

# **Navigating New Laws and Protocols Around Public Meetings**

**Monday, January 24, 2022  
12:30 – 2:00 pm**

# THANK YOU FOR JOINING

## Webinar Host & Moderator

**Melissa Kuehne**

Senior Program Manager  
Institute for Local Government



# TODAY'S AGENDA

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**Welcome, Logistics & Introductions**

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**Presentations:**

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Julian A. Viksman, Attorney, Hanson Bridgett

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Brendan Adams, Attorney, Hanson Bridgett

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Donna Johnston, Clerk Recorder/Clerk of the Board, Sutter County

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**Polling & Panel Discussion**

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**Q&A**

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**Wrap Up & Adjourn**

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# HOW TO ASK A QUESTION

- All webinar participants will be on MUTE during the entire call.
- Please TYPE any questions into the question box at any time during the webinar.
- The moderator will read your questions during the question period at the end of the webinar.



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- ILG is the non-profit training and education affiliate of three statewide local government associations
- Together with our affiliates, we serve over 2,500 local agencies – cities, counties and special districts
- We provide practical and easy-to-use resources so local agencies can effectively implement policies on the ground



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Districts Association**  
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Leadership & Governance

Civics Education & Workforce

Public Engagement

Sustainable & Resilient Communities



## Services

Education & Training

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Capacity Building

Convening

Our mission is to help local government leaders **navigate complexity, increase capacity & build trust** in their communities

# INSTANT POLLING – LOG INTO MEETING SIFT

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# TODAY'S PRESENTERS

Julian A. Viksman  
Attorney  
Hanson Bridgett



Brendan Adams  
Attorney  
Hanson Bridgett



Donna Johnston  
Clerk Recorder/Clerk of  
the Board  
Sutter County



# AB 361 and the Brown Act: Compliance and Legal Issues

Institute for Local  
Government

January 2022



**Julian Viksman**

Phone: 213-395-7645

[jviksman@hansonbridgett.com](mailto:jviksman@hansonbridgett.com)

**Brendan Adams**

Phone: 415-995-6490

[badams@hansonbridgett.com](mailto:badams@hansonbridgett.com)





# AB 361 and the Brown Act

- What is the Ralph M. Brown Act?
- How did Assembly Bill 361 (Rivas) change the Brown Act?
- Topics
  1. The Brown Act
  2. AB 361
  3. Practical Considerations
  4. Q&A with Donna Johnston, Clerk of Board for Sutter County, and Dora Seamans, San Mateo County Transit District Secretary



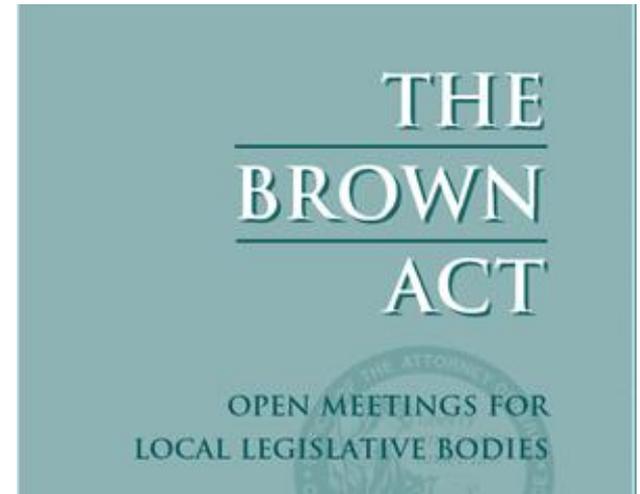
# Part I: The Brown Act





# Purpose of the Brown Act

- Provide public access to meetings of California local government agencies
- Promote transparency and public participation
- Open to the public
- See Bagley-Keene Act for State government agencies





# What Does the Brown Act Require?

**“All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend** any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.” (Government Code § 54953)





# Open Meetings: Brown Act

- Meetings of local legislative bodies
  - Notice specifying time and place of meeting
  - Published agenda
  - Opportunity for public comment
- Penalties: Invalidate action and/or misdemeanor
- New laws
  - *AB 2257: post agenda or link to agenda on primary website homepage accessible through a prominent, direct link for all meetings after 1/1/2019 (Gov't Code 54954.2)*
  - *AB 1787: members of the public with translators receive twice the allotted time for public comment*



# Closed Session Exceptions

- Real property – “price and terms of payment” only
- Pending litigation
- Personnel
  - *Post-Bell reform: can only approve compensation at regular meeting and in open session*
  - *SB 1436: before taking final action on executive compensation, legislative body must orally report a summary of a recommendation for a final action during the open meeting (Gov’t Code section 54953)*
- Threat to public security
- Labor negotiations
- ***Duty of confidentiality!***





# Brown Act Pitfalls

- Quorums outside of noticed meetings
  - Conference exception
  - Improper use of “ad hoc” committees
- “Serial” conversations
  - Daisy chain
  - Hub and spoke
  - Talking outside of meetings
  - *E-mail / Internet*





# Traditional Brown Act Teleconferencing

- The Brown Act has allowed local agencies to use teleconferencing tools for public meetings!
- “Teleconference” means “a **meeting of the legislative body, the members of which are in different locations, connected by electronic means**, through either audio or video, or both. (Government Code § 54953(b)(4))



