVERNOR

The HONORABLE ELENI KOUNALAKIS, LIEUTENANT GOVERNOR, has requested an opinion on a question relating to the federal Americans with Disabilities Act and the California open meetings law known as the Ralph M. Brown Act.

QUESTION PRESENTED AND CONCLUSION

Under the Ralph M. Brown Act, a local agency's legislative body must generally conduct its meetings in person at locations open to the public. Does the Americans with Disabilities Act (ADA) nonetheless require that a local agency's legislative body allow remote participation for a member with a qualifying disability that precludes their in-person attendance at meetings of the body?

Yes. The ADA generally requires a local agency's legislative body to allow remote participation as a reasonable accommodation for a member with a qualifying disability that precludes their in-person attendance at meetings of the body. This duty to reasonably accommodate is subject, however, to the Brown Act's requirement that the remote participation must be conducted in a manner that simulates in-person attendance at meetings held in person at a location open to the public. To accomplish this, the Act requires that individual members who participate remotely (1) use two-way video and audio streaming in real time and (2) disclose the identity of any adults who are present with the member at the remote location. These two requirements should be applied to members who attend meetings remotely due to a qualifying disability.

BACKGROUND

The question before us involves the ADA, a federal law, and the Brown Act, a state law.¹ "Congress enacted the ADA in 1990 to remedy widespread discrimination against" people with disabilities.² Congress enacted amendments to the ADA in 2008 that reasserted that purpose.³ In furtherance of its purpose, the ADA generally requires "reasonable accommodation" be made in employment, government services, and public accommodations for individuals with disabilities.⁴ In the employment context, for example, a reasonable accommodation could be a modified work schedule.⁵ Determining what constitutes a reasonable accommodation in any given scenario is a fact-intensive, individualized, case-by-case inquiry.⁶

The Legislature enacted the Ralph M. Brown Act in 1953 "to ensure the public's right to attend the meetings of public agencies."⁷ In furtherance of that purpose, the Act generally requires legislative bodies of local agencies to hold their meetings in person at locations open to the public.⁸

As to the interplay of these laws, the ADA plainly preempts contrary state law.⁹ But state law can be relevant to determining what the ADA requires.¹⁰ That means that the details of the Brown Act's provisions regarding in-person meeting attendance at

public locations are relevant to a reasonable accommodation analysis under the ADA. For purposes of the question presented here, the relevant inquiry is whether the Brown Act considers in-person meeting attendance at public locations to be an "essential function" or ""essential eligibility requirement."

*2 In 2001, we considered the same substantive question. We concluded that remote participation could *not* be a reasonable accommodation under the ADA.¹¹ Among other considerations, we discerned from the Brown Act that in-person meeting attendance by a member of a Brown Act body at a public location was an "essential function" and "essential eligibility requirement." At that time, the Brown Act did not allow a member to participate in a meeting remotely from a nonpublic location in any circumstance whatsoever.¹² Although the Act did authorize members to participate in meetings by "teleconferencing" (by audio or visual means), that option was available only if the teleconferencing location itself was also open to the public.¹³

Since then, the Legislature has modified the Brown Act. Intervening amendments allow remote participation in meetings by members from nonpublic locations in certain circumstances.¹⁴ As we will explain, those amendments reveal that remote participation no longer falls outside the realm of what can be a "reasonable accommodation" for purposes of the ADA.

ANALYSIS

Reasonable Accommodation for a "Qualified Individual" with a Disability Under the ADA

Under the ADA, a person with a disability is someone who has "a physical or mental impairment that substantially limits one or more" of the person's "major life activities."¹⁵ Before a requirement for a reasonable accommodation applies, it must be established that the person is a "qualified individual" with a disability. The meaning of a "qualified individual," and the factors informing whether an accommodation for such an individual is "reasonable," turn on which portion of the ADA applies.¹⁶

The ADA is divided into titles, and the first two are implicated here.¹⁷ Title I applies to employment by "covered entities" (including local governments), which are defined in part by whether the entity employs more than a threshold number of employees in a specified period.¹⁸ Title II applies to participation in state and local government services, programs, and activities.¹⁹

Whether serving as a member on a board of a local agency governed by the Brown Act constitutes employment under Title I, or instead participation in a program or activity under Title II, can depend on the particular board, commission, or body.²⁰ Thousands of bodies governed by the Brown Act exist.²¹ Given the myriad ways in which these bodies may be formed and operate, it would appear infeasible and imprudent to make a universal pronouncement about whether board membership falls under Title I versus Title II. But we need not embark on such an endeavor; in either case, our answer to the question presented here is the same. To explain why, we must return to the concepts of a "qualified individual" and a "reasonable accommodation." Those terms have multiple meanings under the ADA, but we focus only on those that are relevant to our purposes.²²

***3** Under Title I, a qualified individual with a disability is someone who "can perform the essential functions" of the job in question—that is, the "fundamental job duties of the employment position"—with or without reasonable accommodation.²³ A job function may be essential, for example, "because the reason the position exists is to perform that function."²⁴ Factors that help to identify essential functions may include (among others) the employer's judgment on what functions are essential, the employer's written job descriptions, how much time is spent performing the function, consequences of not requiring the function to be performed, work by past employees in the job, and work of current employees in similar jobs.²⁵

A covered employer is responsible for providing a reasonable accommodation to a qualified individual with a disability unless it would cause the employer "undue hardship."²⁶ But no failure to accommodate occurs if an otherwise qualified individual cannot, even *with* a reasonable accommodation, meet the employer's "qualification standards" that are both "job-related and consistent with business necessity."²⁷ The distinction between ""qualification standards" and "essential functions" is that the latter are basic duties while the former are "personal and professional attributes," which may include "skill, experience, education, physical, medical, safety and other requirements."²⁸

Under Title II, a qualified individual with a disability is an individual who "meets the essential eligibility requirements" to "participat[e] in programs or activities provided by a public entity," with or without reasonable modification.²⁹ An accommodation to a qualified individual is not reasonable under Title II if it would fundamentally alter the government program or activity or cause an undue financial or administrative burden.³⁰ An accommodation would fundamentally alter a program if it would compromise the "essential nature" of the program.³¹

For its part, the United States Department of Justice has issued informal guidance that expresses its view on the availability of remote participation by members at city council meetings as a reasonable accommodation under the ADA in appropriate circumstances.³² The guidance states that:

[I]f an elected city council member has a disability that prevents her from attending council meetings in person, delivering papers to her home and allowing her to participate by telephone or videoconferencing would enable her to carry out her duties.³³

*4 Our independent analysis below reaches a similar conclusion with respect to local officials subject to the Brown Act. We first explain our conclusion from 2001.

