



# ***Atascadero City Council***

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## ***Staff Report - City Attorney's Office***

### **Council Norms and Procedures 2009 Consideration of Amendments**

#### **RECOMMENDATIONS:**

Council:

1. Review Council's suggested changes from Strategic Planning Workshop of January 29, 2009, amend if desired, and approve the Council Norms and Procedures 2009; and,
2. Give direction regarding revisions, if any, to the Council Norms with regard to electronic communications by Council Members.

#### **DISCUSSION:**

The City Council reviewed, and made some changes to, the Council Norms and Procedures 2007 at the Strategic Planning Workshop on January 29, 2009. The Council directed staff to bring the document back to a regular Council meeting to allow the Council to review the changes suggested at the Strategic Planning Workshop, make more changes if necessary, and approve the document for 2009. A Draft of Council Norms and Procedures for 2009 is Attachment 5 to this Report.

This Report shall also discuss the subject of communications to and from City Council Members with each other and with members of the public through electronic methods including email and websites. Attachments 1 to 4 to this Report pertain to the subject of electronic communications as referenced in the Report. The legal issues addressed in this Report also apply to Commissioners.

#### **I. Electronic Mail (E-Mail)**

##### **A. Introduction**

The Brown Act applies certain requirements to communications between City of Atascadero ("City") officials, including Councilmembers, Planning Commissioners, and Parks and Recreation Commissioners. This law requires particular communications to be made during open and noticed public meetings. This Memorandum will explain how

the Brown Act applies to serial communications, including email and group communications.

## B. Common Questions

### 1. What is a serial meeting under the Brown Act?

The term “serial meeting” does not appear in the Brown Act. However, the Courts have interpreted the Brown Act to prohibit serial meetings. A “serial meeting” takes place under the Brown Act if, outside of noticed public meeting, there are a series of communications, such as in person meetings, telephone calls, emails, other communication methods, or a combination thereof, in which a quorum of the body ultimately engages in deliberations or reaches a collective concurrence. However, mere information exchanges do not constitute a serial meeting and are permitted.

### 2. How can emails create a serial meeting under the Brown Act?

An exchange of informational emails is allowed under the Brown Act. However, emails that constitute deliberations or result in a collective concurrence of a majority of the legislative body would constitute a serial meeting which is not allowed by the Brown Act. Deliberation as well as action must occur openly in noticed public meeting.

## C. Legislative Meetings

The Brown Act requires that any “meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body.” (Government Code § 54953(a)) For purposes of the Act, “legislative body” includes appointed commissions. (Government Code § 54952(b)) The purpose behind the Brown Act, as originally adopted and as it remains today, is to make sure that actions of public agencies and their deliberations are taken in open and public meetings where all persons are permitted to attend. The courts have construed the Brown Act liberally and in favor of openness.

Under the Act, a “meeting” includes any use of direct communication, personal intermediaries, or technological devices which are employed by a majority of the members of the legislative body to develop a collective concurrence. Government Code § 54952.2(b). Direct communication includes conversations at events and even conversations between Council Members or Commission Members at the supermarket. Personal intermediaries can include any intermediary, from the City Manager to a receptionist to a Commission Member’s spouse. Technological devices include phones, computers (including email, chat rooms, instant messaging, and other types of communication), fax machines, or any other device used to convey information and opinions between Council or Commission Members.

## D. Serial Meetings

A serial meeting can occur in two primary ways: “chain” and “hub-and-spoke” communication. A chain communication occurs when member A contacts member B,

and B contacts member C, and C contacts member D, and so on, until a majority has been involved in deliberations or reaches a collective concurrence. See *Wolfe v. City of Fremont* (2006) 144 Cal.App.4<sup>th</sup> 533. A hub and spoke communication occurs when a person contacts at least a majority of the members of the legislative body which results in deliberations or a collective concurrence on an action to be taken by the legislative body.

#### 1. Chain Communications

Some communications can violate the Brown Act because they are “chain” communications. In these communications, one Member of the Council or Commission would speak or email to a second member to communicate an opinion on a matter. That member would then extend the “chain” by contacting a third member and informing her or him about the opinions already shared until a majority of the body engaged in deliberations or a collective concurrence has been developed.

For example, it is a violation if Commission Member A calls Member B to share background information on a project and to tell B how A will vote, and B then emails C explaining the information and sharing B and A’s planned votes, and C calls D to share the information and the votes of the previous three as well as her own vote. If there are deliberations or a collective concurrence by a majority of the body as a result of these communications, then there has been a violation of the Brown Act.

