

## First Supplement to Memorandum 2020-48

**Emergency-Related Reforms:  
Common Interest Development Meetings  
(Draft Tentative Recommendation)**

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Memorandum 2020-50<sup>1</sup> discusses Civil Code Section 5120(a), which provides in part:

All votes shall be counted and tabulated by the inspector or inspectors of elections, or the designee of the inspector of elections, in public at a properly noticed open meeting of the board or members. Any candidate or other member of the association may witness the counting and tabulation of the votes.

Marjorie Murray, writing on behalf of the California Center for Homeowner Association Law, has asked how that requirement could be met in a meeting conducted entirely through teleconferencing.<sup>2</sup> Similarly, CACM has suggested that the Commission address the issue.<sup>3</sup>

It is worth noting, however, that language that is already included in the draft tentative recommendation attached to Memorandum 2020-48 may be sufficient to address the issue. In particular, proposed Section 5450(b)(5) would require, as a condition of conducting a teleconference meeting under the proposed law, that:

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

That guaranteed right to “participate” would seem to encompass the right to witness the opening and counting of ballots. If the teleconference meeting has a video component, it would be a simple matter to point the camera at a person who is opening ballot envelopes, and require that person to hold the ballot up so

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1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. See Memorandum 2020-49, Exhibit p. 2.

3. See First Supplement to Memorandum 2020-35, Exhibit p. 1.

that the votes can be read. A meeting that does not include such a video component would not be in compliance with the requirement that members have the same participation rights that they would have in a face-to-face meeting.

This could perhaps be emphasized in a Comment to proposed Section 5450, along these lines:

Paragraph (b)(5) 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.

**For the purposes of a tentative recommendation, should such language be added to the Comment?**

Respectfully submitted,

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Executive Director