2001 Opinion

Our 2001 opinion concluded that remote participation in a meeting subject to the Brown Act could not be a reasonable accommodation under either Title I or Title II.³⁴ As to Title I, the opinion determined that the Brown Act's requirement for inperson attendance at meetings at locations open to the public was an essential function of holding office on a local agency board.³⁵ It observed that "[p]ublic attendance facilitates the people's right to participate in all phases of local government decision-making and serves to prevent misuse of the democratic process by secret legislative action at the local government level."³⁶ The opinion also determined that, under the Brown Act, "the ability to attend scheduled meetings that are accessible to the public is both 'job-related and consistent with business necessity," and "related to the requisite qualifications" to hold office at the local level.³⁷ It explained:

[N]othing other than the presence of such person [that is, a member] at a publicly accessible site would serve the state's legitimate interest in public attendance and participation in the decision-making process. While teleconferencing may consist of electronic connection through either audio, video, or both (Gov. Code, § 54953, subd. (b)(4)), no camera focused upon a member in a remote location closed to the public may detect the presence of other influences, including persons, within that location, and thus cannot with similar effectiveness serve the public's interest in "curb[ing] misuse of the democratic process."³⁸

The opinion further determined that even if Title II instead applied, remote participation could not be a reasonable accommodation, for the same reasons set forth in the Title I analysis. It concluded that "the ability to attend a meeting of the board at a location accessible to members of the public, including individuals with disabilities, would constitute an essential eligibility requirement."³⁹ As discussed earlier, Title II does not require that a reasonable accommodation be made for an individual who does not meet an "essential eligibility requirement."⁴⁰ The 2001 opinion resolved the Title II analysis based on that factor alone.⁴¹

Subsequent Amendments to the Brown Act Illustrate That Remote Participation Can Be a Reasonable Accommodation

Subsequent changes to the Brown Act lead us to a different conclusion from the one described in the 2001 opinion. As the 2001 opinion observed, the Brown Act at that time authorized members to participate in meetings by audio or video "teleconferencing" only if, among other requirements, the teleconferencing location was open to the public.⁴² But the Legislature has since amended the Brown Act multiple times to authorize remote participation by members from nonpublic locations in certain circumstances, using two-way, real-time video and audio streaming—technology which was not nearly as developed and widely used in 2001 as it is today.⁴³ The across-the-board prohibition on remote participation by members in nonpublic locations has been removed from the Act.

***5** In 2021, during the COVID-19 pandemic, the Legislature amended the Brown Act to allow remote participation from nonpublic locations by *all* members (regardless of any disability), using two-way, real-time video and audio streaming.⁴⁴ The authorization was predicated on a declared state of emergency and the presence of health- or safety-related circumstances.⁴⁵ In 2022, as those circumstances began to wane, California started planning for COVID-19 to become an endemic disease. The Governor announced that the declared state of emergency—one of the prerequisites for members to meet remotely under the 2021 amendment—would end in February 2023, setting the stage for in-person meetings to resume.⁴⁶

Against this backdrop, the Legislature amended the Act in 2022 to temporarily authorize (until 2024) an *individual* member to occasionally participate from a nonpublic location in certain exceptional circumstances. That authorization was subject to various requirements, including two-way streaming and a requirement that a quorum of members participate from a single physical location open to the public.⁴⁷ In 2023, the Legislature extended that limited authorization until 2026.⁴⁸ Subject to various requirements, the new authorization allows a member to participate in a meeting remotely for a limited number of times, if there is either "just cause" or "emergency circumstances."⁴⁹

The first of those exceptions—the one for "just cause"—explicitly refers to ADA accommodations. Specifically, "just cause" can be established based on a need related to a disability that has not been "otherwise accommodated" under the ADA.⁵⁰ In other words, the exception authorizes a member to participate at meetings remotely because of a need related to a disability, but excludes from its ambit a disability *already* accommodated under the ADA. The most logical explanation for that exclusion is that the Legislature presupposed that a member may already participate remotely for an unlimited number of sessions as an ADA accommodation.⁵¹

Returning to our chronology, in 2023 the Legislature extended indefinitely the authorization for *all* members to meet remotely from nonpublic locations during a declared state of emergency as specified.⁵² We refer to these as "pandemic-like" circumstances.⁵³ In such circumstances, if a majority of members makes certain health- or safety-related findings during a declared state of emergency, all members may participate remotely for an unlimited number of meetings at nonpublic locations.⁵⁴ So even after the limited authorization for individual members to participate remotely for ""just cause" or in "emergency circumstances" expires in 2026, the Act will continue to allow remote participation by all members in "pandemic-like" circumstances.

*6 These recent changes to the Brown Act point to a conclusion that is different from the one we reached in 2001. Perhaps most telling is the new ""just cause" exception, allowing remote participation for a need related to a disability—but not a disability that has been "otherwise accommodated" under the ADA.⁵⁵ While this exclusion is currently set to expire in 2026, it nevertheless reveals a legislative belief upon its enactment that remote participation was already available for a qualifying individual as an accommodation under the ADA.⁵⁶ We therefore conclude that, in light of the recent legislative amendments, in-person attendance is no longer an ""essential job function" nor "an essential eligibility requirement" under Title I or Title II, as the Legislature has determined that remote participation is compatible with membership on a Brown Act body.

Conditions on Remote Participation

Although the Brown Act now allows remote participation in certain circumstances, in-person attendance at physical locations open to the public remains the default under the Act. The Act therefore places multiple conditions on remote participation. One requires virtual access by the member so the public can address members directly by video and audio streaming (which again, was not nearly as developed and used in 2001 as it is today); if such access is disrupted, the body (through its members) cannot take action on any agenda item until the streaming connection is restored.⁵⁷ Another condition requires the member who is participating remotely in a non-public location to disclose the identity of any adults who are present in the room with the member and the nature of their relationship.⁵⁸

We do not purport to prescribe here all of the conditions that could or should be placed on remote meeting attendance as part of a reasonable accommodation. Nor do we attempt to prescribe all of the ways in which technology can be employed to simulate in-person meetings to best promote the Act's purpose of public participation—which will likely evolve over time. But mindful of the Act's strong preference for in-person meetings, we conclude that remote participation as a reasonable accommodation must be done in a manner that simulates in-person attendance, as the Act requires where it allows remote participation for other reasons. This would include the Act's requirements that remote participants (1) use two-way, real-time video and audio streaming and (2) disclose the presence of other adults at the remote location.⁵⁹

Authority from Other Jurisdictions Supports Our Conclusion

Our answer to the question presented generally accords with cases in other jurisdictions that have considered whether remote participation could be a reasonable accommodation despite state open-meeting laws that generally require in-person attendance. We are aware of three such cases, all decided by district courts. In the first two cases, the courts upheld remote participation as a reasonable accommodation. In the third case, the court found a lack of factual support for remote participation as a reasonable accommodation—but did not rule out the possibility of remote participation in other, more appropriate factual circumstances.

