



Everything Local Public Agencies Need to Know About California's New Rules on Virtual Meetings During the Pandemic

09.17.2021 | By **Ashley K. Dunning, Benjamin Z. Rubin, Alfred E. Smith II**

On September 16, 2021, Governor Newsom signed Assembly Bill 361 (2021-2022) (“AB 361”), which incorporated into California state law some aspects of the teleconferencing rules that have applied by Executive Order to local public agencies during the COVID-19 pandemic. Notably, because AB 361 included an urgency measure, the law was immediately effective as of the date of the Governor’s signature. AB 361 provides that it sunsets on January 1, 2024.

Benefits of operating under AB 361 during the COVID-19 pandemic, as opposed to under the normal open meeting laws, include the following:

- Agendas need not be posted at all teleconference locations;
- Each teleconference location need not be identified in the notice and agenda of the meeting;
- Each teleconference location need not be accessible to the public; and
- A quorum of the members of the legislative body do not need to participate in the meeting from locations within the boundaries of the territory over which the public agency exercises jurisdiction.

Following are requirements for invoking AB 361 the first time that a public agency does so:

1. There must be a “proclaimed state of emergency,” *as there is currently, in that the Governor’s State of Emergency Declaration, issued on March 4, 2020, has not been lifted, and*
2. One of the following three circumstances must exist:
 1. State or local officials have imposed or recommended measures to promote social distancing;
 2. The meeting is held to determine, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to health or safety of attendees; or

3. The majority of the legislative body has voted that, as a result of the emergency, meeting in person would present imminent risk to the health or safety of attendees.

If a public agency wishes to consider invoking AB 361 for subsequent meetings, the following is required for those subsequent meetings:

1. The proclaimed state of emergency must remain active; or
2. State or local officials have imposed or recommended measures to promote social distancing; and
3. Not later than 30 days after teleconferencing for the first time under the AB 361 rules, and every 30 days thereafter, the Legislative body shall make the following findings by majority vote:
 - The legislative body has reconsidered the circumstances of emergency, and at least one of the following circumstances exist:
 1. The state of emergency continues to directly impact the ability of the members to meet safely in person; or
 2. State or local officials continue to impose or recommend measures to promote social distancing.

If a public agency were to invoke AB 361, following are notice and participation requirements:

Notice Requirements

- Each notice of the meeting and agenda must identify the means by which members of the public may access the meeting and offer public comment by a call-in option or an internet-based service option (does not need to be both)

Participation Requirements

- Cannot require public comments to be submitted in advance of the meeting (although the agency may provide this as an option along with the call-in or internet-based service option)
- Public must be able to attend via call-in option or internet-based service option (does not need to be both)
- Public must be able to address the legislative body “directly” via call-in option or internet-based service option
- The public agency must provide an opportunity for the public to address the Legislative body and “offer comment in real time”
- If there is a disruption that prevents the public agency from broadcasting the meeting using the call-in option or internet-based service option, or if there is a disruption within the public agency’s control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the body “shall take no further action on items appearing on the agenda until public access to the meeting via the call-in option or internet-based service option is restore”
- Timing of Public Comment Period
 - If a legislative body does not provide a timed public comment period, but takes public comment separately on each agenda item, it shall allow a “reasonable amount of time per agenda item to allow public members the opportunity to provide public comment,” including time for members of the public to register to provide comment or otherwise be recognized for the purpose of providing public comment
 - If a legislative body provides a timed general public comment period that does not correspond to a specific agenda item, it shall not close the public comment period or the opportunity to register until the timed general public comment period has elapsed
 - If a legislative body provides a timed public comment period for each agenda time, it shall not close the public comment period or the opportunity to register until the timed public comment has elapsed

A Final Note

The current teleconferencing Executive Orders described in our prior blog post will remain in effect, if not rescinded, until September 30, 2021. Therefore, public agencies should have a couple of weeks to assess how to conduct their meetings in light of AB 361.

And, if legislative bodies will not be meeting until October 2021, AB 361 provides that its provisions may be invoked once under the conditions described, without having the legislative body make, by majority vote, the legislative findings noted above.

However, legislative findings will be required at least every 30 days thereafter, for as long as the legislative body continues to invoke AB 361 for purposes of conducting its meetings under those new rules.