

AB 361: UNDERSTANDING BROWN ACT TELECONFERENCING REQUIREMENTS

On September 16, 2021, Governor Gavin Newsom signed into law AB 361 (Chapter 165, Statutes of 2021), enabling local public agencies to continue to use teleconferencing without complying with certain Brown Act provisions. Then on September 20, 2021, Governor Newsom issued Executive Order N-15-21, delaying the full application of AB 361 (which would typically be effective immediately, as urgency legislation) until 11:59 pm October 1, 2021. These moves are the latest in a series of adjustments made to Brown Act rules for teleconference since the beginning of the COVID-19 pandemic. For more information on how the COVID-19 emergency has impacted Brown Act meetings, please see our [*Briefings, COVID-19: Brown Act, Unemployment and Retiree Work Rules Impacted by New Executive Order*](#) and [*Virtual Brown Act Meetings Will Expire September 30th*](#).

FINDINGS AND VOTES REGARDING IMMINENT RISK

As an initial matter, to utilize the provisions in AB 361, the meeting must be held during a proclaimed state of emergency in which state or local officials have imposed or recommended measures to promote social distancing.

Under those circumstances, the legislative body of a local agency that holds a meeting during a proclaimed state of emergency must determine, by majority vote, that meeting in person would present imminent risks to the health or safety of attendees.

If a proclaimed state of emergency still exists and the local agency wishes to continue to hold meetings in compliance with AB 361, it must do the following:

- (1) Within 30 days of the initial teleconference, make the following findings by majority vote:
 - a. The agency has reconsidered the circumstances of the state of emergency, and
 - b. It either continues to directly impact the ability of members to meet safely in person, or state or local officials continue to impose or recommend measures to promote social distancing
- (2) Make the same findings by majority vote every 30 days thereafter.¹

Once those requirements are met, the local agency can hold teleconference meetings under the Brown Act as modified by AB 361. Those modifications, and their corresponding provisions under the Brown Act and Executive Order N-29-20, are outlined in the table on the following page.

¹ The statute is silent as to whether the subsequent votes must occur at a public meeting. Local agencies may wish to seek direction from their legal counsel as to how to comply with this provision in conformity with other provisions in the Brown Act and Government Code.

Brown Act	Executive Order N-29-20	AB 361
Effective prior to March 17, 2020, and effective after 11:59 pm on October 1, 2021 unless the conditions set forth in AB 361 are met	Effective March 17, 2020 through 11:59 on October 1, 2021	Effective after 11:59 pm on October 1, 2021 (by operation of Executive Order N-15-21)
All votes must be made by rollcall.	All votes must be made by rollcall.	All votes must be made by rollcall.
1. Local agency must give notice of each teleconference location from which a member will be participating in a public meeting. 2. Each teleconference location must be specifically identified in the meeting notice and agenda, including full address and room number.	Suspended. Local agency must only give notice and post agenda in accordance with the Brown Act provisions for in-person meetings.	Waivable, if all other requirements under AB 361 are met. Local agency must only give notice and post agenda in accordance with the Brown Act provisions for in-person meetings.
1. Each teleconference location must be accessible to the public. 2. Members of the public must be able to address the body at each teleconference location.	Local agencies do not have to let members of the public attend at each teleconference location, but must allow members of the public to observe and address the meeting telephonically or otherwise electronically.	Local agencies do not have to let members of the public attend at each teleconference location, but must allow the public to access the meeting. The agenda must provide an opportunity for the public to directly address the legislative body. The agenda must include an opportunity for all persons to attend via a call-in or an internet-based service option. The legislative body need not provide a physical location for the public to attend or provide comments.
Local agency must post agendas at all teleconference locations.	Suspended. Local agency must only give notice and post agenda in accordance with the Brown Act provisions for in-person meetings.	Waivable, if all other requirements under AB 361 are met.

Brown Act	Executive Order N-29-20	AB 361
<p>During teleconference meetings, at least a quorum of the members of the local body must participate from locations within the boundaries of the territory over which the local body exercises jurisdiction.</p>	<p>Suspended.</p>	<p>Waivable, if all other requirements under AB 361 are met.</p>
<p>The agenda shall provide an opportunity for members of the public to address the legislative body directly at each teleconference location.</p>	<p>The local agency must give notice of the means by which members of the public may observe the meeting and offer public comment.</p>	<p>In each instance, when the local agency provides notice of the teleconferenced meeting or posts its agenda, give notice for how the public can access the meeting and provide public comment.</p> <p>Provide adequate time for public comment, either by establishing a timed public comment period or by allowing a reasonable amount of time to comment.</p> <p>If the legislative body uses a third-party website or platform to host the teleconference, and the third-party service requires users to register to participate, the legislative body must provide adequate time during the comment period for users to register, and may not close the registration comment period until the comment period has elapsed</p> <p>Stop the meeting during any service disruption that either (i) prevents the local agency from broadcasting the meeting to the public using the call-in or internet-based service option, or (ii) is within the local agency's control and prevents the public from submitting public comments.</p>

Brown Act	Executive Order N-29-20	AB 361
Local agency must conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing at the meeting.	<p>Local agency must implement a procedure for receiving and swiftly resolving requests for reasonable modification from individuals with disabilities, resolving any doubt in favor of the individual.</p> <p>Local agency must advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment.</p>	Local agency must conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing at the meeting.

The information contained in this *Briefing* is intended to provide information regarding recent changes in the law and is not intended to be used as legal advice. Local agencies should review their continuing obligations under the Brown Act with their own legal counsel.

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