



COUNTY OF YOLO

Office of the County Council

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MEMORANDUM

TO: All Local Legislative Bodies subject to the Ralph M. Brown Act

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

DATE: March 30, 2022

SUBJECT: Post-Pandemic Teleconferencing and Meeting Considerations

This memorandum provides updated guidance regarding remote meetings pursuant to the Ralph M. Brown Act (“Brown Act”).¹

As explained below, the changing public health situation may soon compel an end to remote meetings using the simplified approach authorized by Assembly Bill 361 (“AB 361”). The County Health Officer is not expected to reissue social distancing recommendations in April, narrowing the circumstances for meeting remotely under AB 361. Also, if the Governor ends the pandemic emergency proclamation,² local legislative bodies will no longer be able to rely on AB 361 and must instead return to in-person meetings or, if feasible, authorize continued remote meetings using the original, less practical teleconferencing provisions of the Brown Act discussed below. “Hybrid” meetings that offer both in-person and teleconference (video or call-in) options for participation are also an option—and indeed, may become the “new normal” for public agency meetings—so long as all Brown Act requirements for an in-person meeting are satisfied and no technological constraints exist.

As background, in 2021, AB 361 amended the Brown Act to add simplified procedures that make it easier to hold remote meetings during a state of emergency proclaimed by the Governor (a local emergency is insufficient). *See* Gov. Code § 54953(e). Additionally, the legislative body must find either of the following circumstances is present:

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 We cannot predict when an announcement may occur, but a continued decline in case rates could prompt a change in the near future.

- 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.

A previous memorandum from this Office (dated September 30, 2021) explained the process for initiating AB 361 compliance for remote meetings and the need to thereafter (ever 30 days or so) renew compliance by making essentially the same findings mentioned above.³

Most agencies subject to the Brown Act have relied on the Health Officer's social distancing recommendations described in a monthly memorandum in implementing AB 361 (also available at the link included in footnote 3). With declining COVID-19 infection rates, many Health Officers (including in Yolo County) will no longer recommend social distancing. If this occurs, local legislative bodies *may still meet remotely pursuant to AB 361* only if:

- (1) the Governor's pandemic emergency proclamation remains in force; *and*
- (2) each such body finds by majority vote "that meeting in person would present *imminent risks* to the health or safety of attendees."

It is unknown whether the Governor will maintain his emergency proclamation for much longer. If it is repealed, new AB 361 authorizations will be legally impossible and all existing AB 361 determinations will sunset on the 30th day after their adoption.

For so long as the Governor maintains the emergency proclamation, each local legislative body may consider the "imminent risks" determination if it wishes to still hold remote meetings under AB 361. This is a matter for each legislative body to decide in its discretion; the County Health Officer is not expected to issue any guidance bearing on such a determination. Factors such as local infection rates, meeting duration, expected attendance, facility air filtration technology, and the potential for attendance by vulnerable populations are among those that may be appropriately considered by a legislative body.

Procedurally, those intending to consider such a determination are advised to schedule a special meeting for this purpose, with no other agency business on the agenda. Such a limited purpose meeting can be held remotely pursuant to the AB 361 rules. If this is not feasible, the "imminent risks" finding may be considered as the first item of business on the meeting agenda for a regular meeting. If the meeting is held remotely pursuant to AB 361 and the finding is *not* made by majority vote, however, the meeting must adjourn and all remaining items must be continued *unless* the meeting also complies with the various requirements of the Brown Act's original teleconferencing provisions.

If AB 361 compliance is no longer possible—either because an "imminent risks" finding is not made or because the Governor's emergency proclamation sunsets—local legislative bodies will have to return to in-person meetings or invoke the original teleconferencing provisions of the Brown Act. The prior memorandum by this Office illustrated some of the key differences between AB 361 and the other teleconferencing provisions as follows (with a few additions):

³ Posted online at: <https://www.yolocounty.org/government/board-of-supervisors/advisory-bodies/resources-for-local-governing-and-advisory-body-members>,

Brown Act Requirements (“Old Rules”)	AB 361 Rules
<ul style="list-style-type: none"> Agendas must be posted at each teleconference location where a legislative body member is present 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 location⁴ Additional teleconference locations may also be offered for the convenience of participants. 	<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

As this summary shows, even without AB 361’s simplified requirements teleconference meetings are possible with some advance planning and coordination. Indeed, many meeting attendees are comfortable using Zoom (and similar technologies) and will now likely chose to participate remotely rather than travel to a teleconference or in-person meeting site to participate. That said, it is still necessary to accommodate the public at each teleconference location under the original Brown Act teleconferencing rules, including private residences or locations where technological constraints may exist. The reason for this is explained in one guide on Brown Act teleconferencing:

The right of individuals to attend the public meetings of local agencies and be face-to-face with their elected or appointed public officials is viewed as sacrosanct, only able to be abrogated in the most extraordinary of circumstances. Under normal conditions, local agencies are required to allow members of the public to participate in a public meeting from the very same teleconference locations that other board members are using to attend that meeting. (*AB 361 Implementation Guide*, California Special Districts Association, p. 6 (2021).)

A somewhat different approach is to hold a “hybrid” meeting, with all legislative body members appearing in-person and the public is afforded the option of appearing in-person or attending via video or call-in technologies. The increased convenience of this approach promotes additional public engagement while also reducing in-person attendance. Presently, the Brown Act does not regulate this

⁴ In addition, all teleconference locations must be ADA-accessible.

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approach. This Office encourages legislative bodies offering “hybrid” meetings to ensure any limitations to virtual participation are clearly described on the agenda (for example, if remote attendees are not able to offer comments). And consistent with the original Brown Act teleconferencing rules, all legislative bodies members must either attend in-person or comply with the teleconferencing rules if they opt to participate remotely. Put simply, if a legislative body members participate remotely under the original rules, the public must be offered the same participation opportunity in the same location(s).

It is possible that changing circumstances surrounding the COVID-19 pandemic will require legislative bodies to adapt again in the future. The County Counsel’s Office will continue to provide updates as significant changes occur. Additional information about Brown Act compliance and other resources can be found on the County’s website, at <https://www.yolocounty.org/government/board-of-supervisors/advisory-bodies/resources-for-local-governing-and-advisory-body-members>.

Any questions about this memo or can be directed to:

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