#### 2. Hub and Spoke Communications

Some communications can violate the Brown Act because they are “hub and spoke” communications. In these communications, an intermediary (the “hub”) speaks or emails with Members (the “spokes”) and communicates what one person said to others on the body. If, through this series of communications, the majority of the body reaches a collective concurrence, then there has been a violation of the Brown Act.

For example, if a person speaks to Council Members A, B, C, D, and E, all separately and during these conversations there is deliberation or a collective concurrence of a majority of the body, then there has been a violation of the Brown Act.

#### E. Emails to Establish a Collective Concurrence

Using email can potentially develop a collective concurrence. Covered officials must be extremely careful when using email, except to pass along general information. For example, officials should refrain in emails from stating or taking a position on matters that may come before the agency. A sender can never predict where or in how many “in” boxes an email may end up.

If Council Member A emails Member B stating how Member A is planning to vote on an agenda item on the next week’s calendar, and Member B does not respond, there is no violation of the Brown Act because there has not been deliberations or a collective concurrence by a majority of the body. However, because the Member A has no control over who Member B emails next -- and what Member B says in that email -- members should not state their opinions in emails because of the risk of involvement of a majority of the body.

It is important to note that a collective concurrence can occur by email even if the participants did not intend to come to a collective concurrence or otherwise violate the Brown Act. In the case of Wolfe v. City of Fremont (2006) 144 Cal.App.4th 533, a city resident appealed dismissal of his suit alleging that private City Council discussions violated the Brown Act. The Court held that individual discussions between Council Members that turn into a serial meeting undertaken to reach a collective concurrence violate the Brown Act. The Wolfe Court states(144 Ca. App. 4<sup>th</sup> 533, 546):

“This is not to imply that serial meetings between a city official and individual members of the city council can never lead to a violation of the Brown Act, but more than mere policy-related informational exchanges are required before such a violation will occur. Under section 54952.2, subdivision (b), the Brown Act is violated by such serial meetings only if (1) the city official acts as a ‘personal intermediary’ for council members during the course of such meetings and (2) the meetings are used by a majority of the legislative body to develop a ‘collective concurrence’ regarding a matter of interest.”

With respect to email use, the technology – email – can act as the intermediary through which the Council develops collective concurrence. The sending of thoughts on a matter through email is most troublesome because the sender loses the ability to control the scope of persons with whom the recipient shares the email. In this way, an email intended for one person may ultimately reveal the opinions of the sender to multiple people – perhaps enough to establish a collective concurrence.

#### F. The Brown Act is Liberally Construed to Accomplish its Purposes

Email can potentially be used to develop a collective concurrence. Covered officials should remember that in construing the language of the act, courts are instructed that “the Brown Act is a remedial statute that must be construed liberally so as to accomplish its purpose.” Wolfe v. City of Fremont (2006) 144 Cal.App.4th 533, 545 (citing Epstein v. Hollywood Entertainment Dist. II Bus. Improvement Dist., 87 Cal.App.4th 862, 869)

As noted above, serial meetings which constitute deliberations or result in a collective concurrence of a majority of a body are not permitted under the Brown Act. And courts must liberally construe the terms “serial meeting,” “deliberation” and “collective concurrence.” The court in Wolfe defines the term deliberations as a “discussion of matters leading to a decision”. This is a broad construction of the term, as opposed to a narrow one in which deliberations would only be considered formal discussions by a decision-making body sitting as a body.

#### G. Attachments

Attachment 1 is a copy of pertinent provisions of the California Government Code Sections cited in this Report.

Attachment 2 is a copy of an excerpt from the paper entitled: Ralph M. Brown Act “California Open Meeting Laws” 2007 City Attorney Spring Conference by Sacramento City Attorney Eileen Monaghan Teichert, pages 6-7. The paper refers (page 6-7) to serial meetings, emails and collective concurrence and also cites an Attorney General Opinion which we have included with this report as Attachment 4.

Attachment 3 is a copy of a paper by City Attorneys Natalie West and Michael Jenkins on email issues and tips for avoiding problems with use of email, November 2003.

Attachment 4 is the Opinion of California Attorney General No. 00-906 issued February 20, 2001 on local public agency use of emails and concludes that a majority of the board members of a local agency may not e-mail each other to develop a collective concurrence without violation the Brown Act even if the emails are posted on the agency's website or printed copies of the e-mails are reported at the next public meeting of the agency.

## **ii. Website and Blogs**

### **A. Introduction**

This section of the Report analyzes the potential legal issues relating to the operation and use of websites including, but not limited to, "blog" websites, by Council Member and Commissioners. This Report also defines and describes personal use of websites and blogs and analyzes the issues that this technology can raise for the Council and Commissions.

