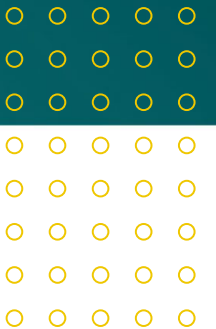


SB 707

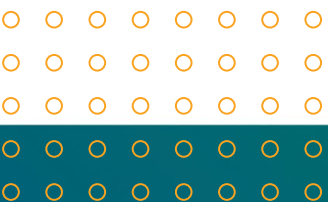
Presenter: Holland Stewart, General Counsel



Agenda

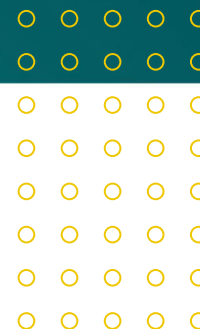


- Overview of SB 707
- Applicability to SGPWA
 - Teleconferencing Updates
 - Social Media
 - Miscellaneous Updates
 - Disruption Policy
- Updates for Eligible Legislative Bodies



Overview of SB 707

Important Changes to the Brown Act in 2026



Senate Bill (SB) 707



- Effective: January 1, 2026; some portions become effective July 1, 2026
- Modernizes the Brown Act (Gov. Code § 54950 *et seq.*) to reflect technology changes and promote greater public access
 - Most significant changes apply to “eligible” legislative bodies, although some changes apply to all legislative bodies of local agencies
 - Teleconferencing, social media, disruptions, etc.

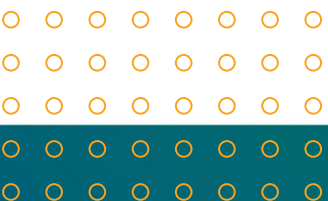
Two Types of Legislative Bodies

“ELIGIBLE” LEGISLATIVE BODIES

- Most senior body (e.g., council, board) of a...
 - City w/ population over 30k
 - County w/ population over 30k
 - City in a County w/ population over 600k
 - Special district with a website and
 - covering all of a county over 600k, and 200+ employees
 - 1k+ employees
 - \$400 million annual revenue and 200+ employees

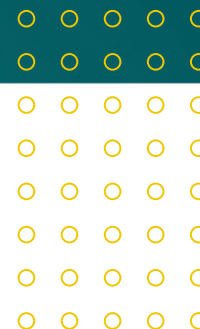
ALL LEGISLATIVE BODIES

- Any other body not fitting the “eligible” description, including...
 - Boards of *most* special districts
 - Standing lower decision-making bodies (e.g., Planning Commission, Historic Commission, committees); and
 - Advisory bodies, etc.
- Most significant changes under SB 707 **will not** apply to these bodies
- SGPWA is **not** an eligible legislative body



Updates to Teleconferencing Rules

Effective January 1, 2026, for all Legislative Bodies



Classic Teleconferencing Rules

- “Classic” teleconferencing rules ((Gov. Code § 54953(b))) remain the same
 - Under “classic” rules, legislative body members can teleconference as long as:
 - Agenda is posted at all meeting locations—including all teleconference locations
 - Agenda identifies the teleconference locations
 - Public can attend and provide public comment from all meeting locations—including all teleconference locations
 - At least a quorum of the body participates within the body’s jurisdiction
 - All votes are taken by roll call

New Alternative Teleconferencing – General Rules



- Public participation access is required via two-way video platform **or** two-way phone + live webcast (Zoom/Teams most common)
- Agenda must include participation and public comment instructions
- Remote members generally must participate by audio and video
- Remote members must disclose any adult (18+) present and their general relationship before action is taken
- SB 707 alternative teleconferencing options include:
 - Disability-related reasonable accommodation
 - Proclaimed state or local emergency
 - Just cause

Alternative Teleconferencing – General Rules (cont'd)

- Real-time public comment required (no advance request required)
- Allow reasonable time for public participation
- No further action if technical issues prevent public access or comment
- Minutes must identify remote attendees and the teleconferencing exception used – **NEW**



Alternative Teleconferencing – Disability Accommodation



- Teleconferencing as a reasonable accommodation for a member's disability
 - Remote participation may be provided as a reasonable accommodation for a member with a disability, consistent with applicable disability law (e.g., ADA, FEHA)
 - Remote participation is treated as in-person attendance for quorum/location requirements
 - Member uses audio and video; audio-only allowed if disability prevents appearing on camera (disability-related accommodation)
 - Member must disclose any adults (18+) present in the room and general relationship before action is taken