*7 In *Silver v. City of Alexandria*, a federal district court in Louisiana granted a 98-year old city council member a preliminary injunction allowing him to participate remotely in city council meetings as a reasonable accommodation under Title II of the ADA because his cardiovascular-related disability and age made him "particularly susceptible" to succumbing to COVID-19.⁶⁰ The court observed that the state's open meetings law for many years contained no exception allowing remote participation, but that a recent amendment allowed such participation (on voting and debating) during public health emergencies such as the pandemic.⁶¹ The court also noted the prevalence of video-streaming technology, which was used for the hearing on the injunction.⁶² While "[i]t is true that virtual participation by an individual council member is not exactly the same as participation by physical presence," the court ultimately determined there would be "no substantial negative impact on the operation of city government by the granting of injunctive relief," and that the accommodation "would not alter the nature" of the meetings.⁶³

Next, in *Palmer v. Michigan*, a federal district court in Michigan granted a preliminary injunction allowing a board member of a multi-county mental health agency to participate in meetings remotely as a Title II ADA reasonable accommodation.⁶⁴ An exception to the Michigan open meetings law had allowed remote participation for medical conditions. But it expired at the end of 2021, after which the health agency denied plaintiff's request to continue to participate remotely.⁶⁵ While the agency mandated social-distancing and mask-wearing protective measures, plaintiff's cerebral palsy made him at high risk of illness if exposed to COVID-19, and his disability interfered with his ability to communicate while wearing a mask.⁶⁶ The court observed that the open meetings law continued to authorize remote participation for a member who was absent for military duty.⁶⁷ The court therefore rejected the agency's claim that any decision taken while plaintiff participated remotely could be rendered void for non-compliance with the law because "military members can already participate remotely."

plaintiff's remote participation would cause little or no harm, and that it "would not impose an undue burden" on the health agency nor "fundamentally alter its programs or services."⁶⁹

The last case is *Chew v. Legislature of Idaho*.⁷⁰ Although the Idaho district court in that case denied a request for a temporary restraining order sought by members with disabilities seeking a Title II accommodation to participate remotely in sessions of the Idaho Legislature, that denial casts no doubt on our conclusion.⁷¹ The case instead illustrates that not every disability is one that necessitates remote participation. In rejecting the request, the court drew upon Ninth Circuit cases prescribing an individualized, case-by-case inquiry to determine the reasonableness of a requested accommodation.⁷² The court found nothing to rule out other types of accommodations such as masks, plexiglass barriers, and choice of seat.⁷³

***8** For the reasons discussed above, we conclude that the ADA requires a local agency's legislative body to allow remote participation from a nonpublic location as a reasonable accommodation for a qualifying individual whose disability precludes their in-person attendance, subject to the requirements of the ADA.⁷⁴ Under the Brown Act, the remote participation must be conducted in a manner that simulates in-person attendance at meetings held in-person and open to the public. To accomplish this, the Act provides conditions on how an individual member may participate remotely—namely, by the member using two-way live video and audio streaming and disclosing the identity of any adults who are present in the room with them at the remote location.

Rob Bonta Attorney General Catherine Bidart Deputy Attorney General

Footnotes

- ¹ This question is implicated in a pending case in the United States District Court for the Northern District of California, *Fischer v. City of Berkeley*, 3:23-cv-04280-TSH. It appears that no decision will be issued soon, if at all, in that case: the district court postponed the deadline for responding to the complaint multiple times in anticipation of possible settlement and referred the case to mediation, which has been completed. As of the date of publication of this opinion, the case docket reflects that the case settled in mediation, and a dismissal or status report is due September 20, 2024.
- PGA Tour, Inc. v. Martin (2001) 532 U.S. 661, 674; see Pub.L. 101-336, § 2 (July 26, 1990), 104 Stat. 327; 42 U.S.C. § 12101.
- ³ Pub.L. 110-325, §§ 1-2 (Sept. 25, 2008), 122 Stat. 3553.
- ⁴ See, e.g., 42 U.S.C. §§ 12112(b)(5) (employment), 12182(b)(2)(A)(ii) (public accommodations); 28 C.F.R. § 35.130(b)(7)(i) (government services); see also *Where Do We Go Berkeley v. Cal. Dept. of Transportation* (9th Cir. 2022) 32 F.4th 852, 860 fn. 4 (stating that "reasonable accommodation" in Title I of ADA and "reasonable modification" in Title II of ADA "create identical standards and may be used interchangeably," quoting *Payan v. L.A. Cmty. Coll. Dist.* (9th Cir. 2021) 11 F.4th 729, 738 fn. 4).
- ⁵ See generally 42 U.S.C. § 12111(9) (referring to job restructuring and modifying facilities, schedules, and equipment, as examples); 29 C.F.R. § 1630.2(o)(2)(ii) (same).

- McGary v. City of Portland (9th Cir. 2004) 386 F.3d 1259, 1270; Crowder v. Kitagawa (9th Cir. 1996) 81 F.3d 1480, 1486; see also Zivkovic v. Southern Cal. Edison Co. (9th Cir. 2002) 302 F.3d 1080, 1089 ("[E]mployer is not obligated to provide" employee's preferred accommodation but "need only provide some reasonable accommodation," quoting *E.E.O.C. v. Yellow Freight Sys. Inc.* (7th Cir. 2001) 253 F.3d 943, 951); see, e.g., *Pruett v. Ariz.* (D. Ariz. 2009) 606 F.Supp.2d 1065, 1068, 1079 (rejecting plaintiff's accommodation claim for chimpanzee as service animal because plaintiff had not shown it "more adequately meets her disability-related needs than several alternatives," and had conceded "even this mild-mannered, affable Chimpanzee could become aggressive" and is likely to grow too big to be a service animal).
- ⁷ Freedom Newsp. Inc. v. Orange Co. Employees Ret. Sys. (1993) 6 Cal.4th 821, 825; Stats. 1953, ch. 1558, § 1 (initial enactment of statutory scheme); Stats. 1961, ch. 115, § 1 (naming statutory scheme "Ralph M. Brown Act").
- ⁸ See, e.g., Gov. Code, § 54953, subd. (a) ("All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter"); *id.*, subd. (b)(3) (requiring teleconferencing locations be accessible to public); see also *id.*, § 54950 (reciting that "agencies in this State exist to aid in the conduct of the people's business" and proclaiming "[i]t is the intent of the law that their actions be taken openly and that their deliberations be conducted openly"). The requirement for agency meetings to be open to public scrutiny is also enshrined in the California Constitution. (Cal. Const., art. I, § 3, subd. (b)(1) ("meetings of public bodies ... shall be open to public scrutiny").)
- ⁹ Shavelson v. Bonta (N.D. Cal. 2022) 608 F.Supp.3d 919, 926 (stating that ADA "'requires preemption of inconsistent state law' when necessary to comply with its command—including the ADA's command that state and local governments provide 'reasonable modification[s]' to their programs in certain circumstances," quoting Mary Jo C. v. New York State & Local Retirement System (2d Cir. 2013) 707 F.3d 144, 163; Crowder v. Kitagawa, supra, 81 F.3d 1480, 1485 ("When a state's policies, practices or procedures discriminate against [people with disabilities] in violation of the ADA, Department of Justice regulations require reasonable modifications in such policies, practices or procedures").
- See Cripe v. City of San Jose (9th Cir. 2001) 261 F.3d 877, 884 ("If a disabled person cannot perform a job's 'essential functions' (even with a reasonable accommodation), then the ADA's employment protections do not apply"); 42 U.S.C. §§ 12111 ("[C]onsideration shall be given to the employer's judgment as to what functions of a job are essential"), 12131-12132 (prohibiting discrimination against individuals who meet public entity's "essential eligibility requirements"); see, e.g., *Peden v. City of Detroit* (2004) 470 Mich. 195, 209 (review of state law governing police officers to identify "essential functions" enabling such officers to perform duties).
- ¹¹ 84 Ops.Cal.Atty.Gen. 181, 185-188 (2001).
- ¹² See *ibid*.
- ¹³ See Stats. 1998, ch. 260, § 1 (providing that "each teleconference location shall be accessible to the public," "at least a quorum of the members of the legislative body shall participate from locations within" the agency's jurisdiction, and that "agenda shall provide an opportunity for members of the public to address the legislative body directly ... at each teleconference location" (Gov. Code, § 54953, subd. (b)(3)), and defining "teleconference" to mean a meeting of members "in different locations, connected by electronic means, through either audio or video, or both" (*id.*, § 54953, subd. (b)(4)).)
- ¹⁴ See, e.g., Stats. 2023, ch. 534, § 1 (Gov. Code, § 54953, subds. (e), (f), (j)(4)); Stats. 2022, ch. 285, § 1 (same); Stats. 2021, ch. 165, § 3 (Gov. Code, § 54953, subd. (e)).