### **B. Common Questions**

#### **1. What is a personal website? What is a blog?**

A personal website is operated by an individual, usually on a not-for-profit basis. The individual uses the website to post information, opinion, and other content (e.g., photos) for viewing by internet users. The individual has sole control over the content of the website and the website. A blog can be a personal website or a single "page" on a larger website, usually hosted by a for-profit company, on which an individual can express thoughts, opinions, and report on facts. Blogs are not checked by editors, and the primary user (the "blogger") has sole control over the blog's content (though the for-profit companies may have some rules about use of the blogs). Many blogs allow readers to leave comments on the items posted by the blogger; some blogs are "closed" and do not allow comments. See further discussion in Section C, below.

#### **2. Does the use of a personal website or blog violate the Brown Act?**

Not on its own, no. On its own, the use of a personal website or blog by a Council Member or Commissioner does not involve communications that tend to develop a collective concurrence outside a noticed public meeting and thus would not violate the Brown Act. However, and similar to the use of other technology by Council Members and Commissioners, once opinions on a matter are posted to the internet, the poster loses control of who else views those opinions. Thus, blogging and personal websites create a greater possibility for the development of a collective concurrence outside a public meeting than would exist without use of these technologies. Still, the technologies, in and of themselves, do not violate the Brown Act. See further discussion in Section D, below.

3. Does the use of a personal website or blog create other legal issues for the Commission or Council on which the blog user sits?

Yes. Bloggers and personal website users usually share their opinions on matters. Internet postings by a Commissioner or Council Member prior to a hearing on a matter could be viewed as evidence of bias or predetermination of a matter. Even where opinions are not shared, the mere decision of what information to post on a personal website or blog – i.e., what matters to discuss – could be evidence of a Member's or Commissioner's opinions on a matter. If a website or blog is viewed as an "official" forum for exchanges with the public, then public comments on items will be subject to First Amendment protections, but may also be implicated in Public Records Act requests, in the need for disclosure of ex parte communications, and the need for a formal response to CEQA-related comments. In all these matters, it is the way in which an individual personal website or blog is used, and not the mere act of posting something to the internet, that creates potential legal issues. See further discussion in Section E, below.

### C. Personal Website or Blog

A personal website is a portal on the internet, usually hosted by an individual from his or her home computer, and on which the individual posts information, thoughts, and other content (e.g., photos or movies) relevant or important to the individual. A blog is a website, usually hosted by a company that obtains ad revenue every time a page is viewed.<sup>1</sup> Three major blog-hosting companies are WordPress, Blogspot, and Blogger. The nature of an individual blog (short for "web log") is found in the long version of the name. It is a "log" of an individual's thoughts and other information provided by that individual, which log is available on the "web" (internet).

In both personal websites and blogs, the only limit to the content of the website comes from the individual -- what does the individual want the world to read? In the case of a Council Member or Commissioner, a simple way of looking at the potential content divides that content up into three categories: (1) information about City matters, (2) the official's opinions on such matters, and (3) information not related to City matters. The third set of thoughts would not have any bearing on City business. The first set – information provided without comment or opinion – would be qualitatively different than the second – opinion – as discussed further below.

As for structure of personal websites and blogs, they generally run one of two ways.<sup>2</sup> In one type of site, the poster/blogger posts thoughts or opinions and allows readers to comment on those opinions. In the other type, the poster/blogger posts thoughts or opinions but comments are not allowed. Where comments are allowed, they may be

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<sup>1</sup> Some blogs are hosted by individuals or organizations on computers/servers that they own and maintain themselves. The vast majority of blogs, however, are hosted by these types of for-profit companies.

<sup>2</sup> This is a simplistic analysis, of course. There are myriad ways that blogs may be structured, but for the purpose of reviewing the legal implications of blogs, the key issues are (1) whether opinion or just facts are posted and (2) whether comments are allowed or not.

completely unregulated, regulated by requiring users to sign up for an account,<sup>3</sup> or regulated by the poster/blogger having to moderate and approve any comment before it appears on the website. Different issues may arise out of each type of comment system.

