

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Emergency-Related Reforms: Common Interest Development Meetings

November 2020

California Law Revision Commission
c/o UC Davis School of Law
Davis, CA 95616
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November 19, 2020

To: The Honorable Gavin Newsom
Governor of California, and
The Legislature of California

Existing law provides that a common interest development can only conduct a board 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.

Respectfully submitted,
Crystal Miller-O'Brien
Chairperson

EMERGENCY-RELATED REFORMS: COMMON INTEREST DEVELOPMENT MEETINGS

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

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

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

A similar requirement exists for state and local agencies.⁵

As a result of the COVID-19 pandemic, it became unsafe for groups of people to congregate. “Stay at home” orders were issued, both locally and statewide. The requirement that one location be held open to the public made it impracticable for public bodies to

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).

use teleconferencing to conduct open meetings. This was a serious problem, because teleconferencing was the only means of conducting meetings safely during the public health emergency.

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

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

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

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

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

- Notice of the meeting must include detailed instructions on how to participate in the teleconference.

6. See Executive Order N-29-20.

- The notice must include contact information for a person designated to provide technical assistance with the teleconference process, both before and during the meeting.
 - A vote of the directors must be conducted by roll call.
 - Members must be allowed to participate by telephone.
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PROPOSED LEGISLATION

Civ. Code § 4090 (amended). “Board meeting”

SECTION 1. Section 4090 of the Civil Code is amended to read:
4090. “Board meeting” means either-of the following:

(a) A congregation, at the same time and place, of a sufficient number of directors to establish a quorum of the board, to hear, discuss, or deliberate upon any item of business that is within the authority of the board.

(b) A teleconference, where a sufficient number of directors to establish a quorum of the board, in different locations, are connected by electronic means, through audio or video, or both. A teleconference meeting shall be conducted in a manner that protects the rights of members of the association and otherwise complies with the requirements of this act. Except for a meeting that will be held solely in executive session or conducted under Section 5450, the notice of the teleconference meeting shall identify at least one physical location so that members of the association may attend, and at least one director or a person designated by the board shall be present at that location. Participation by directors in a teleconference meeting constitutes presence at that meeting as long as all directors participating are able to hear one another, as well as members of the association speaking on matters before the board.

Comment. Section 4090 is amended to reflect the enactment of Section 5450.

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

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

Article 11. Emergency Powers and Procedures

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

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

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

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

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

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

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

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

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

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

Comment. Section 5450 is new.

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

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

Paragraphs (b)(1) and (2) govern the required delivery and content of notice of a meeting conducted under this section.

Paragraph (b)(3) provides that a meeting conducted under this section must afford every director and member of the association the same right to participate in the meeting that the person would have had in a face-to-face meeting. This would include the right to witness the opening and counting of paper ballots under Section 5120(a). To comply with that

requirement, the meeting would need to provide video that clearly shows the opening of ballot envelopes and the votes cast by the ballots, sufficient to demonstrate the accuracy of the process.

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