

**ASSEMBLY BILL 361 AND
APPROVE EXTENDING VIRTUAL
COMMISSION MEETINGS**

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 533-5800

DATE: September 28, 2021
TO: Honorable Mayor and Councilmembers
FROM: City Attorney
SUBJECT: Legal Update: Assembly Bill 361 amending the Ralph M. Brown Act

INTRODUCTION

In March 2020, in response to the public health threat caused by the novel coronavirus, Covid-19, Governor Gavin Newsom issued Executive Orders N-25-20 and N-29-20 (Executive Orders) suspending provisions of the Ralph M. Brown Act (Brown Act). The Executive Orders allowed local jurisdictions to hold teleconferenced public meetings and for members of the public to observe and address the legislative bodies during teleconferenced meetings. The Executive Orders expire September 30, 2021.

On September 16, 2021, the Governor signed Assembly Bill 361 (A.B. 361) into law. A.B. 361 amends the Brown Act to codify the temporary rules established by the Executive Orders and provide a mechanism for the Council of the City of San Diego (Council) and City boards and commissions to continue teleconferencing during a proclaimed state of emergency related to Covid-19.¹

BACKGROUND

The California State legislature adopted the Brown Act in 1953 to "aid in the conduct of the people's business" by requiring that legislative bodies' "actions be taken openly and that their deliberations be conducted openly." Cal. Gov't Code § 54950. Meetings of a legislative body must be "open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency" unless the Brown Act provides otherwise. Cal. Gov't Code § 54953(a).

The Brown Act allows members of the legislative body to participate in meetings by teleconference provided that certain requirements as set forth in California Government Code section 54953(b) are met. In the absence of the Executive Orders and A.B. 361, the legislative

¹ The teleconferencing option in A.B. 361 applies to all legislative bodies in the City, defined in the Brown Act as including the City Council and commissions, committees, boards and other bodies, "whether permanent or temporary, decision making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body." Cal. Gov't Code § 54952.

“For the duration of the Governor’s declared state of emergency related to the Covid-19 pandemic, the Council and the City’s boards and commissions may use teleconferencing in compliance with A.B. 361 if social distancing recommendations are in effect or if the Council adopts a resolution determining that meeting in person would present imminent risks to the health or safety of attendees.”

CITY ATTORNEY MEMO ON AB 361 AMENDING THE RALPH M. BROWN ACT

**City of San Diego
(Past 7 days)**

Confirmed cases:

1,141

Case rates: 11.9

Transmission rates:

Substantial
transmission

**City of San Diego
(Past 30 days)**

Confirmed cases: 4,308

**County of San Diego
(Past 30 days)**

Confirmed cases:

15,684

Outbreaks: 179

Hospitalizations: 494

ICU: 29

Deaths: 158

35 new community outbreaks were confirmed in the past seven days (Oct. 13 through Oct. 19)

37 new deaths were reported since Oct. 13, 2021. The region's total is 4,178.

COVID DATA TO EVALUATE

“ THERE ARE NO PLANS TO RETURN TO COUNCIL AT THIS TIME. WE ARE STILL MONITORING THE AMOUNT OF HOSPITALIZATIONS AND DEATHS DUE TO THE DELTA VARIANT OF COVID 19.

”

Director of Legislative Affairs, Office of Council President Campbell



QUESTIONS TO CONSIDER

1. Does the COVID-19 pandemic continue to directly impact the ability of commissioners to meet safely in person?
2. Would members of the public continue to have access to the meeting and be provided with an opportunity to address the Commission if meetings remained virtual?
3. If the Commission chooses to teleconference in compliance with A.B. 361, would that decision and the circumstances of the state of emergency be evaluated in 30 days?