#### D. Use of Personal Websites and Blogs and the Brown Act

As a brief reminder, the Brown Act requires that any “meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body.”<sup>4</sup> For purposes of the Act, “legislative body” includes appointed commissions.<sup>5</sup> The purpose behind the Brown Act, as originally adopted and as it remains today, is to make sure that actions of public agencies – including their deliberations - are taken in open and public meetings where all persons are permitted to attend. Under the Act, a “meeting” includes any use of direct communication, personal intermediaries, or technological devices which are employed by a majority of the members of the legislative body to develop a collective concurrence.<sup>6</sup>

As noted in the discussion earlier in this Report regarding email, there is a risk that the use of email can lead to seriatim meetings and collective concurrences to occur. Since the use of email can potentially develop a collective concurrence, covered officials must be extremely careful when using email, except to pass along general information. For example, officials should refrain in emails from stating or taking a position on matters that may come before the agency. A sender can never predict where or in how many “in” boxes an email may end up. The same is true for personal websites and blogs -- the poster can never know who will read his thoughts and opinions or who may act on them. The following is an example of emails causing a problem can that has been adapted to apply to use of these new technologies:

Council Member A posts on her personal website or blog about an item coming before the City Council on the next week’s calendar, and the tone of the posted comments indicates that Member A is likely opposed to the item. Council Members B and C do not respond to Member A, but Member B emails Member A’s posted thoughts to Member C. Members B and C then realize that they most likely have a three-person concurrence against the item. While Member A was unaware that his thoughts were part of the deliberations by Members B and C, his blog may have created the basis for a collective concurrence by a majority of the body.

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<sup>3</sup> This is more common with blogs, where the for-profit companies allow this feature. It would be unwieldy for an individual running a private website.

<sup>4</sup> Government Code § 54953(a).

<sup>5</sup> Government Code § 54952(b).

<sup>6</sup> Section 54952.2(b); see also Op.Cal.Atty.Gen. No. 00-906 (2001). See Attachment 4.

It is important to remember that a collective concurrence can occur by use of these technologies even if the initial poster never intended to come to a collective concurrence or otherwise violate the Brown Act.

With respect to a personal website or blog, if the official posted thoughts or opinions on an issue, or in the case of a blog that allows commentary by readers, if one or more other members of the body weighed in on an issue posted by the blogger, a collective concurrence could be reached on the website. In addition and as hypothesized above, even the posting of "pure facts" can be done in a way that could lead to a reasonable conclusion as to the poster's stance on an issue. Given that the poster cannot control who sees the contents of the website or blog, the chance for a Brown Act violation based on internet content is very real.

#### E. Websites, Blogging and Other Legal

The subject of personal websites, blogs, and how they may affect City functioning faces all public agencies. At the City Attorneys Conference of the League of California Cities in 2008 , a panel discussion was held at which city attorneys from across the state raised potential issues and problems arising out of the use of blogs by officials, by municipal staffs, and "official" blogs on which cities might post information to supplement their posted agenda packets. While there are as yet no California decisions or specific laws or regulations giving guidance as to the intersection of posting content on the internet and a public official's duties to his constituents, the following issues should be considered:

##### 1. Due Process/Appearance of Bias

Statements by a public official posted on a website may be used by a person opposed to the position taken by the public official as evidence of bias or prejudice on the part of a public official. With respect to a personal website or blog, even if all that is posted by the official are facts of applications coming before the body and results of the body's decisions, it is conceivable that disaffected individuals could claim that the manner in which news is posted shows a bias.

For example, even if the public official posts on a website only factual information, an individual may claim that the public official is only posting facts favorable, or unfavorable, to project which is evidence that the official is biased and has prejudged the project before the project comes to the Council for a decision as an agenda item.

##### 2. Brown Act/Public Comment

While the major Brown Act issue with personal websites and blogs is collective concurrence, if a site is open to public comment, the nature of the site becomes one where commentators are giving thoughts directly to the official. The official might take those comments into account when making decisions on items before the Council or Commission on which the official sits. However, the comments are not being made in

the scheduled public meeting, sometimes anonymously, so the weight to be given the comments by the body cannot be accurately judged. This could create Brown Act issues, disclosure of ex parte communications issues, and prejudgment issues. There might also be CEQA issues because if the blog or website features an item that has a draft EIR pending, the comments on the item might be deemed to be comments to which the City has to formally respond before certifying the final EIR.

### 3. Public Records Act

There is an open question as to whether public statements on a website would rise to the level of documentation that the City must make available in response to a request for public records. Also, if an official relies on any public comments written on a blog to formulate a vote on an item, those comments could themselves be deemed to be public records subject to disclosure in a response to a Public Records Act request. This is not an issue is clearly answered by the statutes or court cases, but it is one that has the attention of other cities that are looking at blogs and personal websites.