# Traditional Brown Act Teleconferencing

- However, there are a number of requirements
  1. Post agendas at all teleconference locations
  2. Identify each teleconference location in the notice and agenda of the meeting
  3. Keep each teleconference location accessible to the public
  4. Generally, at least a quorum of the legislative body must participate from within the boundaries of the local agency's jurisdiction



# Part II: AB 361





# What is AB 361?

- Signed into law by Governor Gavin Newsom on September 16, 2021
- In response to the COVID-19 Pandemic
- Contains sunset provisions





# AB 361 and the Brown Act

AB 361 allows legislative bodies to meet remotely without making the teleconference location accessible to the public and without a quorum of the legislative body participating from boundaries without the jurisdiction in three circumstances:

- The legislative body holds a meeting during a proclaimed state of emergency, and **state or local officials have imposed or recommended measures to promote social distancing**
- The legislative body holds a meeting during a proclaimed state of emergency **for the purpose of determining**, by majority vote, whether **as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees**
- The legislative body holds a meeting during a proclaimed state of emergency **and has determined**, by majority vote, that, **as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees**



# AB 361 and the Brown Act: Notice and Agenda

- Adds additional requirements to the regular Brown Act notice and agenda requirements:
  - Must provide notice of the means by which members of the public may access the meeting and offer public comment
  - Agenda must identify and include an opportunity for all persons to attend via a call in option or an internet-based service option
- But note that you do not need to:
  - Post agendas at each teleconference location
  - Keep each teleconference location open to the public
  - Have at least a quorum of the members of the legislative body participate within the boundaries of the agency



## **AB 361 and the Brown Act: Public Comment**

- In the event of a disruption which prevents the agency from broadcasting the meeting to the public using the call-in option or internet-based service option, the legislative body cannot take action on items appearing on the meeting agenda until public access to the meeting is restored
- Cannot require public to submit comments in advance of meeting
- Must provide the public an opportunity to address the legislative body and offer comment in real time
- Cannot close public comment period for agenda until either the public comment period has elapsed or a reasonable amount of time per agenda item has elapsed
  - Must include time for the public to register



# AB 361 and the Brown Act: Ongoing Findings

- A legislative body must make certain findings every 30 days to continue using AB 361
- If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, a legislative body may continue to teleconference under AB 361 if it **makes the following findings by majority vote every 30 days after teleconferencing for the first time:**
  - **The legislative body has reconsidered the circumstances of the state of emergency****and**
  - **The state of emergency continues to impact the ability of the members to meet safely in person****or**
  - **State or local officials continue to impose or recommend measures to promote social distancing**



# Regular Teleconference v. AB 361 Teleconference

	Regular	AB 361
Agenda	Must be posted at every teleconference location.	Not posted at every teleconference location.
Accessibility	Each teleconference location is accessible to the public.	Teleconference locations NOT accessible to the public.
Notice	No special notice requirements.	Must provide notice by which the public can access meeting and offer comment.
Quorum	At least a quorum of the legislative body must participate within the boundaries of the agency.	Not Applicable.
Resolutions	Not Applicable.	Initial resolutions and ongoing findings.
Disruption	No special requirements.	Halt meeting until access restored.



# Part III: Practical Considerations





# Technology

- Does the agency have adequate technology to broadcast and receive public comment via video or telephone?
- Disruption events—is that technology reliable?
- Moderating the chat and using mute functions





# Capacity

- Is there capacity for the Board and public to meet in person, given social distancing recommendations?
  - Overflow room



# Hybrid Meetings

- Broadcast for convenience
- Partial attendance by Board
- But remember the safety-oriented provisions of AB 361!





# Ethical Implications

- AB 361 was intended to improve public access to meetings during the COVID-19 Pandemic and future applicable emergencies
  - Contemplates health and safety of the Board and the public
- Don't forget the purpose of the Brown Act!



# SUTTER COUNTY



**Donna Johnston**  
**Clerk Recorder/Clerk of**  
**the Board**

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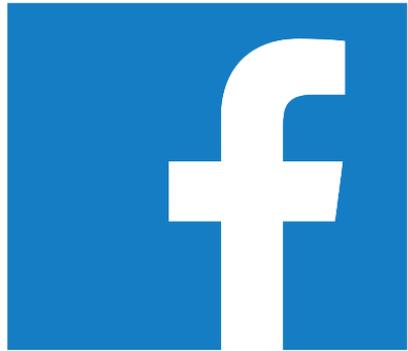


# POLLING & DISCUSSION



# STAY IN TOUCH

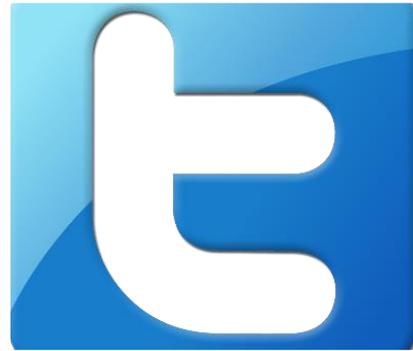
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# THANK YOU!

Julian A. Viksman  
Hanson Bridgett  
jviksman@hansonbridgett.com



Brendan Adams  
Hanson Bridgett  
badams@hansonbridgett.com



Donna Johnston  
Sutter County  
djohnston@co.sutter.ca.us



Melissa Kuehne  
Institute for Local  
Government  
mkuehne@ca-ilg.org



**Thank you  
for joining us!**