Alternative Teleconferencing Options

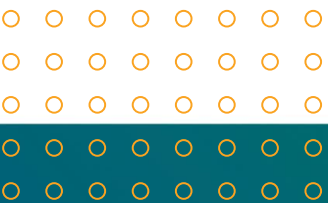


Proclaimed State or Local Emergencies

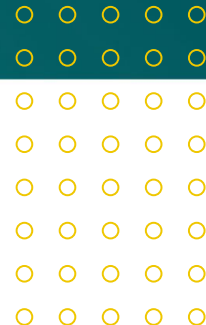
- Continuation/expansion of AB 361, adopted during COVID-19, for Governor-declared emergencies
- Allows fully remote meetings during qualifying emergencies
- Expands coverage to *local emergencies*, “a condition of extreme peril to persons or property proclaimed by the governing body of the local agency” under the California Emergency Services Act, or a local health emergency declared under Health & Safety Code § 101080 within boundaries (**new**)

Just Cause

- Continuation of AB 2449, adopted in 2022. Continues same rules: Quorum from one location, announcement of reason for teleconferencing at start, camera on
- Includes childcare, caregiving to certain family members, travel for official agency business, immunocompromised family member, medical emergency (**new**), military service (**new**), physical or mental condition not accommodated under other provisions
- Use limits apply: 2x/year if meetings monthly or less; 5x/year if meetings 2x per month; etc.



Social Media: Key Points



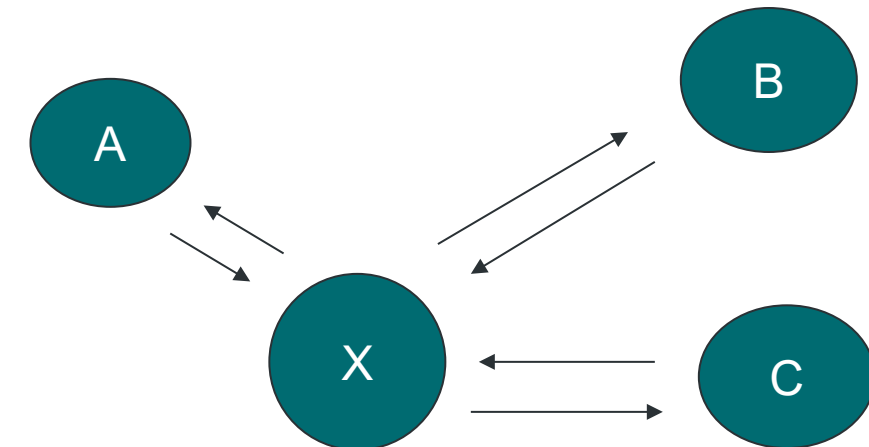
Social Media and the Brown Act



- California Government Code § 54952.2 prohibits certain communications by officials over social media
 - A majority of the members may **not** use an internet-based social media platform to discuss business within subject matter of the body's jurisdiction
 - A member may **not** respond directly to any communication posted or shared by another member regarding the body's business on an internet-based social media platform
 - "Communication" includes likes, thumbs up, emojis or other symbols
- Officials may "like," thumbs up, or comment on posts from the legislative body's official social media page, so long as they are not interacting with each other

Social Media Regulations

- Board members ***may not*** do the following on a social media platform:
 - Discussion by a majority: Discuss legislative body's business with a majority of members
 - Discussion includes communicating, posting, sharing, commenting, or using digital icons (i.e., a thumbs up or an emoji);
 - Direct Responses: Respond directly to another member's communication, comment or post if:
 - (1) both members, and (2) the topic concerns legislative body's business
- Concern about serial meetings, which are prohibited by the Brown Act
 - Hub & Spoke / Daisy-Chain



Legal Considerations



- A public official's use of social media can cross the line from personal expression to official government speech, subjecting that official's actions on social media to First Amendment scrutiny

Case Study: *Lindke v. Freed* (2024)



- James Freed operated a Facebook page with a profile picture where he wore a city label pin
- Freed’s “About” section included a link to the city website, the city’s general email address, and he described himself as “Daddy to Lucy, Husband to Jessie and City Manager, Chief Administrative Officer for the citizens of Port Huron, MI”
- Freed made personal posts about his family
- Freed also shared news about the city’s policies, communications from other city officials, and even solicited feedback from the public

Case Study: Lindke v. Freed (2024)



- Freed deleted “derogatory” or “stupid” comments
- Freed began deleting Kevin Lindke’s comments regarding the city’s approach to the Covid-19 pandemic
- Eventually, Freed blocked the Lindke from commenting on his posts
- Lindke sued under 42 U.S.C. § 1983, arguing Freed’s actions violated his First Amendment rights because Freed’s Facebook page was an “official” page

