

To: San Anselmo Town Council  
David Donery, Town Manager  
From: Megan Holt Acevedo, Town Attorney  
Date: May 27, 2020  
Re: Compliance with the Ralph M. Brown Act During the Novel Coronavirus  
(COVID-19) Emergency

## Summary

At the Town Council meeting of May 12, 2020, Mayor Ford Greene requested that I provide the Council with a memo regarding the Town's obligations under the Ralph M. Brown Act ("Brown Act") during the COVID-19 emergency. Governor Gavin Newsom has suspended certain provisions of the Brown Act to allow public entities to conduct business safely during this emergency. In compliance with these State directives, the Town has adapted its public meetings to a virtual platform and has continued to conduct its business in an open and public manner.

### A. Executive Orders Related to the Brown Act

On March 12, 2020, Governor Newsom issued [Executive Order N-25-20](#),<sup>1</sup> which authorized state and local legislative bodies to more easily hold public meetings by way of teleconference. On March 17, 2020, Governor Newsom adopted [Executive Order N-29-20](#),<sup>2</sup> which revised and superseded Executive Order N-25-20. The Order waives several requirements for teleconference meetings, eliminates the requirement for a physical meeting location within the jurisdiction for teleconference meetings, and simplifies notice and accessibility requirements.

Specifically, Executive Order N-29-20 allows local legislative bodies to hold public meetings via teleconference without having to post an agenda at each teleconference location or ensure ADA accessibility or the opportunity for public comment at each location. The Order mandates that members of the public be allowed to observe and address the meeting telephonically or otherwise electronically. To address ADA issues, the Order requires the local agency to:

1. Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities; and
2. Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment. (Order N-29-20 § 3(i)-(ii)).

In addition to these ADA requirements, Executive Order N-29-20 includes provisions for notice. Local legislative bodies must give the same notice and follow the same agenda posting required by the Brown Act. Notice must include not only the time of the meeting, but information about the means by which members of the public may observe the meeting and offer public comment.

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<sup>1</sup> Executive Order N-25-20 is available at <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.12.20-EO-N-25-20-COVID-19.pdf>

<sup>2</sup> Executive Order N-29-20 is available at <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.17.20-N-29-20-EO.pdf>

(Order N-29-20 § 3(i)-(ii)). The Order specifies that the provisions concerning the conduct of public meetings shall apply only during the period in which state and local health officials have imposed or recommended social distancing measures. (Order N-29-20 § 3).

On March 21, 2020, Governor Newsom adopted [Executive Order N-35-20](#),<sup>3</sup> which further loosens Brown Act requirements. The Order permits legislative bodies to receive updates about the COVID-19 emergency outside of public meetings.

[A]ll members of a local legislative body or state body may receive updates (including, but not limited to, simultaneous updates) relevant to the declared emergency (including, but not limited to, updates concerning the impacts of COVID-19, the government response to COVID-19, and other aspects relevant to the declared emergency) from federal, state, and local officials, and may ask questions of those federal, state, and local officials, in order for members of the legislative body to stay apprised of emergency operations and the impact of the emergency on their constituents. (Order N-35-20 § 2).

Members of a legislative body may receive and ask questions about the emergency and emergency response simultaneously or through serial communications. However, the Order prohibits members from taking action on, or discussing amongst themselves, any item of business that is within the subject matter jurisdiction of the legislative body without complying with otherwise-applicable requirements of the Brown Act.

Most recently, on May 7, 2020, Governor Newsom adopted [Executive Order N-63-20](#),<sup>4</sup> which addresses public hearing requirements. The Order provides that any statute or regulation that permits a party or witness to participate in a hearing in person, a member of the public to be physically present at the place where a presiding officer conducts a hearing, or a party to object to a presiding officer conducting all or part of a hearing by telephone, television, or other electronic means, is suspended, provided all of the following requirements are satisfied.

1. Each participant in the hearing has an opportunity to participate in and to hear the entire proceeding while it is taking place and to observe exhibits;
2. A member of the public who is otherwise entitled to observe the hearing may observe the hearing using electronic means; and
3. The presiding officer satisfies all requirements of the ADA and Unruh Civil Rights Act. (Order N-63-20 § 11).

## **B. Town Compliance with State Law**

The Town initially canceled Town Council meetings when it became clear that gathering in groups would not be safe for the public, Council members or staff. When the Town held its first virtual Town Council meeting via Zoom on April 14, 2020, and for subsequent Council meetings, the Town has complied with Executive Order N-29-20. Specifically, the Town provided notice on the agenda of the procedure by which the Town can receive and resolve

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<sup>3</sup> Executive Order N-35-20 is available at <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.21.20-EO-N-35-20-text.pdf>

<sup>4</sup> Executive Order N-63-20 is available at <https://www.gov.ca.gov/wp-content/uploads/2020/05/5.7.20-EO-N-63-20-text.pdf>

requests for reasonable modification or accommodation from individuals with disabilities. Each agenda contains the following statement:

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Town Clerk at 415-258-4660 or email [ckacmar@townofsananselmo.org](mailto:ckacmar@townofsananselmo.org). Notification at least 48 hours prior to the meeting will enable the Town to make reasonable accommodation to help insure accessibility to this meeting.

To date, the Town Clerk has not received any requests for accommodation for participation in a public meeting.

In addition, the Town has continued to provide notice and post agendas pursuant to Brown Act requirements and has included on each agenda information about the means by which members of the public may observe the meeting and offer public comment. For example, at the top of the agenda it states:

Virtual Meeting: <https://us02web.zoom.us/j/81472135665>

Or Telephone: +1 669 900 6833 | Webinar ID: 814 7213 5665

The Town also provides a link on the agenda and detailed information at each Town Council meeting to inform the public about how to comment or ask questions during the meeting.<sup>5</sup>

Executive Order N-35-20 allows all members of the Town Council, outside of a noticed public meeting, to receive updates related to the emergency, as long as the Council members do not discuss or take action on the information. For example, if the Town Manager offers the full Town Council an update on the emergency, Council members may ask questions, as long as the depth of questioning and exchange of information does not involve a discussion among the members. Council questions that seek to clarify the information presented are appropriate, while those that lead to members sharing opinions or discussing the matter are improper.

Finally, the Town Council will adhere to Executive Order N-63-20 when conducting virtual hearings that would generally permit the parties to attend in person. For example, when the Council conducts an appeal hearing, each participant will be given an opportunity to participate in and to hear the entire proceeding while it is taking place and to observe exhibits.

Additionally, members of the public will be able to observe the hearing using electronic means. As always, the Town Council will ensure that the parties receive due process and that any requests for accommodation are addressed. (Order N-63-20 § 11).

## Conclusion

Governor Newsom's Executive Orders suspending certain Brown Act requirements have allowed the Town to safely conduct its business during the COVID-19 emergency, while ensuring transparency and public participation.

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<sup>5</sup> Information on how to participate in each meeting is provided at [https://sananselmo-ca.granicus.com/MetaViewer.php?view\\_id=1&clip\\_id=417&meta\\_id=68406](https://sananselmo-ca.granicus.com/MetaViewer.php?view_id=1&clip_id=417&meta_id=68406)