- ¹⁵ 42 U.S.C. § 12102(1)(A); see 29 C.F.R. § 1630.2(i) (defining major life activities to include various tasks, such as working and "operation of a major bodily function").
- ¹⁶ See, e.g., 42 U.S.C. §§ 12111(8) (defining "qualified individual" under Title I), 12131(2) (defining "qualified individual with a disability" under Title II).
- ¹⁷ See Pub.L. 101-336 (July 26, 1990), 104 Stat. 327 (enacting five titles).
- ¹⁸ 42 U.S.C. § 12111(2) ("covered entity" includes "employer"); *id.*, § (5)(A) (defining "employer"D' as one "engaged in an industry affecting commerce" with "15 or more employees" for "20 or more calendar weeks in the current or preceding calendar year," and includes "any agent of such" employer); see *Zimmerman v. Oregon Dept. of Justice* (9th Cir. 1999) 170 F.3d 1169, 1177 ("Congress consciously and expressly chose to include the employment practices of state and local governments in Title I").
- ¹⁹ 42. U.S.C. §§ 12132, 12131(1)(A); see, e.g., *Willits v. City of Los Angeles* (C.D. Cal. 2013) 925 F.Supp.2d 1089, 1093 (stating that City of Los Angeles is covered by Title II).
- ²⁰ Compare Zimmerman v. Oregon Dept. of Justice, supra, 170 F.3d at pp. 1174, 1176, 1178-1179 (Title II applies to public agency "outputs," not "inputs" like employment which is covered by Title I) with Where Do We Go Berkeley v. California Dept. of Transportation, supra, 32 F.4th at p. 861 (Title II "bring[s] within its scope anything a public entity does," and ""whether it is a normal function of a governmental entity," quoting Barden v. City of Sacramento (9th Cir. 2002) 292 F.3d 1073, 1076); see, e.g., Mirka v. Langley, City of (9th Cir. 2001) 16 Fed.Appx. 665, 666 (rejecting city hall volunteer's Title II claim because her services were "input' rather than "output' functions"); Holmes v. City of Aurora (N.D. III., Jan. 18, 1995, No. 93 C 0835) 1995 WL 21606, at *3-4 (stating that city's pension board of mayoral appointees, current city employees, and former city employee would be covered by Title I if board "is considered to be plaintiff's employer or an agent of the City," but "should be considered a 'public entity"D' covered by Title II because of nature and extent of its relationship with city); see also fns. 60-73, post, and corresponding text in the body discussing members' reasonable accommodation claims all brought under Title II.
- ²¹ See, e.g., Letter from David Chiu, City Attorney for the City and County of San Francisco to Deputy Attorney General Catherine Bidart, February 9, 2024, p. 2 (stating that San Francisco has "well over 100 Brown Act bodies"); see also Gov. Code, § 54952 (broadly defining "legislative body").
- ²² See, e.g., 42 U.S.C. §§ 12102(1)(C) (defining "disability" to include individual "regarded" as having qualifying impairment), 12201(h) (no reasonable accommodation is required for such individual).
- ²³ 42 U.S.C. § 12111(8) (defining "qualified individual" with disability); 29 C.F.R. § 1630.2(n)(1) (defining "essential functions" to include "fundamental job duties of the employment position" and to exclude ""marginal functions").
- ²⁴ 29 C.F.R. § 1630.2(n)(2) (listing examples of reasons why function could be essential).
- ²⁵ 29 C.F.R. § 1630.2(n)(3).
- ²⁶ 42 U.S.C. § 12112(b)(5)(A); see 42 U.S.C. § 12111(10) (defining "undue hardship" as "action requiring significant difficulty or expense" in light of certain factors including cost of the accommodation and entity's resources).
- ²⁷ 42 U.S.C. § 12113(a).
- ²⁸ Bates v. United Parcel Service, Inc. (9th Cir. 2007) 511 F.3d 974, 989-990; 29 C.F.R. § 1630.2(n)(1) (essential functions) & *id.* (q) (qualification standards).
- ²⁹ 42 U.S.C. § 12131(2).

³⁰ *Tennessee v. Lane* (2004) 541 U.S. 509, 532; 28 C.F.R. §§ 35.130(b)(7)(i), 35.150(a)(3).

