

Outline to Utilize Modified Brown Act Teleconferencing Requirements Pursuant to AB 361

Below are the procedures for qualifying and maintaining qualification under AB 361's modified Brown Act teleconferencing rules.

1. Proclamation of a State of Emergency: A state of emergency is declared by the Governor pursuant to the California Emergency Services Act (pursuant to Cal. Gov. Code § 8625). (Governor Newsom issued a Proclamation of a State of Emergency on March 4, 2020 declaring a state of emergency exists in California due to the threat of COVID-19.)

2. General AB 361 Rule and Suspended Teleconferencing Requirements: A legislative body wishes to meet remotely ¹ and utilize the modified Brown Act requirements for teleconferencing by not complying with Government Code section 54953(b)(3) as a result of the emergency. The following teleconferencing rules would be suspended:
 - a. Posting the agenda at all teleconference locations;
 - b. Identifying each teleconference location in the notice and agenda of the meeting and proceeding;
 - c. Opening each teleconference location to the public;
 - d. Allowing the public to address the legislative body directly at each teleconference location; and
 - e. At least a quorum of the legislative body shall participate from locations within the boundaries of the area over which the local agency exercises jurisdiction.

3. Threshold Requirements for the Legislative Body to Qualify:
One of the following criteria must be met:
 - a. State or local officials have imposed or recommended measures to promote social (physical) distancing. (Gov. Code § 54953(e)(1)(A).) Legislative bodies of the County may rely on Cal/OSHA requirements (8 CCR § 3205(c)(5)(D)), which recommends physical distancing to decrease the spread of the virus.
OR
 - b. Legislative body holds a meeting for the first time to determine by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees. (Gov. Code § 54953(e)(1)(B)) This is best achieved by passage of a resolution to this effect. The resolution is valid for a maximum of 30 days.
OR
 - c. Legislative body has already determined by majority vote that as a result of the emergency, meeting in person presents imminent risks to the health or safety of attendees. (Gov. Code § 54953(e)(1)(C)) and 30 days has not elapsed since that majority vote.

¹ This applies to legislative bodies that are currently meeting remotely (with no in-person option) and/or wish to begin or continue meeting exclusively remotely. This does not apply to legislative bodies that will be meeting in-person or in a hybrid format (in-person with a remote option).

4. Requirements for the Legislative Body to Continue to Qualify: Within 30 days after passage of the initial resolution and every 30 days thereafter ², if the proclaimed state of emergency remains in effect, then, the legislative body needs to pass another resolution with the following findings:
 - a. The legislative body has reconsidered the circumstances of the state of emergency ,
AND
 - b. Having reconsidered the state of emergency, the legislative body determines that 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 (physical) distancing.

Outline for Public Notice and Public Comment Pursuant to AB 361

Below are the procedures for providing public notice and public comment under AB 361's modified Brown Act teleconferencing rules.

1. General rule: The legislative body shall allow members of the public to access the meeting, and the agenda shall include an opportunity for members of the public to address the legislative body directly.
2. Teleconference agenda & manner of public participation: When the legislative body provides notice of the time of the teleconference meeting or posts the agenda for the meeting, the legislative body must also provide the manner in which the public can access the meeting and provide public comment by a call-in option or internet based option. Legislative bodies should provide information including, but not limited to, the following: phone numbers, passwords, URLs, email addresses, third party links to internet-based option, etc.
3. Interruption in Teleconference Broadcasting: In the event of a disruption which prevents the legislative body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of such a disruption within the local agency's control, the legislative body shall take no further action on items until public access to the meeting by the call-in option or internet-based option is restored. If the legislative body continues with the meeting during the disruption, any action taken may be challenged pursuant to Gov't Code section 54960.1. Staff may need to monitor the means by which the public can observe the meeting and offer comment to make sure the participation options are functioning properly.

² If the legislative body does not meet often enough to renew the initial resolution every 30 days, then the initial resolution will lapse. In that circumstance, if the legislative body would like to utilize the modified Brown Act requirements, it must pass a new initial resolution. Alternatively, the legislative body could schedule special meetings for the specific purpose of renewing the resolution in between its normal meeting schedule.

4. Public comment:

- a. No requirement to submit public comment in advance. Legislative bodies cannot require that written comments be submitted in advance of the meeting. The public must be able to address the body in real time.
- b. Third party internet website registration may be required. If the legislative body uses an internet based option for public participation that is not under the control of the local legislative body but requires the public register to login for the teleconference (i.e. Zoom), the public may be required to register as required by the third-party internet website to participate.
- c. Time to Accept Public Comment. Legislative bodies may only close registration for public comment at the same time as the public comment period is closed and must accept public comment until that point. This is the same for each agenda item.