



COUNTY OF YOLO

Office of the County Counsel

Philip J. Pogledich
County Counsel

625 Court Street, Room 201 • Woodland, CA 95695
MAIN (530) 666-8172 • FAX (530) 666-8279
www.yolocounty.org

MEMORANDUM

TO: All Bodies Subject to the Ralph M. Brown Act

FROM: Philip J. Pogledich, County Counsel
Eric May, Senior Deputy County Counsel

DATE: September 30, 2021

SUBJECT: Remote Meetings Pursuant to AB 361

This memorandum provides a short explanation of how bodies subject to the Ralph M. Brown Act (“Brown Act”)¹ can properly hold a remote (teleconference or videoconference) meeting using simplified procedures added to California law through newly-enacted Assembly Bill 361 (“AB 361”). This memorandum and related materials, including the full text of AB 361, will be maintained on the County Counsel’s webpage under the “Resources for Local Governing and Advisory Body Members” tab.²

Before the pandemic, the Brown Act had numerous requirements for bodies wishing to meet remotely. The requirements were burdensome and, as a result, few bodies met remotely. AB 361 amended the Brown Act to add simplified procedures that make it easier to hold remote meetings during a state of emergency and when state or local officials impose or recommend measures to promote social distancing. *See* Gov. Code § 54953(e). These new rules supersede and replace similar rules in the Governor’s Executive Order No. N-29-20, which many local boards, commissions, and committees have relied on to hold remote meetings since the onset of the COVID-19 pandemic. AB 361’s new rules apply starting October 1, 2021, and the transition to AB 361 should be straightforward for any bodies that are currently meeting remotely the Executive Order No. N-29-20 procedures.

¹ The Brown Act applies to “legislative bodies,” which the Act defines as including (i) a governing body of a local agency or local body created by state or federal statute, (ii) a commission, committee, board, or other body of a local agency, whether permanent or temporary, decision-making or advisory, created by a legislative body. *See* Gov. Code § 54952.

² <https://www.yolocounty.org/government/general-government-departments/county-counsel>, or just search for “Yolo County Counsel” in any search engine.

In summary, the benefits of conducting remote meetings pursuant to AB 361 versus the alternative Brown Act procedure are as follows:

Brown Act Requirements (“Old Rules”)	AB 361 Rules
<ul style="list-style-type: none"> • Agendas must be posted at each teleconference location • All teleconference locations must be listed on the agenda 	<ul style="list-style-type: none"> • Agendas do not need to be posted at each teleconference location
<ul style="list-style-type: none"> • Each teleconference location must be accessible to the public, and the public must be allowed to offer comments from each location 	<ul style="list-style-type: none"> • Local agencies do not need to allow public participation at each (or any) teleconference location, but instead must “clearly advertise” how members of the public can participate on the agenda • Public participation must allow for either a call-in option or an internet-based service option to directly address the body in real-time during public comment • In the event the meeting broadcast is disrupted, the meeting must pause until it is restored
<ul style="list-style-type: none"> • At least a quorum of the legislative body must be present within the agency’s territory 	<ul style="list-style-type: none"> • Legislative body members may participate from anywhere

A. Initial Adoption of Findings Required by AB 361

To use AB 361’s simplified procedures after October 1, 2021, the Governor must have declared a state of emergency (a local state of emergency is not sufficient), and the state of emergency must be in effect. For the current COVID-19 pandemic, this requirement is satisfied. Additionally, **either** of the following circumstances must be present:

- State or local officials continue to impose or recommend measures to promote social distancing; **or**
- As a result of the declared emergency, the legislative body finds by majority vote that meeting in person would present imminent risks to the health or safety of attendees.

In Yolo County, the Health Officer currently recommends social distancing for public agency meetings. Accordingly, starting October 1, AB 361 **automatically** applies to any remote meeting of a legislative

body in Yolo County. You do not need to do anything to transition from the Executive Order procedures to AB 361 at you first meeting on or after October 1.

