



July 7, 2020

Sent via email

RE: Concerns Regarding Public Participation in Government Public Meetings During COVID-19 and Recommendations to Promote Equitable Participation

Dear Governor Newsom:

Public participation is a crucial part of our democratic process, including the ability for all residents to engage in public board, commission, and legislative meetings and to provide public comment. All residents must have the opportunity to have their voices heard in local, regional and state decision-making processes, in an inclusive and transparent manner. Unfortunately, however, several local jurisdictions have failed to provide the necessary accommodations for remote participation to allow all residents---regardless of language, ability, health status, broadband access, or geography--to participate in and influence decisions that impact their lives. In order to ensure equitable and meaningful public participation, **we urge you to issue an Executive Order that clearly requires local, regional and state bodies to provide effective, inclusive remote participation options both during and after the COVID-19 pandemic.**

[Executive Order N-25-20](#) (March 12, 2020) granted local legislative and state bodies the authorization to hold virtual public meetings that are accessible “to all members of the public seeking to attend and to address the local legislative or state body.” The Order stated that legislative bodies should “adhere as closely as reasonably possible to the provisions of the Bagley-Keene Act and the Brown Act...in order to maximize transparency and provide the public access to their meetings.” Given the insufficient response of many local jurisdictions as coronavirus cases rise and the state continues to take necessary precautions, it is time to build on and strengthen this Executive Order.

Local Jurisdictions are Failing to Provide Inclusive, Remote Options as Residents Face Barriers to Participation

Leadership Counsel for Justice & Accountability works alongside communities in the San Joaquin and Eastern Coachella Valleys, and partners with many community leaders who have struggled to be involved in local decision making. We describe below several of the barriers that residents have experienced in their efforts to engage with their local governments (please also [see here](#) for a list of barriers to participation that we have seen in the regions in which we work).

Please note that while we focus on local governments in the following examples, we have concerns that some state agencies and the Legislature have not adopted or effected best practices for remote participation. The Legislature, for example, *should not* consider eliminating remote public comment at this time, *particularly as COVID-19 cases are rising dramatically in California.*

It has been - and is growing increasingly so - impossible to provide comments during public meetings in a manner that can inform deliberation. Over the past several months, several jurisdictions in the regions gave the option to make public comments by phone and/or email prior to their board meetings. However, we found that some legislative bodies--i.e. the Coachella Valley Water District, Fresno County Board of Supervisors, Merced County Board of Supervisors & City Council, and Bakersfield City Council--accepted email or phone public comments prior to the board meetings, but did not read or otherwise appropriately acknowledge those comments during their meetings. Residents who remotely joined to see their comments inform meeting discussions and decisions were unfortunately met with disappointment when boards would simply state “there are x number of public comments in the record,” and provide no further discussion of the public’s concerns.

Several local legislative bodies failed to make teleconferencing an option for their board meetings. This is of particular concern for households and areas without broadband access. We came across this problem on multiple occasions, such as in Fresno County and the Coachella Valley Water District, where the Boards insisted that telecasting was the same as teleconferencing, failing to provide a phone line. In Madera County, a remote line was only offered if you requested it the day before. Despite the efforts of many of our advocates to clarify that each option requires different technical capacities that not every resident can access, and to urge boards to offer a reasonable call-in option, the local jurisdictions ignored our comments.

Lack of translation services for public meetings and comments is a rampant problem that is hindering residents’ ability to engage at public meetings and hearings during the pandemic. Some jurisdictions, like the Riverside County Board of Supervisors, have used board members or other non-trained staff members, to interpret public comments for their meetings. This approach is not sustainable and not the role of the board members or other non-trained staff. Kern, Fresno, Madera, Merced and Riverside Counties have only provided written materials, including agendas and instructions to call in and email public comments, in English. What’s worse, several of these counties give no instruction on whom to contact for translation/interpretation services and/or require residents to unreasonably request translation so far in advance that, in some cases, the agenda has not yet been finalized.

These obstacles in place during the height of the COVID-19 shelter in place restrictions represent a much more positive picture than we are already experiencing and anticipate as local agencies have suspended remote participation options as part of aggressive reopening processes. While some people may feel comfortable resuming in-person meetings, the counties we work in have some of the highest numbers of COVID-19 cases that are disproportionately impacting Latinx and Black communities. **Removing remote participation and moving to only in-person meetings is an irresponsible choice and that unnecessarily puts vulnerable communities at higher risk of exposure and sends the message that immunocompromised, older, and other vulnerable constituents are not welcome to contribute to public meetings.** Additionally, beyond the fact that public health is at risk, remote participation has also finally allowed residents who otherwise would not have been able to participate to engage in the decision-making process. This is an unanticipated, yet crucial change the state should further encourage, if we truly want an inclusive “California for All.” The state should therefore strengthen its capacity and direction to ensure remote options remain both during and after the pandemic.

