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## MEMORANDUM

TO: Public Law Clients  
FROM: Richards, Watson & Gershon  
DATE: March 18, 2020  
SUBJECT: New Executive Order Regarding Public Meetings

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Yesterday evening Governor Newsom issued an executive order which, among other items, revised Brown Act-related provisions in the executive order he issued on March 12<sup>th</sup> in response to the COVID-19 emergency. Previously, in Executive Order N-25-20, the Governor “waived” certain Brown Act requirements for meetings in which members of a public agency legislative body participate via teleconference. Now, in Executive Order N-29-20, the Governor has further relaxed Brown Act requirements for meetings held by teleconference.

Briefly summarized, the key Brown Act-related points of Executive Order N-29-20 for local public agencies are:

1. Express and implied requirements for the physical presence of legislative body members, the clerk, other staff, or the public as a condition of holding a meeting, or for the purpose of constituting a quorum, are waived. This is unchanged from Executive Order N-25-20.
2. Requirements for noticing and posting agendas at each teleconference location, for public participation to be allowed from each teleconference location, and for a quorum of the legislative body to be physically present within the jurisdiction are suspended. This is unchanged from Executive Order N-25-20.
3. In the case of a meeting conducted by teleconference, the agency “need not” provide any physical location from which members of the public may observe and participate in the meeting if the agency allows the public to observe and address the meeting “telephonically or otherwise electronically”. This is a change from Executive Order N-25-20.
  - Note: It is uncertain whether this rule applies only when a meeting is **entirely** held by teleconference (all legislative body members attend by phone or video) or if it

also applies when a meeting is **partially** held by teleconference (some legislative body members attend at a physical location and some attend by phone or video). Like Executive Order N-25-20, Executive Order N-29-20 urges agencies to “make reasonable efforts to adhere as closely as possible” to the Brown Act in order to maximize transparency and provide public access. However, the obvious intent of these orders is to impose “social distancing” and minimize public gatherings for the duration of the emergency. Thus, when a meeting is held even partially by teleconference, we believe the agency is now **not** required to provide a physical location for public participation as long as the conditions described in this memo are met. If the meeting is held entirely in a physical location and not by teleconference, physical access by the public must be allowed. Though this provision of Executive Order N-29-20 could be interpreted differently, we believe this interpretation best balances the “social distancing” intent with protecting public access.

5. If an agency holds a meeting via teleconference and allows members of the public to observe and address the meeting “telephonically or otherwise electronically,” then the agency must implement a procedure for receiving and swiftly resolving requests for reasonable modifications or accommodation from persons with disabilities consistent with ADA requirements. Any doubts must be resolved in favor of accessibility. Further, the agency must advertise that accessibility request procedure each time the agency gives notice of the means by which members of the public will be able to observe and offer public comment on the meeting. This is a change from Executive Order N-25-20.

6. Agenda notice and posting times set forth in the Brown Act remain in effect. This is unchanged from Executive Order N-25-20.

7. Every time the agency gives notice of the time of a meeting and posts an agenda, the agency must also give notice of the means by which members of the public may observe and provide comment at the meeting. If that means of public participation changes, after the meeting has been noticed or the agenda posted, the agency may satisfy this notice requirement by advertising the change using the “most rapid means of communication available at the time.” So if an agency posts an agenda and gives the public a teleconference dial-in number, for example, and if the dial-in number changes after the agenda is posted, the meeting can still go forward as long as the agency publicizes the change as quickly as possible. This would include social media and the agency website, and perhaps via email. This is a change from Executive Order N-25-20.

8. These Brown Act suspensions are in effect only as long as state and local public health officials have imposed or recommended social distancing measures.

9. We recommend that agencies immediately add the following text to public meeting notices and agendas, **in addition to the text we previously advised you to add regarding COVID-19 and teleconferencing:**

“Members of the public may observe and offer comment at this meeting telephonically or otherwise electronically by [***add information regarding teleconference line or other electronic means here***]. If you are an individual with a disability and need a reasonable modification or accommodation pursuant to the Americans with Disabilities Act (“ADA”) please contact [**name and email address or telephone number**] prior to the meeting for assistance.”

9. Based on recent experience with teleconference meetings, we suggest that staff take the following steps to help make electronic meetings more productive and understandable to the public:

- a. Test technology in advance, especially connections to teleconference participants and the connection between the teleconference and meeting video or audio streaming.
- b. Remind participants to not talk over each other, and to wait until each person is finished speaking before starting a new comment.
- c. Suggest that the meeting chair recognize each participant individually for comments and questions. Although this may seem cumbersome for each item on an agenda, it reduces the likelihood that a comment or question will be missed.
- d. Impose and enforce a strict time limit on public comments.
- e. Remember that each item on the agenda requires a roll call vote.

We hope this additional advice is helpful in meeting the challenges posed by this unique situation. Please contact your RWG attorney if you have further questions.