- Alexander v. Choate (1985) 469 U.S. 287, 300. For example, "moving a beach volleyball program into a gymnasium, so a player who uses a wheelchair can participate on a flat surface without sand, would 'fundamentally alter' the nature of the game." (U.S. Dept. of Justice Civil Rights Division, "ADA Update: A Primer for State and Local Governments," originally issued Jun. 1, 2015, and last updated Feb. 28, 2020, available at https://www.ada.gov/resources/title-ii-primer/ (as of July 24, 2024), (hereafter, "US DOJ ADA Primer").)
- ³² See 42 U.S.C. § 12206; see also *id.*, §§ 12134 ("Attorney General shall promulgate regulations in an accessible format that implement this part [[Title II]"); *Fortyune v. City of Lomita* (9th Cir. 2014) 766 F.3d 1098, 1104 (giving manual comprising "DOJ's interpretation of its ADA implementing regulations" controlling weight unless plainly erroneous or inconsistent).
- ³³ US DOJ ADA Primer, *ante* fn. 31.
- ³⁴ 84 Ops.Cal.Atty.Gen., *supra*, pp. 185-188.
- ³⁵ *Id.*, p. 185.
- ³⁶ *Ibid*.
- ³⁷ 84 Ops.Cal.Atty.Gen., *supra*, pp. 185-186.
- ³⁸ *Id.*, p. 186, quoting *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 555.
- ³⁹ *Id.*, p. 188.
- ⁴⁰ See *ante* fn. 29 and corresponding text in the body.
- ⁴¹ 84 Ops.Cal.Atty.Gen., *supra*, p. 188. As discussed above, if the essential eligibility requirements are met, a particular accommodation would still not be owed if the accommodation would fundamentally alter the nature of the government activity at issue or would be an undue burden. (See *ante* fns. 30-31 and corresponding text in the body.)
- ⁴² Gov. Code, § 54953, subd. (b), as amended by Stats. 1998, ch. 260, § 1; see *ante* fn. 13.
- ⁴³ Stats. 2021, ch. 165, § 3, eff. Sept. 16, 2021; Stats. 2022, ch. 285, § 1, eff. Jan. 1, 2023; Stats. 2023, ch. 534, § 1, eff. Jan. 1, 2024.
- ⁴⁴ Stats. 2021, ch. 165, § 3, eff. Sept. 16, 2021 (adding Gov. Code, § 54953, subd. (e) to allow remote meetings with conditions, such as allowing public to directly address members, and prohibiting action on agenda when disruption prevents broadcast or comment). This exception was originally set to expire in 2024 (*id.*, adding Gov. Code, § 54953, subd. (f); later the exception was amended, including an amendment for the exception to last indefinitely (Stats. 2023, ch. 534, § 2, eff. Jan. 1, 2024, operative Jan. 1, 2026).
- ⁴⁵ Stats. 2021, ch. 165, § 3, eff. Sept. 16, 2021 (amending Gov. Code, § 54953, subd. (e) to allow remote meetings during declared state of emergency when social distancing is officially imposed or recommended, or if meeting's purpose is to determine whether in-person meeting would imminently risk attendee health or safety, with periodic related findings).
- 46 See Press Release, "Governor Newsom to End the COVID-19 State of Emergency," Oct. 17, 2022 (announcing COVID-19 declared state of emergency from to end February 28, 2023), available at https://www.gov.ca.gov/2022/10/17/governor-newsom-to-end-the-covid-19-state-of-emergency/, as of July 24, 2024; Press Release, "Governor Newsom Marks End of California's COVID-19 State of Emergency," Feb. 28, 2023, available

at https://www.gov.ca.gov/2023/02/28/governor-newsom-marks-end-of-californias-covid-19-state-of-emergency/, as of July 24, 2024; see also Associated Press, "California Changes Its COVID Strategy and Announces a Plan to Live with the Virus," updated Feb. 18, 2022, available at https://www.npr.org/2022/02/18/1081655623/california-adopts-nations-first-endemic-virus-policy, as of July 24, 2024 (covering announced preparations for endemic stage).

- ⁴⁷ Stats. 2022, ch. 285, § 1, eff. Jan. 1, 2023 (adding Gov. Code, § 54953, subds. (f), (j), (k)).
- ⁴⁸ Stats. 2023, ch. 534, § 1, eff. Jan. 1, 2024 (amending Gov. Code, § 54953, subd. (k)). A bill is pending to amend this legislation; as of the date of this opinion, the bill would provide a more detailed specification for calculating the number of times a member may participate remotely. (Assem. Bill No. 2302 (2023-2024 Reg. Sess.), § 1, as introduced Feb. 12, 2024.)
- ⁴⁹ Gov. Code, § 54953, subd. (f)(2).
- ⁵⁰ "[J]ust cause" includes "[a] need related to a physical or mental disability ... not otherwise accommodated by subdivision (g)," and subdivision (g) refers to the ADA. (Gov. Code, § 54953, subd. (j)(2)(C); see *id.*, subd. (g) (reciting requirement for legislative body to have procedure for swiftly resolving requests for ADA reasonable accommodations).) A disability that has not been "otherwise accommodated" could be, for example, in the midst of an interactive process to identify a reasonable accommodation. (See *Anthony v. Trax Internat. Corp.* (9th Cir. 2020) 955 F.3d 1123, 1134 (recounting employer obligation to engage in interactive process with employees to find reasonable accommodation).)
- ⁵¹ The exception allowing remote participation for "just cause" may also be met by caregiving needs, a contagious illness, or official travel. (Gov. Code, § 54953, subd. (j)(2)(A), (B) & (D).) The other exception for an individual member to participate remotely—in "emergency circumstances"— defines such circumstances as "a physical or family medical emergency that prevents a member from attending in person." (Gov. Code, § 54953, subd. (j)(1).)
- ⁵² Stats. 2023, ch. 534, § 2, eff. Jan. 1, 2024 (amending Government Code section 54953 subdivisions (e) and (j), operative January 1, 2026, to amend and preserve authorization with no sunset date for entire body to meet remotely during declared state of emergency, if legislative body makes related findings, as specified).
- ⁵³ We do not foreclose the possibility that a declared state of emergency unrelated to a pandemic could entail circumstances and related findings that would satisfy the exception allowing all members to participate remotely. (See *ibid*.)
- ⁵⁴ Gov. Code, § 54953, subd. (e); Stats. 2023, ch. 534, § 2 (amending Gov. Code, § 54953, subd. (e), operative Jan. 1, 2026).
- ⁵⁵ See *ante* fn. 50.
- ⁵⁶ Remote participation on an individual case-by-case basis as a reasonable accommodation under the ADA is also consistent as a policy matter with the Brown Act provision allowing all members to participate remotely in pandemic-like circumstances. In such circumstances, the Act makes remote participation available for the safety of everyone. Safety concerns also support allowing an individual member to participate remotely if their particular disability puts them at heightened risk of serious illness or death due to COVID-19 (or other maladies or conditions).
- ⁵⁷ See Gov. Code, §§ 54953, subds. (e)(2)(A) (public access), (e)(2)(B) (disruption), (f)(1)(D) (same), subds. (f)(1)(A) (video and audio) & (f)(2)(C) (same).
- ⁵⁸ Gov. Code, § 54953, subd. (f)(2)(B); cf. 84 Ops.Cal.Atty.Gen., *supra*, p. 186.

