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Public Meeting Management and Recent Brown Act Updates

This term, the legislature enacted—and the Governor recently signed—two separate bills that provide additional tools for local public agencies to use with issues related to both public and board member participation in public meetings. Both go into effect on January 1, 2023.

The first, Senate Bill 1100, added Section 54957.95 to the Government Code, authorizing the presiding member of a local public agency or their designee to remove any individual for disrupting a public meeting after a warning and continued disruption. The second, AB 2449, signed this week, provides an additional option for individual board member remote videoconference meeting participation through December 31, 2025, for just cause and/or when confronted with emergency circumstances.

Handling Meeting Disruptions

Senate Bill 1100

Many local public agencies have been grappling with difficult and repeated disruptions to their meetings, often seriously impacting the agency's meaningful ability to efficiently and effectively conduct the public's business. Although it has long been a misdemeanor to willfully disrupt a public meeting (Penal Code section 403) and agencies have always been empowered with the ability to adopt reasonable regulations to ensure the orderly conduct of meetings, SB 1100 provides those presiding over public meetings with a very specific standard to enforce and a clear right to remove those engaging in continued, willfully disruptive behavior after requests to stop.

The New Law:

Specifically, Government Code section 54957.95 has been added to provide that after the presiding member of the board (or designee) warns an individual that their behavior is disrupting the meeting and that person fails to promptly stop the disrupting behavior, the presiding official or designee may remove that individual from the meeting. For purposes of this law, "disrupting" has been defined as engaging in behavior during the meeting that ***actually*** disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting, including but not limited to:

- Failing to comply with reasonable and lawfully adopted meeting conduct regulations
- Engaging in behavior that constitutes either (1) use of force or (2) a true threat of force

"True threat of force" means a threat that has sufficient signs of intent and seriousness, that a reasonable person would perceive to be an actual threat to use force by the individual making the threat.

Existing law protects the public's right to access the meetings of public agencies and to provide comment on matters of the agency's business, including the right to disagree with and/or criticize the agency's policies,

procedures, programs and/or services, as well as the acts or omissions of the board itself. (Gov. Code § 54954.3.) As such, care must be taken to ensure that members of the public are provided the opportunity to attend meetings and address the board, which often requires tolerating angry, heated, and potentially even hostile comments. However, as this new law makes clear, boards are not required to tolerate threats of force or violence, or members of the public who refuse to relinquish the microphone or who prevent others from exercising their rights.

Implementation:

To this end, boards should consider conducting governance workshops and/or placing an item on the regular agenda to discuss this new law, as soliciting feedback and guidance from members of their board and community regarding implementation and enforcement as well as what disruption and threat of force mean in this context, are well-advised. Boards will also want to work to answer key questions such as:

- *Who will be responsible for warning a person if their behavior is disruptive?*
- *What information will be provided to the public generally as well as individuals specifically of the potential consequences of continued disruption?*
- *Will it be the board president or a designee who ultimately decides to remove a person?*
- *Who will be responsible for physically removing the person, agency security personnel, a School Resource Officer (SRO), a law enforcement officer from an outside agency, a school administrator, someone else?*

Communications with local law enforcement regarding their requested role, if any, will also be especially critical, as the enforcement right lies with the agency itself and is not framed as a criminal act.

Q: So what should we do to inform our community members of the existence of this law and the possibility of removal for willful disruption of our meetings?

Again, it is critical that boards communicate clearly with their stakeholders because they do not want to be in a position where their board president or other official is faced with removing a member of the public from a meeting when that possibility has not already been clearly explained to the community in general or those in attendance specifically. This type of notice, in addition to the governance workshops or agenda item discussions noted above, can take many forms including:

- Amending existing—or adding new—policies, regulations, board bylaws, and/or governance handbooks to describe with greater specificity *why*, *when* and *how* a person may be removed from a public meeting and publishing those to the agency's website;

- Including a public notice of the new law and the agency's related policies and/or practices in agency newsletters and on meeting agendas, including placement of a general warning at the top of all meeting agendas about the prohibition against disrupting a public meeting and the removal procedures if disrupting behavior is not promptly ceased upon warning; and

- Reading aloud the agency's agreed-upon participation norms and speaker procedures at the beginning of all public meetings, perhaps immediately prior to hearing public comments, along with consequences for noncompliance.

Then, should a member of the public engage in disruptive behavior and refuse or fail to cease the disruptive conduct, those in attendance will understand what is happening, why it is happening, and the related legal authority of the pertinent agency official(s) involved. Accordingly, we also recommend training board members, as well as spokespersons and public information officers, with regard to the handling of disruptions when they occur, including how to articulate what the person's behavior was that actually "disrupted" the meeting, the warnings that were provided, and how removal was accomplished so that the board could move forward to get its necessary work done.

Each individual case will likely be unique. Agency officials should thus consult with legal counsel to decide if and how best to implement this new law to ensure that the public continues to be able to meaningfully participate in the democratic process of local board meetings, while at the same time permitting the agency to actually accomplish the work it must complete on behalf of the public it serves.

Board Member Exigencies and Remote Meeting Attendance

Assembly Bill 2449

With the current legislation—enacted during the pandemic exempting local agency boards from many of the general tele/videoconferencing rules during declared states or emergency or when public health recommends social distancing—set to expire on December 31, 2024, the legislature recently passed and the Governor just signed AB 2449, new legislation which will provide individual board members and agencies with some additional flexibility when it comes to remote meeting participation.

