

Alerts & Articles

New Brown Act Amendment Changes the Rules for Teleconference Meetings During A State of Emergency

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UPDATE (9.21.21): Governor Newsom signs Executive Order Suspending AB 361 until October 1, 2021

On September 20, 2021, Governor Newsom signed Executive Order (“EO”) N-15-21 to suspend AB 361 until October 1, 2021. EO N-15-21 provides that AB 361’s amendments to the Brown Act which allow teleconference meetings during a state of emergency are suspended through September 30, 2021. However, EO N-15-21 orders that any legislative body that meets prior to October 1, 2021 to take a majority vote for the purpose of determining whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees, shall comply with the requirements of Government Code 54953(e)(2) as amended by AB 361.

Assembly Bill (“AB”) 361 (Rivas). On September 16, 2021, California Governor Gavin Newsom signed AB 361 into law, effective immediately. The Bill amends the Ralph M. Brown Act^[1] to include new authorization for remote meetings, including remote public comment, for all local agencies. The new authorization, which largely extends the provisions of the Governor’s Executive Order N-29-20 (signed March 17, 2020) and Executive Order N-35-20 (signed March 21, 2020), is effective until January 1, 2024.

This Alert focuses on changes to the Ralph M. Brown Act — which governs public meetings of numerous local agencies, including school and community college districts — but please note the Bill contains corresponding changes to other public meeting laws, such as the Bagley-Keene Act.

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1. Traditional Teleconferencing Rules

Before the COVID-19 pandemic, the Brown Act traditionally allowed a local agency to use teleconferencing for meetings or proceedings, subject to specific agenda posting, physical access and quorum requirements. Generally, local agencies were required to:

- Post agendas at each teleconference location;
- Identify each teleconference location in the notice and agenda of the meeting or proceeding;
- Make each teleconference location accessible to the public;
- Have at least a quorum of the members of the legislative body participate from locations within the boundaries of the applicable local agency's territory; and
- Provide means for the public to address the legislative body at each teleconference location.

2. Executive Orders N-29-20 and N-35-20 Suspended Provisions of the Brown Act

On March 17, 2020 and March 21, 2020, in light of the declared state of emergency due to the coronavirus pandemic, Governor Newsom implemented several exceptions to the Brown Act's teleconferencing rules to allow local agencies to continue to function during the stay-at-home orders. Pursuant to Executive Orders N-29-20 and N-35-20, the following Brown Act requirements were suspended until September 30, 2021:

- The requirement to notice each teleconference location from which members of the legislative body participate.
- The requirement that each teleconference location be accessible to the public.
- The requirement that members of the public be able to address the legislative body from each teleconference location.
- The requirement that at least one member of the legislative body be physically present at each meeting location.



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- The requirement that during a teleconference meeting, at least a quorum of the legislative body participate from locations within the boundaries of the district.

3. New Changes to Government Code 54953 Effective Until January 1, 2024

Given the continuing COVID-19 state of emergency, AB 361 was introduced to establish clear rules for teleconference meetings during such emergencies, effective immediately and until January 1, 2024. The legislation does not expressly state whether it is intended to override the Executive Orders for meetings held between September 16 and September 30, 2021. Local agencies with questions in this regard are advised to contact their legal counsel.

a. Teleconferencing Exemptions During Emergencies:

Effective September 16, 2021, new Government Code section 54953(e)(1) allows local agencies to continue to meet via teleconference without complying with the Brown Act's traditional agenda posting, physical access and quorum requirements for teleconferencing, but only during a state of emergency proclaimed by the Governor (in accordance with Government Code section 8625) in which (1) state or local health officials have imposed or recommended measures to promote social distancing, or (2) the legislative body has determined (or is meeting to determine) by majority vote that meeting in person would present imminent risk to the health or safety of the attendees.

This new authority clearly includes, but is not limited to, emergencies arising from pandemics.

b. How to Appropriately Utilize the New Teleconferencing Exemption:

If a local agency chooses to use the teleconferencing exemption and forego the Brown Act's traditional agenda posting requiring the identity of and public access to each teleconference location and quorum requirements for teleconferencing, Government Code section 54953(e)(2) requires the local agency to:

- Give timely notice of the meeting and post agendas as required by the Brown Act;
- Allow members of the public to access the meeting and directly address the legislative body as provided by Section 54954.3. Each agenda must provide notice of the means by which the public may access the meeting and offer public comment. The agenda must identify and include an opportunity for all persons to attend **via a call-in option OR an internet-based service option**;
- Conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body;
- In the event of a service disruption that prevents broadcasting the meeting or in the event of a disruption within the local agency's control that prevents public comment for members of the public using the call-in option or internet-based option, stop the meeting and take no further action on agenda items until

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public access is restored. Actions taken on agenda items during a disruption may be subject to challenge pursuant to Section 54960.1.

Note: Public agencies may wish to indicate on their agendas how and when remote meetings which are disrupted in this manner will be continued.

- Must abolish any requirement that public comments be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time.

Note: Written public comment is still allowed, but a “real-time” comment option (e.g. telephone or internet based) which allows the person to read their own comment must be allowed. The above provisions do not require the legislative body to provide a physical location from which the public may attend or comment.

c. Public Comments:

In addition to requiring “real-time” public comments, i.e. making any requirement to provide public comment in advance and/or via email non-compliant, Government Code section 54953(e)(2) provides additional guidelines regarding public comment periods:

- The legislative body may use an online third-party system for individuals to provide public comment which might require an individual to register prior to providing comment.

Note: Under this provision, although the Brown Act does not allow a local agency to require a meeting attendee to provide their name and address as a condition of attendance, a third-party internet provider may require a person to register for the service^[2].

- A legislative body that provides a timed public comment period for each agenda item may not close the comment period or the time to register to provide comment until the timed period has elapsed.
- If the legislative body does not provide a time-limited comment period, it must allow a reasonable time for the public to register and comment on each agenda item.
- If the legislative body provides a timed general public comment period that does not correspond to a specific agenda item, it may not close the public comment period or the opportunity to register until the timed general public period has elapsed.

Note: This effectively eliminates any early cut-off of collecting email/comment cards until the end of the applicable comment period, regardless of whether there is a single comment period at the beginning of the meeting, or individual comment periods for each agenda item.

d. Verification

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Government Code section 54953(e)(4) also now requires local agencies to verify **every 30 days** that the exemption from traditional teleconference requirements is still necessary. Specifically, the legislative body must make findings no later than 30 days after the first teleconference and every 30 days thereafter that:

- the legislative body has reconsidered the state of emergency circumstances; and
- either i) the state of emergency continues to directly impact the ability of the members to meet safely in person, or ii) state or local officials continue to impose or recommend measures to promote social distancing.

Because monthly meetings can be more than 30 days apart, we advise that local agencies take care to ensure their Board makes the appropriate findings at least every 30 days so as to ensure compliance with this verification requirement.

e. Sunset Provision

These provisions will be automatically repealed on January 1, 2024. At that time, unless further changes are made by future legislation, the Brown Act's traditional (pre-pandemic) teleconferencing rules will apply, as stated in section 1 above.

If you have any questions regarding this alert, please contact the authors or your regular attorney at Atkinson, Andelson, Loya, Ruud & Romo.

[1] See generally Government Code section 59450 et seq.

[2] Use of a pseudonym for registration should be allowed.

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