- ⁵⁹ Many commenters pointed to advances in technology—and our collective experience with that technology during the pandemic—as a basis for concluding that remote participation is a reasonable accommodation. While we acknowledge that technology has advanced in this area, we stress that our analysis is not driven by those advances. Our analysis instead turns on legal changes to the Brown Act, which reveal that a member may, in appropriate circumstances, attend a meeting remotely from a nonpublic location as a reasonable accommodation under the ADA.
- ⁶⁰ Silver v. City of Alexandria (W.D. La. 2020) 470 F.Supp.3d 616, 618, 620, 625.
- ⁶¹ *Id.*, at pp. 623-624.
- ⁶² *Id.*, at p. 623.
- ⁶³ *Id.*, at pp. 623-624.
- Palmer v. Michigan (W.D. Mich., Mar. 29, 2022, No. 1:22-CV-90) 2022 WL 908966, at **1, 7 (hereafter, Palmer). This case mentions and reaches the same conclusion of opinions by the Attorney General of Michigan. (See *id.* at **2, 4, citing Atty. Gen. Op. 7, Atty. Gen. Op. 15-16, ECF No. 11-1.)
- ⁶⁵ *Palmer*, *supra*, at **1-2.
- ⁶⁶ Ibid.
- ⁶⁷ *Palmer*, *supra*, at *6.
- ⁶⁸ *Ibid*.
- ⁶⁹ Ibid.
- ⁷⁰ Chew v. Legislature of Idaho (D. Idaho 2021) 512 F.Supp.3d 1124 (hereafter, Chew).
- ⁷¹ See *id.*, at pp. 1126-1128; see also *id.*, at p. 1127 (explaining that temporary restraining order, like preliminary injunction, is to preserve status quo, but typically lasts 28 days while preliminary injunction may extend until lawsuit ends).
- ⁷² Id., at p. 1129, citing Wong v. Regents of Univ. of Cal. (9th Cir. 1999) 192 F.3d 807, 818; Crowder v. Kitagawa, supra, 81 F.3d at p. 1486.
- ⁷³ *Chew*, *supra*, at pp. 1130-1131.
- ⁷⁴ We acknowledge that the ADA excuses a covered entity from providing an otherwise required accommodation to an employee where it "can demonstrate that the accommodation would impose an undue hardship" on its operations, defined as "an action requiring significant difficulty or expense" when considered in light of certain factors including cost of the accommodation and the entity's resources. (See 42 U.S.C. §§ 12112(b)(5)(A) & 12111 (defining "undue hardship"); see also 28 C.F.R. § 35.164 (public entity not required to make modification for accessible communication "that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens"). While the accommodation at issue here—remote attendance by a member of a local agency legislative body—does not appear to be the type of accommodation that would typically present such financial or technical burdens, we cannot conclude that this would never be the case. We do not address these hypothetical concerns here. Such concerns, if they were to arise, would be determined based on the particular facts and circumstances, under controlling provisions and interpretations of the ADA.

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2025 Annual Brown Act and Ethics Update Presentation Attachment 6

West's Annotated California Codes Government Code (Refs & Annos) Title 5. Local Agencies (Refs & Annos) Division 2. Cities, Counties, and Other Agencies (Refs & Annos) Part 1. Powers and Duties Common to Cities, Counties, and Other Agencies (Refs & Annos) Chapter 9. Meetings (Refs & Annos)

West's Ann.Cal.Gov.Code § 54952.2

§ 54952.2. Meeting; prohibited communications; social media; exclusions from chapter

Currentness

<Section operative until Jan. 1, 2026. See, also, § 54952.2 operative Jan. 1, 2026.>

(a) As used in this chapter, "meeting" means any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.

(b)(1) A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.

(2) Paragraph (1) shall not be construed as preventing an employee or official of a local agency, from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.

(3)(A) Paragraph (1) shall not be construed as preventing a member of the legislative body from engaging in separate conversations or communications on an internet-based social media platform to answer questions, provide information to the public, or to solicit information from the public regarding a matter that is within the subject matter jurisdiction of the legislative body provided that a majority of the members of the legislative body do not use the internet-based social media platform to discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body. A member of the legislative body shall not respond directly to any communication on an internet-based social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body.

(B) For purposes of this paragraph, all of the following definitions shall apply:

(i) "Discuss among themselves" means communications made, posted, or shared on an internet-based social media platform between members of a legislative body, including comments or use of digital icons that express reactions to communications made by other members of the legislative body.

(ii) "Internet-based social media platform" means an online service that is open and accessible to the public.

(iii) "Open and accessible to the public" means that members of the general public have the ability to access and participate, free of charge, in the social media platform without the approval by the social media platform or a person or entity other than the social media platform, including any forum and chatroom, and cannot be blocked from doing so, except when the internet-based social media platform determines that an individual violated its protocols or rules.

(c) Nothing in this section shall impose the requirements of this chapter upon any of the following:

(1) Individual contacts or conversations between a member of a legislative body and any other person that do not violate subdivision (b).

(2) The attendance of a majority of the members of a legislative body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the local agency. Nothing in this paragraph is intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a legislative body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(4) The attendance of a majority of the members of a legislative body at an open and noticed meeting of another body of the local agency, or at an open and noticed meeting of a legislative body of another local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(5) The attendance of a majority of the members of a legislative body at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(6) The attendance of a majority of the members of a legislative body at an open and noticed meeting of a standing committee of that body, provided that the members of the legislative body who are not members of the standing committee attend only as observers.

(d) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

Credits

(Added by Stats.1993, c. 1137 (S.B.36), § 2, operative April 1, 1994. Amended by Stats.1994, c. 32 (S.B.752), § 3, eff. March 30, 1994, operative April 1, 1994; Stats.1997, c. 253 (S.B.138), § 1; Stats.2008, c. 63 (S.B.1732), § 3; Stats.2020, c. 89 (A.B.992), § 1, eff. Jan. 1, 2021.)

Editors' Notes

REPEAL

<For repeal of this section, see its terms.>

Notes of Decisions (39)

West's Ann. Cal. Gov. Code § 54952.2, CA GOVT § 54952.2 Current with Ch. 1 of 2023-24 2nd Ex.Sess, and all laws through Ch. 1017 of 2024 Reg.Sess.

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2025 Annual Brown Act and Ethics Update Presentation Attachment 7

KeyCite Yellow Flag - Negative Treatment Proposed Legislation

West's Annotated California Codes Government Code (Refs & Annos) Title 1. General Division 4. Public Officers and Employees (Refs & Annos) Chapter 1. General Article 4. Prohibitions Applicable to Specified Officers (Refs & Annos)

West's Ann.Cal.Gov.Code § 1091

§ 1091. Remote interest of officer or member

Currentness

<Section operative Jan. 1, 2026. See, also, § 1091 operative until Jan. 1, 2026 and repealed on that date.>

(a) An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.

(b) As used in this article, "remote interest" means any of the following:

(1) That of an officer or employee of a nonprofit entity exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)), pursuant to Section 501(c)(5) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(5)), or a nonprofit corporation, except as provided in paragraph (8) of subdivision (a) of Section 1091.5.

(2) That of an employee or agent of the contracting party, if the contracting party has 10 or more other employees and if the officer was an employee or agent of that contracting party for at least three years before the officer initially accepting their office and the officer owns less than 3 percent of the shares of stock of the contracting party; and the employee or agent is not an officer or director of the contracting party and did not directly participate in formulating the bid of the contracting party.