### 4. First Amendment

If the official uses a personal website or blog as a way to disseminate information but also to receive public comment, then there is a potential for the site to be an "open forum" for City business such that the First Amendment could apply to comments made there and the official could be limited in his ability to restrict or censor offensive comments. This goes to the allowing or not allowing of comments at all. Were the official to disallow comments such that nobody could respond to posted information, then no issue would arise. The blog or websites would simply be an "information only" one with no forum created. However, if the official allows any comments at all, caution needs to be taken not to infringe on the First Amendment rights of commentators.

### 5. Confidential Information

There is the possibility that the official could inadvertently release drafts or confidential information. While this possibility exists any time a Commissioner or Council Member receives drafts and confidential information, the potential for a website or blog to disseminate information quickly and to a widespread audience of unknown recipients makes the potential for harm arising out of such dissemination greater for a blogger than for one who is not active on the internet. An official will need to be very careful that any information put on a personal website or blog is information that is intended to be public at the time it is shared. Once information gets onto the internet, it is difficult to erase it forever.<sup>7</sup>

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<sup>7</sup> There are caching websites that take "snapshots" of other websites and then archive the information available on those sites on a day-by-day basis. Much of the information is available to the public at no charge; some more sophisticated caching websites charge premiums for information that the original site has tried to have removed from the public sphere.

## CONCLUSION.

Setting up a personal website or blog to be a one-way sharing of information with no comments from readers avoid some of the issues, but not all of the potential problems arising out of a blog or site. Eliminating comments would mean that there could not be active development of concurrence on the site. Thus, the site itself would not create the same Brown Act, Public Records Act, or First Amendment issues as if comments were allowed.

However, even with comments disabled, there could be Due Process/bias issues, the same collective concurrence issues that arise out of use of email, and the potential for Public Records Act, First Amendment, and breach of confidentiality issues. Should any Council Member or Commission decide to engage in blogging or operating a personal website, caution should be taken and the blog or website should be limited to the posting of factual information in an information-only setting where no comments are allowed. While this will not resolve all possible issues, it will at least decrease the risk of a legal problem.

## **FISCAL IMPACT:**

No Fiscal Impact.

## **ALTERNATIVES:**

1. Take no action.

## **ATTACHMENTS:**

1. California Government Code Sections 54952; 54952.2 and 54953
2. Paper on Ralph M. Brown Act "California Open Meeting Laws" 2007 City Attorney Spring Conference by Sacramento City Attorney Eileen Monaghan Teichert, pages 6-7.
3. Paper by City Attorneys Natalie West and Michael Jenkins on email issues and tips for avoiding problems with use of email, November 2003
4. Opinion of California Attorney General No. 00-906 issued February 20, 2001 on local public agency use of emails
5. Draft Council Norms and Procedures 2009

ATTACHMENT 1

Government Code Section 54952

As used in this chapter, "legislative body" means:

(a) The governing body of a local agency or any other local body created by state or federal statute.

(b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

(c) (1) A board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that either:

(A) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation, limited liability company, or other entity.

(B) Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency.

(2) Notwithstanding subparagraph (B) of paragraph (1), no board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that receives funds from a local agency and, as of February 9, 1996, has a member of the legislative body of the local agency as a full voting member of the governing body of that private corporation, limited liability company, or other entity shall be relieved from the public meeting requirements of this chapter by virtue of a change in status of the full voting member to a nonvoting member.

(d) The lessee of any hospital the whole or part of which is first leased pursuant to subdivision (p) of Section 32121 of the Health and Safety Code after January 1, 1994, where the lessee exercises any material authority of a legislative body of a local agency delegated to it by that legislative body whether the lessee is organized and operated by the local agency or by a delegated authority.

Government Code Section 54952.2

(a) As used in this chapter, "meeting" includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.

(b) Except as authorized pursuant to Section 54953, any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body is prohibited.

(c) Nothing in this section shall impose the requirements of this chapter upon any of the following:

(1) Individual contacts or conversations between a member of a legislative body and any other person.

(2) The attendance of a majority of the members of a legislative body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the local agency. Nothing in this paragraph is intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a legislative body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(4) The attendance of a majority of the members of a legislative body at an open and noticed meeting of another body of the local agency, or at an open and noticed meeting of a legislative body of another local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(5) The attendance of a majority of the members of a legislative body at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(6) The attendance of a majority of the members of a legislative body at an open and noticed meeting of a standing committee of that body, provided that the members of the legislative body who are not members of the standing committee attend only as observers.

Government Code Section 54953

(a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) No legislative body shall take action by secret ballot, whether preliminary or final.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), when a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and that number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(4) This subdivision shall remain in effect only until January 1, 2009.