

Land Development & Regulatory Compliance

On March 11, Governor Newsom issued a wide-ranging Executive Order in response to the COVID-19 public health emergency. Some provisions aim to encourage social distancing by banning large gatherings and temporarily suspending Brown Act requirements. Others enhance the state's ability to respond to outbreaks.

In general, the Executive Order requires compliance with state and local social distancing measures, which include the prohibition of large gatherings of 250 or more people. A "gathering" is defined as "any event or convening that brings together people in a single room or single space at the same time, such as an auditorium, stadium, arena, large conference room, meeting hall, cafeteria, or any other indoor or outdoor space." The Governor has also suspended the Brown Act, which governs public meetings. Local legislative bodies are now authorized to hold public meetings via teleconference and to make public meetings accessible electronically. These bodies may also solicit public comment via electronic means. Still, state or local bodies must give advance notice of each public meeting according to Brown Act requirements.

As we reported on Wednesday, various state agencies, county, municipal governments and special districts are also feeling the pressure to develop emergency response plans and address the uncertainty created by COVID-19. This limit, however, threatens to impact the scheduling of government meetings and opportunities for public participation in the public review and comment process with potential Brown Act implications.

As we noted in our prior COVID-19 bulletin, the real estate industry needs to prepare for and anticipate corresponding indefinite delays on project milestones due to fewer public meetings, limited public outreach except through streaming videos, social media and web-based platforms. For example, to address the concerns about community transmission, some public agencies are cancelling or rescheduling public meetings and hearings, or are postponing community events. This raises issues concerning opportunities for the public to participate in public meetings with challenging scheduling implications when individuals are self-quarantined or when meetings are cancelled or hosted in venues only able to accommodate lower attendance, or when the venues themselves potentially impact vulnerable populations. Likewise, agencies may deprioritize planning actions in order to focus on responding to the public health emergency.

The Executive Order also requires the California Health and Human Services Agency and the Office of Emergency Services to identify and prepare to make available "hotels and other places of temporary residence, medical facilities, and other facilities that are suitable for use as places of temporary residence or medical facilities as necessary for quarantining, isolating, or treating individuals." This may be accomplished by the execution of contracts or agreements, or through the state's "power to commandeer property."

The state is already using hotels in San Mateo and Monterey Counties to quarantine former passengers of the Grand Princess cruise ship. Property owners in possession of sites that may be suitable for temporary residence or as medical facilities, should be aware of the state's authority to commandeer such properties.