AB 2449 adds a new process whereby individual board members may request to participate in local agency meetings remotely starting January 1, 2023 through December 31, 2025 based on the board member's own ***emergency needs*** or for other identified ***just cause*** if both the individual member and the local legislative body comply with certain procedural requirements, which generally include notice, board action to approve requests, and certain board member and public electronic and in-person meeting requirements.

Specifically, ***all of the following*** requirements must be satisfied ***before*** a board member will be permitted to participate remotely:

Agency requirements:

1. The meeting for which remote attendance is being requested has at least a quorum of its members participating in person, from a publicly accessible, singular location within the agency's jurisdiction, which is identified on the posted agenda.
2. For the meeting itself, the local agency must provide:
    - a two-way audiovisual platform of the meeting; and/or
    - a two-way telephonic service and a live webcasting of the meeting.
3. The agenda/notice of the teleconferenced meeting must include instructions regarding how the public may access the meeting electronically, including how they may offer public comment. Notably, public comments must be able to be accepted in real time (the agency cannot require submission of comments in advance).
4. The agenda must provide for an opportunity for all persons to attend and address the board directly through ***all*** of the following:
    - a call-in option;
    - an internet-based service option; and
    - in-person at the location of the meeting.
5. The agency must ensure that any and all business at the meeting is immediately halted in the event remote (e.g. call-in and/or internet-based service) service is disrupted/interrupted, which interruption prevents receipt of public comments
6. The board must formally vote to approve the request.

Board member requirements:

1. The board member seeking to participate remotely must notify the rest of the board of their need (emergency circumstance or just cause) at the earliest possible opportunity.

2. At the time the request is made, the board member requesting remote participation must provide the board with a general description of the qualifying circumstances creating the emergency/just cause. (Note that this requirement does not mandate disclosure of any confidential medical information and need not be more than 20 words in length.)

As for timing, the bill requires requests for remote participation to be made sufficiently in advance of the meeting so as to allow the matter to be properly agendized for formal board action. However, as emergencies and their impacts on members, by definition, are not always known in time to get requests properly agendized, the bill permits board action on last minute requests to occur at the beginning of the meeting for which remote attendance is requested, without a specifically listed agenda item, if the situation giving rise to the need was not known in time to be agendized.

Then, if approved by formal action of the rest of the board, the member participating remotely must:

1. Publicly disclose at the meeting before any action is taken, whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and if so, the general nature of the member's relationship with any such individuals; and

2. Ensure their meeting participation using ***both*** visual and audio technology.

In other words, unless the member participating remotely can ensure that the public can both see and hear them in real time, they will not be authorized to continue to remotely participate.

Q: What constitutes an "emergency" or "just cause" for purposes of this Brown Act flexibility?

The legislature specifically defined emergency circumstances to mean a "physical or family medical emergency that prevents a member from attending in person."

"Just cause" is defined as a childcare or caregiving need, a contagious illness, physical or mental disability not otherwise accommodated by existing processes, or travel on official agency (or other state or local agency) business.

Q: Are there any limits to how often a member can utilize this flexibility?

The bill was introduced and then passed to facilitate remote meeting attendance by board members, understanding that situations do arise where the ability to participate without having to make the member's location accessible to the public is not only necessary but advisable. However, staying true to the spirit of the Brown Act, the bill limits individual board members from using this flexibility to no more than three (3) consecutive months or 20 percent of the regular meetings for the local agency within a calendar year ***or*** to no more than two (2) meetings if the board regularly meets fewer than 10 times per calendar year. Clearly, the legal preference remains in-person participation by board members.

Q: How does a board member make a request for remote attendance, assuming the agency already satisfies all of the other meeting conditions and can a board member make a request that applies to more than one meeting?

The law requires a separate request for each meeting for which remote attendance is sought. As such, as soon as a board member learns of their need to participate remotely, they should notify the rest of the board in writing of their request and the qualifying circumstances. However, if the need for remote participation for multiple scheduled meetings is known, there is nothing that would prohibit the simultaneous submission of separate requests applicable to different meetings. In fact, the legislation appears to require that.

Q: Can the member requesting to participate remotely vote on their request or a similar request by another member?

Although not specifically stated in the legislation, since board action to approve a request is a prerequisite for remote participation, the board member making the request would not be permitted to vote on their own request unless it came on for consideration at a meeting they were attending in person. If being considered at the same meeting for which remote attendance is being sought, the member would not be permitted to participate or vote on anything until their request is approved, including similar request(s) by other board members. Further, as requests require formal board action, it is important to note that they must also be approved by a ***majority of the membership*** of the board, not simply a majority of those otherwise in lawful attendance.

In closing, we note that the rights of the public to attend public meetings and to provide comments directly to their elected (or appointed) officials on matters of public interest within the jurisdiction of the agency remain key principles of representative government. Adherence to the notice and procedural requirements set forth in the Brown Act is thus imperative to avoid what could be costly legal challenges and damaging erosion of community trust. Accordingly, should you have any questions concerning these new laws or their implementation and applicability to your agency's operations, please do not hesitate to call one of our six offices.

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