For purposes of this paragraph, time of employment with the contracting party by the officer shall be counted in computing the three-year period specified in this paragraph even though the contracting party has been converted from one form of business organization to a different form of business organization within three years of the initial taking of office by the officer. Time of employment in that case shall be counted only if, after the transfer or change in organization, the real or ultimate ownership of the contracting party is the same or substantially similar to that which existed before the transfer or change in organization. For purposes of this paragraph, stockholders, bondholders, partners, or other persons holding an interest in the contracting party are regarded as having the "real or ultimate ownership" of the contracting party.

(3) That of an employee or agent of the contracting party, if all of the following conditions are met:

(A) The agency of which the person is an officer is a local public agency located in a county with a population of less than 4,000,000.

(B) The contract is competitively bid and is not for personal services.

(C) The employee or agent is not in a primary management capacity with the contracting party, is not an officer or director of the contracting party, and holds no ownership interest in the contracting party.

(D) The contracting party has 10 or more other employees.

(E) The employee or agent did not directly participate in formulating the bid of the contracting party.

(F) The contracting party is the lowest responsible bidder.

(4) That of a parent in the earnings of their minor child for personal services.

(5) That of a landlord or tenant of the contracting party.

(6) That of an attorney of the contracting party or that of an owner, officer, employee, or agent of a firm that renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of 10 percent or more in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.

(7) That of a member of a nonprofit corporation formed under the Food and Agricultural Code or a nonprofit corporation formed under the Corporations Code for the sole purpose of engaging in the merchandising of agricultural products or the supplying of water.

(8) That of a supplier of goods or services when those goods or services have been supplied to the contracting party by the officer for at least five years prior to their election or appointment to office.

(9) That of a person subject to the provisions of Section 1090 in any contract or agreement entered into pursuant to the provisions of the California Land Conservation Act of 1965.

(10) Except as provided in subdivision (b) of Section 1091.5, that of a director of, or a person having an ownership interest of, 10 percent or more in a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower or depositor, debtor or creditor.

(11) That of an engineer, geologist, architect, or planner employed by a consulting engineering, architectural, or planning firm. This paragraph applies only to an employee of a consulting firm who does not serve in a primary management capacity, and does not apply to an officer or director of a consulting firm.

(12) That of an elected officer otherwise subject to Section 1090, in any housing assistance payment contract entered into pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f) as amended, provided that the housing assistance payment contract was in existence before Section 1090 became applicable to the officer and will be renewed or extended only as to the existing tenant, or, in a jurisdiction in which the rental vacancy rate is less than 5 percent, as to new tenants in a unit previously under a Section 8 contract. This section applies to any person who became a public official on or after November 1, 1986.

(13) That of a person receiving salary, per diem, or reimbursement for expenses from a government entity.

(14) That of a person owning less than 3 percent of the shares of a contracting party that is a for-profit corporation, provided that the ownership of the shares derived from the person's employment with that corporation.

(15) That of a party to litigation involving the body or board of which the officer is a member in connection with an agreement in which all of the following apply:

(A) The agreement is entered into as part of a settlement of litigation in which the body or board is represented by legal counsel.

(B) After a review of the merits of the agreement and other relevant facts and circumstances, a court of competent jurisdiction finds that the agreement serves the public interest.

(C) The interested member has recused themselves from all participation, direct or indirect, in the making of the agreement on behalf of the body or board.

(16) That of a person who is an officer or employee of an investor-owned utility that is regulated by the Public Utilities Commission with respect to a contract between the investor-owned utility and a state, county, district, judicial district, or city body or board of which the person is a member, if the contract requires the investor-owned utility to provide energy efficiency rebates or other type of program to encourage energy efficiency that benefits the public when all of the following apply:

(A) The contract is funded by utility consumers pursuant to regulations of the Public Utilities Commission.

(B) The contract provides no individual benefit to the person that is not also provided to the public, and the investor-owned utility receives no direct financial profit from the contract.

(C) The person has recused themselves from all participation in making the contract on behalf of the state, county, district, judicial district, or city body or board of which they are a member.

(D) The contract implements a program authorized by the Public Utilities Commission.

(17) That of an owner or partner of a firm serving as an appointed member of an unelected board or commission of the contracting agency if the owner or partner recuses themselves from providing any advice to the contracting agency regarding the contract between the firm and the contracting agency and from all participation in reviewing a project that results from that contract.

(18) That of a public officer if the public officer's child is an officer or director of, or has an ownership interest of 10 percent or more in, a party to a contract entered into by the body or board of which the officer is a member, if this information is actually known to the public officer.

(c) This section is not applicable to any officer interested in a contract who influences or attempts to influence another member of the body or board of which they are a member to enter into the contract.

(d) The willful failure of an officer to disclose the fact of their interest in a contract pursuant to this section is punishable as provided in Section 1097. That violation does not void the contract unless the contracting party had knowledge of the fact of the remote interest of the officer at the time the contract was executed.

(e) This section shall become operative on January 1, 2026.

Credits

(Added by Stats.2024, c. 324 (S.B.1111), § 2, eff. Jan. 1, 2025, operative Jan. 1, 2026.)

Notes of Decisions (44)

West's Ann. Cal. Gov. Code § 1091, CA GOVT § 1091 Current with Ch. 1 of 2023-24 2nd Ex.Sess, and all laws through Ch. 1017 of 2024 Reg.Sess.

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2025 Annual Brown Act and Ethics Update Presentation Attachment 8

KeyCite Yellow Flag - Negative Treatment Proposed Legislation

West's Annotated California Codes Government Code (Refs & Annos) Title 9. Political Reform (Refs & Annos) Chapter 4. Campaign Disclosure (Refs & Annos) Article 3. Prohibitions (Refs & Annos)

West's Ann.Cal.Gov.Code § 84308

§ 84308. Person with pending application for license, permit, or other entitlement for use; contribution limitations; disclosure by all parties

Currentness

(a) The definitions set forth in this subdivision shall govern the interpretation of this section.

(1) "Party" means any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.

(2) "Participant" means any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision, as described in Article 1 (commencing with Section 87100) of Chapter 7. A person actively supports or opposes a particular decision in a proceeding if that person lobbies in person the officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence officers of the agency. A person is not a "participant" under this paragraph if their financial interest in the decision results solely from an increase or decrease in membership dues.

(3) "Agency" means an agency as defined in Section 82003 except that it does not include the courts or any agency in the judicial branch of government, the Legislature, the Board of Equalization, or constitutional officers. However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency.

(4) "Officer" means any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elective office in an agency, other than a city attorney or county counsel providing legal advice to the agency who does not have the authority to make a final decision in the proceeding.

(5)(A) Except as provided in subparagraph (B), "license, permit, or other entitlement for use" means all business, professional, trade, and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts, and all franchises.

(B) "License, permit, or other entitlement for use" does not include any of the following:

(i) Competitively bid contracts that are required by law, agency policy, or agency rule to be awarded pursuant to a competitive process.

(ii) Labor contracts.

