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We appreciate if all attendees place themselves on mute and complete the poll as we get ready to start the training.

For any technical questions please chat directly with DWK Client Services.

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2023
Brown Act
Survival Training

January 30, 2023

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New Options For Remote Attendance At Board Meetings



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Remote Attendance – Post-Pandemic

- Three options (§ 54953):
  - Traditional teleconference requirements
  - AB 361
  - AB 2449

- Options come with different
  - Prerequisites
  - Requirements



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Traditional Teleconference Requirements

- The teleconference location must be open and accessible to the public.
- The agenda shall identify all locations, including the teleconference location(s).
- The agenda must be posted at all locations, including the teleconference location(s) at the proper time before the meeting.
- The agenda shall provide for public comment at all locations, including the teleconference location.
- A majority of the Board must be within the boundaries of the District, even if participating by teleconference.
- All votes during a teleconference meeting shall be by roll call.
- The agenda should indicate how/if the meeting will proceed if technical problems prevent teleconferencing.



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AB 361 – Remote Meetings

- Option to meet electronically (audio or audio/video) without compliance with traditional teleconference requirements.
- Do not need to:
  - Provide any public meeting location
  - Open or notice locations
  - Have quorum within jurisdiction
- Still need to:
  - Use roll call for votes
- Must allow for remote real-time public comments.

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AB 361 – Prerequisites

Requirements to use the option:

- State of emergency; *AND*
  - Officials have imposed/recommended measures to promote social distancing, *OR*
  - Board has determined that meeting in person would present imminent risks to the health/safety of attendees, *OR*
  - Board is meeting to make this determination.

→ Pandemic state of emergency to be rescinded February 28, 2023

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AB 2449 – New Option

Effective January 1, 2023 – December 31, 2025

- Advantages
  - Remote participation without traditional requirements
  - Not dependent on state of emergency or findings
- Disadvantages
  - Use limited to specific circumstances
  - Creates new requirement for board approval
  - Requires technological capabilities

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AB 2449 – Remote Participation

- Any location without opening/disclosure of location.
- Meeting requirements:
  - Quorum must be in-person at open location in the district.
  - Public access via two-way audiovisual platform or two-way audio service/ webcast.
  - Public comment via the remote platform as well as in-person (real time).
- Member requirements:
  - Participate through both audio and video.
  - Identify any individual over 18 in the room with the member and relationship.

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AB 2449 – When May It Be Used

- Two circumstances:
  1. Just cause
     - Care for a family member, an illness, or a disability, or traveling on government business.
     - Must notify board of the "just cause," by providing a general description, at the earliest opportunity possible.
  2. Emergency circumstance
     - Physical or family medical emergency that prevents a member from attending in-person.
     - Requires approval by board after it is provided with a general description of the circumstances.
- Limits:
  - For "just cause," only two meetings a calendar year.
  - For either reason, no more than:
    - Three consecutive months; or,
    - 20% of regular meetings in a calendar year if a board meets at least 10 times a year; no more than two meetings in a calendar year if the body meets fewer than 10 times a year.

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AB 2449 Checklist

May a board member attend remotely be using AB 2449?

- ❑ Member can participate via audio *and* video
- ❑ Meeting accessible via audio/video with remote public comment
- ❑ Just cause *or* emergency circumstances (with board approval)
- ❑ Under limit:
  - Just cause – two times a year
  - Either reason – three consecutive months; no more than 20% of regular meetings/two times a year if meet less than 10 times

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Options Compared

	Traditional Teleconference Requirements	AB 361	AB 2449
Effective/ Prerequisites	All times No reason needed.	Until February 28, 2023 (absent other emergency in 2023) Findings required/must be renewed.	2023 through 2025 "Just cause" or "emergency," limited use per calendar year.
Remote/ Electronic Participation	Remote participation allowed, not required. Locations must be open/accessible and noticed.	Electronic meetings allowed, not required. Locations need not be open/accessible or noticed.	Remote participation allowed, not required. Only in-person location must be open/accessible.
Locations	Meeting in-person with remote location open/accessible/noticed.	All electronic.	Meeting in-person with remote connection.
Broadcast	Allowed, not required.	Required for electronic meeting.	Two-way audio and video required.
Public Comment	In person, remote allowed but not required.	Required for electronic meetings. Real-time (not in advance) and must hold open during comment period.	Remote comment required for remote participation, real-time.
Additional Requirements	District procedure regarding accessibility.	District procedure regarding accessibility. No action following technical difficulties.	District procedure regarding accessibility. No action following technical difficulties. Remote member(s) participate via audio/video and identify others in room.

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Rules For Handling Meeting Disruptions

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Before…





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Then…









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Now and into the future…?