As noted above, broadband has always been and continues to be a barrier for many rural communities, especially those that are disadvantaged and lower income Californians. In some areas of both the Eastern Coachella Valley and the San Joaquin Valley, there is no reliable access to an adequate cell signal is not always available. The COVID-19 pandemic has only further exacerbated the urgent need for universal broadband access so that our communities can participate in public meetings, as well as telehealth, tele-education, and other virtual initiatives that have become increasingly important.

Despite our best efforts, we were not able to convince most of the local jurisdictions we work in to address many of the above outlined concerns that only continue to deepen and multiply. For this reason, a statewide Executive Order is crucial to make sure that residents across the state--regardless of language, ability, travel capacity, health status, or any other reason--are able to participate in all local and state decision making processes. California is stronger with more voices at the table.

Recommendations to Ensure Equitable Remote Participation through an Executive Order

We urge you to issue and implement a statewide Executive Order that includes the following activities and practices for equitable remote public participation, and that remains in effect both during and after the pandemic. These recommendations are adapted from our [March recommendations](#) that we developed and circulated at the beginning of the shelter-in-place order--[based on our local experiences](#) since then-- and they apply to **both local and state government**. These options should be available not only during a pandemic, so that those who are not physically able to attend meetings are no longer excluded.

- **Notify the public** of all hearing/meeting times, topics, and detailed information regarding participation. Notices should be easy to consistently find on the primary, relevant state or local jurisdiction websites, and the final, accurate agenda must be disseminated *at least* 72 hours in advance. Notices must clearly show how public comments will be received. All preparatory materials and documents should be made available at the time meeting notices are posted as well. All documents --- notices, agendas, and preparatory materials and other documents -- must be translated into Spanish or other relevant languages.
- **Provide multiple options for teleconferencing**, with *two-way* communication options that allows either computer-users or phone-users to engage.
 - Each teleconferencing medium will offer benefits and limitations, ranging from professional options such as Zoom, GoToMeeting, and WebEx, as well as wide-reaching mediums for video streaming like YouTube and Facebook Live. For live-streamed meetings, the public should always be allowed to comment in real time, through a combination of phone, video, chat boxes, and/or email. (And jurisdictions should be sufficiently proficient in these technologies in order to allow for these real time comments -- i.e. un-muting people when they raise their hands, etc.).

- Allow the public to leave voice message comments, which can be limited to 3 minutes, and played during the comment period and ensure that these messages can be received in multiple languages and interpreted as needed.
- To ensure participation of members of the public that may not have access to the internet or a computer, or who are unable to use video applications, **consistently provide an adequate telephone option**—available in multiple languages—and ensure that comments can be made via phone during the meeting and during discussion of the relevant agenda item.
- **Give ample time and options for the public to submit comments prior to the meeting’s start time**, such as via email or a dedicated phone number. Written or voice message comments should be allowed up until the start of the meeting. Public agencies must not limit comment opportunities to email only and should not arbitrarily word limits on email comments. Limiting comments only to email both excludes members of the public without email / and or internet or data access and often results in comments that remain unheard and ignored. Email or phone comments must be read aloud on the record by staff during the live meeting, for transparency and consideration by the full board/commission. Additionally, all written comments submitted must be publicly available online, and must be included as part of the record.
- **Ensure that there is time for public comment during *each* meeting/hearing agenda item**, and allow sufficient time for live comments to be submitted either electronically or via telephone during deliberation of the item.
- **Ensure sufficient interpretation.** Use separate teleconference lines or audio channels to meet language access needs. Zoom, for example, has simultaneous interpretation capabilities. Certified interpreters should be available--for Spanish and/or other languages that are needed--for residents to understand and participate fully in the entire meeting.
- **Work with community-based equity, social justice and environmental justice organizations to determine when it may or may not be appropriate to delay a hearing or meeting.**
 - Decisions that impact disadvantaged communities must be made with their guidance and input, and agencies should ensure that community residents are able to give meaningful input into the process. Agencies should generally not delay certain decisions and activities that are critical or time-sensitive to creating equity, extending basic resources, protecting public health, and providing healthy, sustainable community infrastructure to DACs (i.e. clean water and air), unless the meeting needs to be postponed in order to meaningfully incorporate DAC resident feedback. The bottom line is that local and state bodies should consult with community-based organizations and should keep equity, justice, transparency and accountability at top of mind when determining action on postponing or cancelling meetings and action items.

- As in-person options for participation return, state and local legislative bodies must **work with community-based organizations and local residents to create solutions to barriers to physical attendance**. For example, even before COVID-19, many rural residents had to drive extremely long distances just to make a 1-3 minute comment. In the long-term, such issues with future in-person meetings may be addressed by solutions such as remote satellite meeting locations, in addition to other community-identified solutions and the remote options described above, including continued phone-in options.

All jurisdictions and agencies should be doing everything in their power to be inclusive and transparent as they strive for equitable public participation, particularly during this time when the COVID-19 pandemic, associated economic recession, and multiple, ongoing racial injustice together make it especially critical to prioritize just, equitable government actions. The need for an Executive Order, to strengthen the entire state's capacity to do so, is clear.

For any questions, please contact Julia Jordan by email or phone (jjordan@leadershipcounsel.org or 651-245-7703).

Sincerely,

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