

Transparency, Public Access & Trust: Keeping Local Government Open through Social Distancing Answers to Frequently Asked Questions

Local government continues to provide essential services during times of crisis. While the mode of operations may change, values should remain the same: transparency, ethics, responsiveness and public involvement. ILG hosted a webinar featuring award-winning law firm Best Best & Krieger and Southern California's City of Temecula in early April 2020. The discussion addressed key transparency topics including the Brown Act, Public Records Act and conflicts of interest. Below are some of the common questions asked before, during and after the webinar. Access the [recording of the webinar here](#).

Public Meetings and the Brown Act

What are the technology requirements for virtual public meetings?

The requirements include:

- The public must be able to observe and address the meeting
- Notice must be posted in a timely manner (72 hours for regular meeting, 24 hours for special meeting)
- Notice must clarify how the public can attend and provide comment
- Reasonable accommodations must be provided. (Think through visual and hearing needs, prepare with your technology department, and plan for special cases.)

How can a local government make sure to maintain control of and manage disruptions during public meetings?

- From a technology standpoint, try to pre-plan what disruptions may occur. Agency staff should brainstorm solutions to various scenarios in advance (e.g. What if an elected official or presenter loses sound or their internet connection? What if a public comment is garbled and drops off?)
- Make sure your meeting logistics team has complete control of and full access to your technology (IT team, meeting chair, clerk, etc.).

- Designate the meeting chair as responsible for announcing any disruptions and the solution to maintain the flow of the meeting.
- Keep members of the press and media informed and consistently participating if an agency does need to clear the virtual room.

What is the best way to handle closed sessions with online or teleconference platforms?

- Create a separate conference call line or virtual platform for closed session. Only provide the closed session information to essential participants, including the governing body and key staff.
- Transparency is particularly important now, which means most discussions related to the emergency should take place in an open session. Under limited circumstances there may be a justification for closed session, such as for labor negotiations, risks to facility security or specific threats of litigation.

How should we handle roll call voting?

- Roll call votes are required under the Brown Act for teleconference meetings. Ensure that your agency's roll call voting procedure is clarified and adequately described at the beginning of the meeting. Develop a meeting script to explain the approach and ensure that your meeting chair and all voting members understand the process.
- For consent calendars, one vote is sufficient unless an item is pulled from consent. In that instance, the pulled item would need its own vote.

We usually post agendas at a location that is currently closed to the public. How can we make sure to comply with the posting requirements?

- Document how you are posting your agendas and post them in as many traditional places as possible within required periods. [See Temecula's affidavit of posting as an example](#). Ensure that the agenda is also posted on the agency's website.

Public Comment

What are the best ways to comply with public comment requirements when holding virtual public meetings?

Agenda Language. When noticing your meeting, provide public participation instructions. [See sample agenda provided by the City of Temecula.](#)

- **Clarify how individuals can participate.**
 - Describe the methods for attending, including the type of webinar platform, YouTube channel, etc. and be consistent.
 - Clarify how individuals can submit comments and the specific rules for doing so. Explain how comments will be treated and any criteria for submissions (time limit, word count, etc.).
- **ADA.** Address ADA requirements and maintain a standard statement about special assistance. Provide a direct telephone number where residents can ask specific access questions and receive special assistance. Any telephone numbers must forward to staff to ensure that messages will be received. The agency may ask for 48 hours to resolve special requests but staff may want to be prepared to resolve items on a case-by-case basis with less time.

Tailor Your Solution to Your Community. The Governor's Executive Order requires that agencies give the public the ability to observe and address the meeting telephonically or by other electronic means. Agencies must still allow for public comments, but that can take many different forms. Some agencies may use a dedicated email address, webinar comments, a teleconference line, or a physical location to drop off comments. Make sure to take into consideration who is in your community, and what methods will best serve your community, when deciding on how you are going to receive public comments.

Public Records Requests

Are we still required to comply with the Public Records Act?

Yes, responses are still due within 10 days. Production of all documents within that time might not be reasonable given remote work circumstances. Demonstrate good faith in your response with an explanation of what is available, when the agency will follow-up, etc. Ensure that all email replies and voice messages

to the requestor clearly outline the process and expected timelines.

Conflicts of Interest

How should we handle possible conflicts of interest?

- For conflicts identified during a meeting, the decision-maker should announce the conflict, leave the meeting and rejoin later. A best practice is to leave the meeting by ending the conference line or leaving the webinar and then rejoining once the agenda item discussion is complete. If not feasible, the decision-maker should mute their line and not participate.
- Form 700 Filing: The deadline has been extended until June 1st, but officials are encouraged to file as soon as possible.

Other Tips and Strategies

Platforms. When choosing a platform, consider how much control your agency will have and the features available for the agency as the host, like mute options for addressing audio interruptions, etc.

Script Your meetings. Creating a written script for the meeting chair will help guide the meeting and support the meeting protocols/decorum. It should contain specific instructions on how to provide comment for both the council or governing body and the public. The script should serve as a guide to keep the meeting continuity and flow. Maintain script guidelines during business items and during public comments. Repeat the voting and roll call procedures for each item to help all officials and the public understand what is happening and to ensure effective virtual participation. [See Temecula's script as an example.](#)

Outreach and Customer Service:

- Communicate early and often about meeting and public records access; inform the public via the agency's website, public access television, social media and any other channels so the public understands how to participate.
- For public records requests, consider what can be done through the Uniform Electronic Transactions Act to prepare materials.

Virtual Setting Tips:

- Before logging into the virtual meeting, staff and officials should consider lighting, environment, background, potential noises, etc.
- Be prepared to show a headshot that ranges between head and chest. Consider using a virtual background.
- Inform users, especially those using platforms for the first time, how to use the technology, including how to switch views (e.g. toggling between gallery view or seeing the current speaker).

In-Person Meetings:

- If you are holding any in-person meetings, plan to demonstrate and model physical/social distancing requirements.

For additional information, please see [ILG's COVID-19 webpage](#) or [Best Best & Krieger COVID-19 Legal Updates](#).

Disclaimer: Open meeting practices continue to evolve as the COVID-19 crisis continues and agencies use a wide range of technology to meet their needs. The information provided in this document is for general informational purposes only and is not intended to provide legal advice to any individual or entity. ILG urges you to consult with your own legal advisor before taking any action based on this information.