(iii) Personal employment contracts.

(iv) Contracts valued under fifty thousand dollars (\$50,000).

(v) Contracts where no party receives financial compensation.

(vi) Contracts between two or more agencies.

(vii) The periodic review or renewal of development agreements unless there is a material modification or amendment proposed to the agreement. Non-material modifications or amendments may be approved by agency staff.

(viii) The periodic review or renewal of competitively bid contracts unless there are material modifications or amendments proposed to the agreement that are valued at more than 10 percent of the value of the contract or fifty thousand dollars (\$50,000), whichever is less. Non-material modifications or amendments may be approved by agency staff.

(ix) Modification of or amendments to contracts that are exempt under this subparagraph, other than competitively bid contracts.

(6) "Contribution" includes contributions to candidates and committees in federal, state, or local elections.

(7) "Pending" in a proceeding involving a license, permit, or other entitlement for use means either of the following:

(A) For an officer, when either of the following occurs:

(i) An item involving the license, permit, or other entitlement for use is placed on the agenda for discussion or decision at a public meeting of the body of which the officer is a member.

(ii) The officer knows a proceeding involving a license, permit, or other entitlement for use is within the jurisdiction of the officer's agency for its decision or other action, and it is reasonably foreseeable that the decision will come before the officer in the officer's decisionmaking capacity.

(B) For a party or party's agent, or a participant or participant's agent, when an application is filed with an agency, or, if the proceeding process does not require an application, when the proceeding is before the agency for its decision or other action.

(b)(1) While a proceeding involving a license, permit, or other entitlement for use is pending, and for 12 months following the date a final decision is rendered in the proceeding, an officer of an agency shall not accept, solicit, or direct a contribution of more than five hundred dollars (\$500) from any party or a party's agent, or from any participant or a participant's agent if the officer knows or has reason to know that the participant has a financial interest, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7. This prohibition applies regardless of whether the officer accepts, solicits, or directs the contribution on the officer's own behalf, or on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

(2) With respect to elected officers, paragraph (1) applies only if the elected officer or the body of which they are a member has the authority to make any decision or recommendation in the proceeding.

(c)(1) Before rendering any decision in a proceeding involving a license, permit, or other entitlement for use, each officer of the agency who received a contribution within the preceding 12 months in an amount of more than five hundred dollars (\$500) from a party or from any participant shall disclose that fact on the record of the proceeding. An officer of an agency shall not make, participate in making, or in any way attempt to use the officer's official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use if the officer has willfully or knowingly received a contribution in an amount of more than five hundred dollars (\$500) within the preceding 12 months from a party or a party's agent, or from any participant or a participant's agent if the officer knows or has reason to know that the participant has a financial interest in the decision, as that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7.

(2) With respect to elected officers, paragraph (1) applies only if the elected officer or the body of which they are a member has the authority to make any decision or recommendation in the proceeding.

(d)(1) If an officer receives a contribution that would otherwise require disqualification under this section, and returns the contribution within 30 days from the time the officer makes any decision, or knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, whichever comes last, the officer shall be permitted to participate in the proceeding.

(2)(A) Subject to subparagraph (B), if an officer accepts, solicits, or directs a contribution of more than five hundred dollars (\$500) during the 12 months after the date the final decision is rendered in violation of subdivision (b), the officer may cure

the violation by returning the contribution, or the portion of the contribution in excess of five hundred dollars (\$500), within 30 days of accepting, soliciting, or directing the contribution, whichever comes latest.

(B) An officer may cure a violation as specified in subparagraph (A) only if the officer did not knowingly and willfully accept, solicit, or direct the prohibited contribution.

(C) An officer's controlled committee, or the officer if no controlled committee exists, shall maintain records of curing any violation pursuant to this paragraph.

(e)(1) A party to a proceeding before an agency involving a license, permit, or other entitlement for use shall disclose on the record of the proceeding any contribution in an amount of more than five hundred dollars (\$500) made within the preceding 12 months before the date that any decision is rendered by the agency by the party or the party's agent.

(2) A party to a proceeding involving a license, permit, or other entitlement for use pending before any agency or a participant in the proceeding shall not make a contribution of more than five hundred dollars (\$500) to any officer of that agency during the proceeding and for 12 months following the date the final decision is rendered by the agency in the proceeding.

(3) An agent to a party or participant shall not make a contribution in any amount to an officer during the time periods described in paragraph (2).

(4) When a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before an agency, the majority shareholder is subject to the disclosure and prohibition requirements specified in this section.

(f) This section shall not be construed to imply that any contribution subject to being reported under this title shall not be so reported.

(g) For the purposes of this section, in determining whether a contribution has exceeded five hundred dollars (\$500), the contributions of an agent shall not be aggregated with contributions from a party or participant.

(h)(1) A person is the "agent" of a party to, or a participant in, a pending proceeding involving a license, permit, or other entitlement for use only if the person represents that party or participant for compensation and appears before or otherwise communicates with an agency for the purpose of influencing the proceeding on behalf of a party or participant.

(2) If an individual acting as an agent is also acting as an employee or member of a law, architectural, engineering, or consulting firm, or a similar entity or corporation, both the entity or corporation and the individual are "agents."

(3) "Agent" includes a lobbyist registered to lobby the agency and who otherwise meets the requirements of paragraph (1).

(4) "Communicate with the agency for the purpose of influencing the proceeding" does not include either of the following:

(A) Preparing drawings or submissions of an architectural, engineering, or similar nature for a client to submit in a proceeding before the agency if both of the following conditions are met:

(i) The work is performed pursuant to the person's profession.

(ii) The person does not make any contact with the agency other than contact with agency staff concerning the process or evaluation of the documents prepared by the person.

(B) Providing technical data or analysis to an agency if the person does not otherwise engage in direct communication for the purpose of influencing the proceeding.

(i)(1) Except as provided in paragraph (2), the provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(2) Subdivision (g) is not severable from paragraph (3) of subdivision (e) if paragraph (3) of subdivision (e) is held invalid in a final decision of a court of competent jurisdiction. If that occurs, subdivision (g) shall become inoperative on the date of that final decision.

Credits

(Added by Stats.1982, c. 1049, p. 3809, § 1. Amended by Stats.1984, c. 1681, § 2, eff. Sept. 30, 1984; Stats.1989, c. 764, § 2; Stats.2021, c. 50 (A.B.378), § 170, eff. Jan. 1, 2022; Stats.2022, c. 848 (S.B.1439), § 1, eff. Jan. 1, 2023; Stats.2024, c. 785 (S.B.1181), § 1, eff. Jan. 1, 2025; Stats.2024, c. 1017 (S.B.1243), § 1.5, eff. Jan. 1, 2025.)

Notes of Decisions (2)

West's Ann. Cal. Gov. Code § 84308, CA GOVT § 84308 Current with Ch. 1 of 2023-24 2nd Ex.Sess, and all laws through Ch. 1017 of 2024 Reg.Sess.

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