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Meetings – Public Rights

- Board meetings are considered a limited public forum
  - The public has broad constitutional rights to comment on any subject relating to the business of the governmental body
  - Attempts to restrict the content of such speech must be narrowly tailored to effectuate a compelling state interest
  - Limits ability to limit public criticism



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Disruption, Interruption, Threats

- The Board president shall not permit any disturbance or willful interruption of Board meetings (Bylaw 9323)
- Persistent disruption by an individual or group or any conduct or statements that threaten the safety of any person(s) at the meeting shall be grounds for the president to terminate the privilege of addressing the Board (Bylaw 9323)
- Every person who willfully disturbs or breaks up any assembly or meeting is guilty of a misdemeanor (Penal Code § 403)



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Clearing the Room

"In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session."

(Gov. Code, § 54957.9)



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SB 1100 – Board Meeting Disruption



Adds Section 54957.95 to the Brown Act

(Effective 1/1/23)

Gives authority to the presiding member of the Board or their designee to remove, or cause the removal of, an individual disrupting a meeting

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SB 1100 – Disrupting Defined

- "Disrupting" means engaging in behavior during a Board meeting that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, one of the following:
  - A failure to comply with reasonable and lawful regulations adopted by a Board pursuant to Section 54954.3 or any other law; or
  - Engaging in behavior that constitutes use of force or a true threat of force.
    - "True threat of force" means a threat that has sufficient indicia of intent and seriousness, that a reasonable observer would perceive it to be an actual threat to use force by the person making the threat.

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SB 1100 – Process



- **Step 1 – Must Warn Individual:**
  - Your behavior is disrupting the meeting; and
  - Failure to cease the behavior may result in your removal

- **Step 2 – May Remove Individual:**
  - If individual fails to promptly cease their disruptive behavior

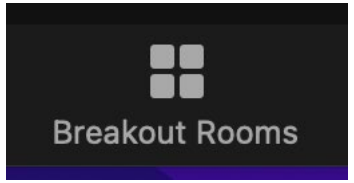
Exception: Prior warning not required for removal if individual's behavior constitutes use of force or a true threat of force

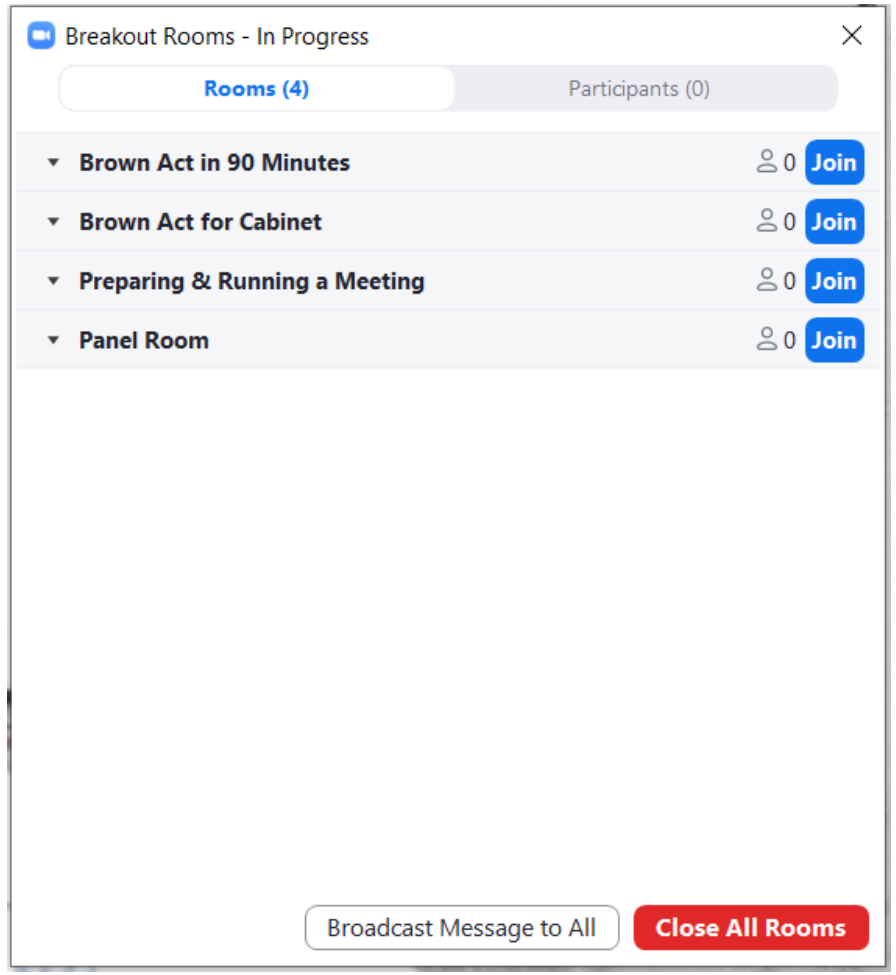
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Selecting Deep Dive Session

1. Brown Act In 90 Minutes
2. Brown Act For Cabinet
3. Preparing For & Running A Meeting





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DWK BETA Brown Bag Webinars

Returning Spring 2023



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