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MEMORANDUM

TO: Public Agency Clients
FROM: Richards, Watson & Gershon
DATE: March 12, 2020
SUBJECT: Public Meetings During the COVID-19 Virus Pandemic

As state, regional, county and local public agencies continue to fight to control the spread of the COVID-19 virus many public gatherings have been cancelled, or attendance restricted. The Centers for Disease Control and other public health experts have advised that “social distancing” is a necessary strategy to stem the spread of the virus. For California local public agencies, however, the concept of “social distancing” or restricting attendance at public meetings can be directly at odds with the requirements of California law. The Brown Act requires that all meetings of a legislative body of a public agency be conducted in an open setting and, with certain limited exceptions, the public must be permitted to attend those meetings of the legislative body¹. This right of public access to the public’s business is protected in the California Constitution², and there is no legal basis for prohibiting public access to public meetings in cases of emergency.

This afternoon, Governor Newsom issued Executive Order N-25-20, to address a number of legal issues relating to the COVID-19 response. The Executive Order can be viewed at <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.12.20-EO-N-25-20-COVID-19.pdf>. Most relevant to public entities, Section 11 of this Executive Order “waives” certain provisions of the Brown Act to authorize public entities to hold public meetings using teleconferencing and other electronic means during the period when state and local public officials impose or recommend measures to promote “social distancing,” including limitations on public events.

Cancelling legislative body meetings will not likely be a practical total solution to this problem. Many emergencies require more oversight and input from a governing body, and the governing body must have meetings to make fundamental decisions. At best, local public agencies can try to mitigate the risks of open public meetings by following the guidance of public

¹ Government Code Section 54953

² Cal. Const. Art. I, Sec. III(b)(1)

health authorities with best practices for gatherings and “social distancing.” Within the confines of the Brown Act and Executive Order N-25-20, we believe local public agencies may employ the following elements as part of a public meeting:

1. Physical changes to meeting locations. Public agencies may set up their meeting rooms to provide for as much physical space between participants as possible within the confines of the room. The California Department of Health recommends that people maintain a physical separation of at least six feet from other persons. The meeting room can be arranged to promote that distance to the extent feasible, as long as the physical layout does not prevent public participation. If possible, consider conducting meetings in more spacious outdoor locations temporarily.

2. Cleaning, Hygiene, and Extra Supplies. Meeting rooms, equipment, and furniture should be thoroughly cleaned before and after meetings with supplies and techniques recommended by the health department. Meeting agendas and posted information can remind participants to wash their hands frequently and practice good sneezing and coughing etiquette. To the extent possible, provide readily available supplies such as hand sanitizer and access to restrooms.

3. Encourage Participants who are Sick to Stay Home. In notices, agendas, social media information, and other communications, encourage people who are not feeling well to stay home and find other ways to participate or become informed. In introductory remarks before the meeting, the chair may repeat this encouragement and suggest ways that people can provide input to the legislative body through the use of technology.

4. Provide Enhanced Technology for Remote Access to Meetings. If your agency does not already provide video and/or audio streaming of meetings, this is the time to start doing it. Many video and audio streaming services are now available at various cost levels. For some agencies, it may be practical to permit organized public comment by telephone or other technology. Letting constituents participate electronically from remote locations is perhaps the best way to maintain public participation during this time of “social distancing” until the emergency fades. Take the time to orally summarize text messages, emails and other communications from the public that can substitute for in-person input.

Staff members also may find that participating in or monitoring meetings electronically may be necessary or more convenient. Indeed, the Governor’s Executive Order encourages agencies to promote electronic participation. In addition, simply making these technological options available will provide visible evidence of the agency’s dedication to transparency and public participation during a time of extraordinary disruption. If your agency already provides remote technological access, consider more publicity regarding those options.

5. Permit Public-Official Participation by Teleconference. As a result of the waivers in Executive Order N-25-20, the Brown Act permits full participation by officials in meetings through video or audio teleconference under the following conditions³:

a. The remote participation location(s) must be connected to the main meeting through telephone, video, or both.

b. There must be at least one location in the jurisdiction from which members of the public have the opportunity to observe and participate, including offering public comment. The locations must be fully accessible pursuant to the provisions of the Americans with Disabilities Act (“ADA”).

c. The notice of meeting and agenda must be timely provided and must specifically list the location of the publicly accessible location.

d. Every vote during the meeting must be by roll call.

e. The meetings must otherwise comply with the Brown Act, which includes allowing participation by the public regarding items on or off the agenda.

f. The agenda or notice of meeting does **not** need to identify the remote locations from which officials are participating.

g. Remote locations at which officials are participating do **not** have to be accessible to members of the public.

h. Public participation does **not** have to be allowed from every remote location.

i. At least a quorum of the legislative body does **not** have to be physically present within the boundaries of the agency’s jurisdiction.

Obviously, conducting a meeting by teleconference requires adequate technology, pre-planning, and additional accommodation for public participation. Members of the legislative body may feel more comfortable participating by remote teleconference, and the Executive

³ Government Code Section 54953(b) and Executive Order N-25-20

Order encourages that. Effective immediately, we recommend that each public agency's meeting notices and agendas contain the following statement, prominently displayed:

"Pursuant to Governor Newsom's Executive Order N-25-20, members of the [NAME OF BODY] or staff may participate in this meeting via a teleconference. In the interest of maintaining appropriate social distancing, members of the public may participate in the meeting electronically, or in person at [ADDRESS]."

We hope that our public agency clients find these recommendations useful. As always, we will continue to update our advice as circumstances warrant. Please contact your RWG lawyer directly for additional guidance.

The Centers for Disease Control and Prevention have provided information for public event organizers that can be found here: <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/mass-gatherings-ready-for-covid-19.html>

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