That said, this Office recommends that all local legislative bodies consider adding an item for consideration at the beginning of their first meeting on or after October 1 to affirm their intention to proceed using AB 361. The agenda item can be part of a consent agenda or otherwise listed before any other substantive agenda items are considered, using the following (or similar) language:

Authorize remote (teleconference/videoconference) meetings by finding, pursuant to Assembly Bill 361, that local officials continue to recommend measures to promote social distancing as a result of the COVID-19 pandemic.

This memo can be provided with the agenda materials to inform all legislative body members of the basis for the agenda item. Also, the County Health Officer has prepared a short memo that covers both social distancing and also, if a legislative body so chooses, information to support an “imminent risks” finding (discussed in subsection B, below). A copy of the Health Officer memo will accompany the distribution of this memo, and it will be updated monthly and posted on the County Counsel’s web page.

As an additional note, please ensure you update any language about remote meetings on your agenda to reflect the use of AB 361. Many local boards, commissions, and committees have included standard text on the cover page of their agendas referring to Executive Order N-29-20. Those references are outdated after September 30, 2021, which is the sunset date for the Executive Order. Going forward, you should refer instead to Government Code section 54953(e)(1) instead, which includes the new language from AB 361.

B. Renewal of Findings

Once a legislative body has an initial meeting under AB 361, it must make certain findings every 30 days to continue meeting remotely using the simplified rules. The findings to be made are as follows:

- (i) The *{name of legislative body}* has reconsidered the circumstances of the state of emergency proclaimed for the COVID-19 pandemic; and
- (ii) Local officials continue to impose or recommend measures to promote social distancing;
and/or
- (iii) The state of emergency continues to directly impact the ability of the members of the *{name of legislative body}* to meet safely in person.

Similar to the recommended agenda language included above, the “renewal” action can be agendized for consideration at the beginning of the meeting (including as part of a consent agenda, if one is used) with the following language:

Renew authorization for remote (teleconference/videoconference) meetings by finding, pursuant to Assembly Bill 361, that (a) the COVID-19 pandemic state of emergency is ongoing, and (b) local officials continue to recommend measures to promote social distancing [, and/or (c) meeting in person would present imminent risks to the health or safety of attendees].

As indicated, only finding (b) or (c) is required, and the appropriate finding(s) to adopt will necessarily depend on the circumstances existing at the time of renewal. As noted above, renewal of these findings is required every 30 days after a legislative body first meets remotely pursuant to AB 361. For legislative bodies that meet less frequently, this Office believes there is no need to hold a special meeting just to adopt the renewal findings within 30 days of the last meeting, and the same procedure should be followed at the outset of the meeting the next time the body convenes.

C. Summary of Recommended Actions

In summary, to properly meet remotely using AB 361, a legislative body should:

For its **first meeting** on or after October 1, 2021:

1. Replace any agenda language referring to Executive Order N-29-20 with a reference to AB 361 or Government Code section 54953(e)(1) (either is fine).
2. Also, if desired (for example, to notify the public), include a consent agenda item as follows:

Authorize remote (teleconference/videoconference) meetings by finding, pursuant to Assembly Bill 361, that, local officials continue to recommend measures to promote social distancing as a result of the COVID-19 pandemic.

At the **second meeting** on or after October 1, 2021 (or any other subsequent meeting occurring within 30 days of the first meeting), adopt renewal findings as follows:

Renew authorization for remote (teleconference/videoconference) meetings by finding, pursuant to Assembly Bill 361, that (a) the COVID-19 pandemic state of emergency is ongoing, and (b) local officials continue to recommend measures to promote social distancing [, and/or (c) meeting in person would present imminent risks to the health or safety of attendees].

D. Questions

Any questions about this memo or Assembly Bill 361 can be directed to:

Phil Pogledich
County Counsel
Philip.pogledich@yolocounty.org

Or to:

Eric May
Senior Deputy County Counsel
Eric.may@yolocounty.org

While e-mail communications are preferred, you may also call 530-666-8172 and ask to speak with either of the above attorneys.