

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

Emergency-Related Reforms: Common Interest Development Meetings

September 2020

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN NOVEMBER 1, 2020.

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

Existing law provides that a common interest development can only conduct a meeting by teleconference if at least one physical location is held open for participation by the owners of separate interests.

The Commission recommends that this requirement be waived during a declared emergency, provided that certain procedural safeguards are met.

This recommendation was prepared pursuant to Resolution Chapter 46 of the Statutes of 2020.

1 EMERGENCY-RELATED REFORMS:
2 COMMON INTEREST DEVELOPMENT
3 MEETINGS

4 A common interest development (“CID”) is a housing¹ development
5 characterized by (1) separate ownership of dwelling space (or a right of exclusive
6 occupancy) coupled with an undivided interest in common property, (2)
7 covenants, conditions, and restrictions that limit use of both the common area and
8 separate ownership interests, and (3) management of common property and
9 enforcement of restrictions by a community association. CIDs include
10 condominiums, community apartment projects, housing cooperatives, and planned
11 unit developments.²

12 Existing law generally requires that meetings of the board of directors of a
13 CID’s managing association be open to the membership of the association. These
14 requirements are similar in spirit to the open meeting laws that govern state and
15 local government entities.³

16 Existing law allows a CID board to meet by teleconference, but only if there is
17 at least one physical location held open for attendance by members and at least
18 one director attends at that location.⁴

19 A similar requirement exists for state and local agencies.⁵

20 As a result of the COVID-19 pandemic, it became unsafe for groups of people to
21 congregate. “Stay at home” orders were issued, both locally and statewide. The
22 requirement that one location be held open to the public made it impracticable for
23 public bodies to use teleconferencing to conduct open meetings. This was a
24 serious problem, because teleconferencing was the only means of conducting
25 meetings safely during the public health emergency.

26 The same problem exists for CIDs. If association boards are to conduct meetings
27 safely, they may need to use teleconferencing to do so. But existing law makes
28 that impracticable, by requiring that a teleconference meeting be anchored by a
29 physical location that is open to attendance by members, with at least one
30 association official present at that location. Recent experience shows that
31 emergency conditions can persist for many months. It would not be feasible for a
32 CID board to be unable to meet for such a long period of time. This may be

1. Although most CIDs are residential, a CID may also include commercial units. An entirely nonresidential CID is exempt from many of the laws that govern residential CIDs. See Civ. Code § 1373.

2. See Civ. Code § 1351.

3. See Gov’t Code §§ 54950-54963 (Ralph M. Brown Act); 11120-11132 (Bagley-Keene Open Meeting Act).

4. See Civ. Code § 4090(b).

5. See Gov’t Code §§ 54953(b)(3), 11123(b)(1)(C).

1 especially true in a time of emergency. The board may need to make unusually
2 critical and time-sensitive decisions.

3 To address that problem for state and local government meetings, Governor
4 Newsom issued an executive order that waived the requirement that a physical
5 location be held open to the public when conducting a state or local government
6 meeting by teleconference.⁶

7 The Commission recommends a statutory reform to codify the same policy for
8 CIDs. The requirement that a CID board meeting conducted by teleconference
9 have a physical location that is open to members would be waived during a
10 declared emergency.

11 The application of that waiver would not be limited to infectious disease
12 emergencies. There may be other kinds of emergencies, like wildfires, that would
13 make it unsafe or otherwise impracticable for an association to meet in a physical
14 location.

15 In addition, the waiver would only apply if certain procedural safeguards are
16 satisfied:

- 17 • Notice of the meeting must include detailed instructions on how to
18 participate in the teleconference.
- 19 • The notice must include contact information for a person designated to
20 provide technical assistance with the teleconference process, both before
21 and during the meeting.
- 22 • A vote of the directors must be conducted by roll call.
- 23 • Members must be allowed to participate by telephone.

24 **The Commission invites public comment on this tentative recommendation.**

6. See Executive Order N-29-20.

PROPOSED LEGISLATION

1 **Civ. Code § 5450 (added). Emergency teleconference meeting**

2 SECTION 1. Article 11 (commencing with Section 5450) is added to Chapter 6
3 of Part 5 of Division 4 of the Civil Code, to read:

4 Article 11. Emergency Powers and Procedures

5 5450. (a) This section only applies to a common interest development that is in
6 an area affected by one or more of the following conditions:

7 (1) A state of disaster or emergency declared by the federal government.

8 (2) A state of emergency proclaimed by the Governor under Section 8625 of the
9 Government Code.

10 (3) A local emergency proclaimed by a local governing body or official under
11 Section 8630 of the Government Code.

12 (b) Notwithstanding subdivision (b) of Section 4090, any other law, or the
13 association's governing documents, a board meeting or meeting of the members
14 may be conducted entirely by teleconference, without any physical location being
15 held open for the attendance of any director or member, if all of the following
16 conditions are satisfied:

17 (1) The meeting notice provides clear technical instructions on how to
18 participate by teleconference.

19 (2) The meeting notice provides the telephone number and electronic mail
20 address of a person who can provide technical assistance with the teleconference
21 process, both before and during the meeting.

22 (3) Every director and member has the same ability to participate in the meeting
23 that would exist if the meeting were held in person.

24 (4) Any vote of the directors shall be conducted by a roll call vote.

25 (5) Any person who is entitled to participate in the meeting shall be given the
26 option of participating by telephone.

27 **Comment.** Section 5450 is new.

28 Subdivision (a) governs the application of the section. See also 42 U.S.C. §§ 247d (federal
29 public health emergency), 5120-5208 (federal disaster relief).

30 Subdivision (b) authorizes meetings to be conducted entirely by teleconference, if certain
31 conditions are met.

32 Paragraphs (b)(1) and (2) govern the required content of notice of a meeting conducted under
33 this section. The method of delivery of a board meeting notice is governed by Section 4045
34 (general delivery). Under Section 4045(b) any member has the right to receive meeting notice by
35 individual delivery under Section 4040, which can include delivery by electronic mail. That
36 option must be noted in the common interest development's annual policy statement. See Section
37 5310(a)(4).

38 Paragraph (b)(4) is similar to Government Code Section 11123(b)(1)(D).

39 Paragraph (b)(5) provides that a meeting conducted under this section must afford every
40 director and member of the association the same right to participate in the meeting that the person

1 would have had in a face-to-face meeting. This would include the right to witness the opening
2 and counting of paper ballots under Section 5120(a). To comply with that requirement, the
3 meeting would need to provide video that clearly shows the opening of ballot envelopes and the
4 votes cast by the ballots, sufficient to demonstrate the accuracy of the process.