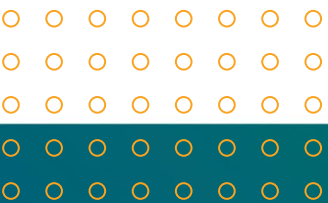
Case Study: *Lindke v. Freed* (2024)

- A public official's social media activity constitutes state action only if the official:
 - (1) possessed actual authority to speak on the State's behalf, and
 - (2) purported to exercise that authority when he spoke on social media."
- Disclaimers are entitled a heavy, but not irrefutable, presumption that that social media activity is personal
 - Ex: "This is the personal page of _____, all thoughts expressed herein are my own."
- Ninth Circuit applied *Lindke* rule in *Garnier v. O'Connor-Ratcliff*

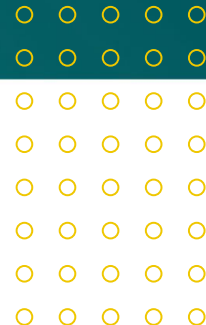
How to Avoid Creating a Government Account?



- To avoid unintentionally creating government accounts, public officials should:
 - Authority: Determine the scope of your authority to speak on behalf of the agency
 - Separate Accounts: Create separate official and personal accounts and clearly distinguish them
 - Disclaimer: If an account is intended to be a personal account, officials should include a disclaimer, of the sort discussed in *Lindke* (“This is the personal page of _____, the views expressed are strictly my own.”)
 - Be aware of the nature of the content you share: Nature of the content shared and how account is used (e.g., does it make official announcements, or solicit public feedback on government matters?) are crucial in determining whether state action is present



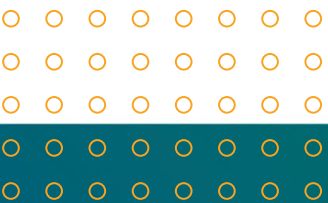
Miscellaneous Updates Applicable to SGPWA



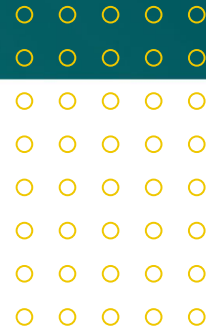
Miscellaneous Updates Effective January 1, 2026



- Social media restrictions now made permanent by SB 707
- Copies of Brown Act must be provided to each member of legislative body (electronic is fine)
- No special meetings on legislative body's salary or benefits (prior language prohibited special meetings for local agency executive salary/benefits)
- Members can waive notice of a special meeting by e-mail or telephone (prior language required waiver by telegram)
- Removal of disruptive virtual attendees (prior language did not acknowledge option to remove)
- Must provide oral report of executive compensation in open sessions (whether considering or approving)
- Local agency must identify and make available a list of one or more meeting locations for legislative body meetings.



Disruption Policy



Disruption Policy

- *Recommended* to adopt **policy on service disruption**, including good faith attempts to restore service for at least an hour [effective July 1, 2026]
- To implement a disruption policy, a body must adopt the policy at a regular meeting during action items, i.e., not on consent calendar



Disruption Policy – Technical Difficulties



If the body becomes aware of service disruption:

- Immediately announce the service disruption
- Call for recess of the open session
- MAY convene the legislative body in an authorized closed session, consistent with the Brown Act
- Recess shall last for one (1) hour or until service is restored, whichever is earlier
- Staff shall make good faith efforts to diagnose and restore the disrupted service

If cannot remedy technical disruption within one (1) hour, the legislative body may:

- Adjourn the meeting
- Further extend recess to restore service; or
- MAY reconvene in open session, but MUST adopt a finding, by roll call vote, that: (1) good faith efforts were taken to restore the service; and (2) the public interest in continuing the meeting outweighs the public interest in remote public access

Disruption Policy – Disruptive Speaker

- If a virtual commentor disrupts a legislative body's meeting:
 - Must first provide a warning consistent with the Brown Act. Indicate behavior is actually disrupting the meeting and failure to cease the disruptive behavior shall result in removal
 - If the commentor persists, then speaker may be muted
 - If muting the commentor does not stop the disruptive behavior, commentor may be removed from the Zoom platform



Recommended Action for SGPWA Board



- Adopt a Resolution Adopting a Policy on Disruption of Telephonic or Internet Service During Public Meetings in Accordance with Senate Bill 707
 - Note: Because SGPWA is not an eligible legislative body, the policy is recommended by BBK, but not required



Questions?

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