

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: December 20, 2022

TO: Honorable Mayor and Councilmembers

FROM: City Attorney

SUBJECT: Legal Update: New Meeting Disruption and Teleconference Amendments to the Ralph M. Brown Act

INTRODUCTION

As the new year approaches, the Office of the City Attorney would like to bring to your attention two important Ralph M. Brown Act (Brown Act) amendments that take effect January 1, 2023. These amendments will impact San Diego City Council (Council) operations as well as those for City boards and commissions.

On August 22, 2022, Governor Newsom signed Senate Bill 1100 (S.B. 1100) into law adding California Government Code section 54957.95. Under this new section, a presiding member of a legislative body is authorized to remove, or cause the removal of, individuals who disrupt open meetings. The bill also identifies the types of behaviors which may be characterized as “disrupting” under the statute.

The Governor also signed Assembly Bill 2449 (A.B. 2449) into law on September 13, 2022. A.B. 2449 revises and recasts the teleconference provisions found in California Government Code sections 54953 and 54954.2.¹ These newly revised sections will take on additional importance if the Governor’s proclaimed COVID-19 State of Emergency ends in February 2023.² In the absence of a proclaimed state of emergency, A.B. 2449 will provide a separate process for local legislative bodies to hold remote “hybrid” meetings.

BACKGROUND

The California State Legislature adopted the Brown Act in 1953 with the express intent that “public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people’s business” and “their actions be taken openly and . . . their deliberations be conducted openly.” Cal.- Gov’t Code § 54950. All meetings of a local

¹ A.B. 2449 will remain in effect through January 1, 2026, when it will be automatically repealed and the pre-COVID version of Section 54953 will remain.

² Governor Newsom announced in October 2022 that the COVID-19 State of Emergency is expected to end on February 28, 2023.

legislative body, therefore, “shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body” unless the Brown Act provides otherwise.³ Cal. Gov’t Code § 54953(a).

Local legislative bodies may adopt reasonable regulations to ensure public participation in the legislative process, “including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.” Cal. Gov’t Code § 54954.3(b)(1).⁴ Such regulations do not trump an individual’s free speech rights under the United States Constitution. Accordingly, local legislative bodies may not “prohibit public criticism of the policies, procedures, programs, or services of the agency, or the acts or omissions of the legislative body.” Cal. Gov’t Code § 54954.3(c).

ANALYSIS

I. Senate Bill 1100 – Orderly Conduct at Open Meetings

Under current law, if a public meeting is willfully interrupted by “a group or groups of persons” that renders the orderly conduct of a meeting unfeasible and order cannot be restored by the removal of the individuals who are interrupting the meeting, members of the legislative body may order the room cleared and the meeting continued outside of the public’s presence.⁵ Cal. Gov’t Code § 54957.9. Representatives of the press or other news media must be allowed to remain provided they are not participating in the disturbance. *Id.*

S.B. 1100 adds section 54957.95 to the California Government Code, which allows the presiding member of the legislative body or their designee to remove, or cause the removal of, individuals who disrupt public meetings. “Disrupting” is defined to mean engaging in behavior during a meeting of the legislative body that “actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, . . . [a] failure to comply with reasonable and lawful regulations adopted by the legislative body.” Cal. Gov’t Code § 54957.95(b)(1)(A). Before removal, the presiding member must warn the offending individual that “their behavior is disrupting the meeting and that the failure to cease their behavior may

³ As used in the Brown Act, a “legislative body” includes the governing body of a local agency and any boards, commissions, committees, or other bodies of a local agency that are created by charter, ordinance, resolution, or formal action of a legislative body. *See* Cal. Gov’t Code § 54952(a), (b).

⁴ Under this section and relevant to meeting disruptions subject to S.B. 1100, the Council adopted former Rule 2.13 of the Rules of Council (recently renumbered as Rule 2.14) which provides that the Council President may order the removal of any person whose conduct disrupts or impedes the conduct of a Council meeting if the person refuses to conform to the rules of conduct after being ordered to do so. *See* San Diego Municipal Code § 22.0101.

⁵ “Willfully” means to act voluntarily and intentionally, but not necessarily maliciously. *Black’s Law Dictionary* (11th ed. 2019).

result in their removal.” Cal. Gov’t Code § 54957.95(a)(2). Warnings are not required if individuals are engaged in behavior that constitutes a use of force or a true threat of force.⁶

The Council also has codified Rules of Council in the San Diego Municipal Code that address meeting disruptions. Rule 2.14 allows the Council President to remove any person who disrupts, disturbs, or impedes the conduct of a Council meeting after a warning and being ruled out of order if the person refuses to comply with the rules of conduct. *See* San Diego Municipal Code § 22.0101. After January 1, 2023, the Council President may also rely on section 54957.95 to immediately remove individuals engaged in behavior that involves a use of force or true threat of force.

II. Assembly Bill 2449 – “Hybrid” Teleconferencing Allowed in Specified Circumstances

The Brown Act permits the use of teleconferencing “for the benefit of the public and the legislative body” in connection with any meeting or proceeding authorized by law.⁷ Cal. Gov’t Code § 54953(b)(1). The legislative body must post agendas at each teleconference location; identify those locations in both the meeting’s notice and agenda; and make each teleconference location accessible to the public. Cal. Gov’t Code § 54953(b)(3). In response to COVID-19, Governor Newsom issued certain executive orders suspending some of these Brown Act provisions (e.g., Cal. Gov’t Code § 54953(b)(3)) and establishing temporary teleconference rules. These temporary rules were later codified into law by Assembly Bill 361 (A.B. 361) in September 2021 and sunset on January 1, 2024.

Under A.B. 361, local agencies can teleconference without identifying each teleconference location and providing public access to those locations so long as the Governor has declared a state of emergency and if: (i) state or local officials have imposed or recommended measures to promote social distancing; or (ii) the legislative body determines, by majority vote, that “as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.” Cal. Gov’t Code § 54953(e)(1)(A)-(C).

A.B. 2449 addresses when a limited number of legislative members need to meet remotely due to emergency circumstances” or other situations supported by “just cause.”⁸ Specifically, “hybrid” teleconference meetings are allowed without having to comply with the disclosure requirements found in California Government Code section 54953(b)(3). The meetings are “hybrid” because at least a quorum of legislative members must participate in person from a singular, clearly

⁶ “‘True threat of force’ means a threat that has sufficient indicia of intent and seriousness, that a reasonable observer would perceive it to be an actual threat to use force by the person making the threat.” Cal. Gov’t Code § 54957.95(b)(2).

⁷ “Teleconference” means a meeting of the legislative body with members in different locations connected by electronic means, through audio or video, or both. Cal. Gov’t Code § 54953(b)(4).

⁸ “Emergency circumstances” are defined as “a physical or family medical emergency that prevents a member from attending in person.” “Just cause” includes childcare or family caregiving needs, contagious illness, physical or mental disability need, or travel while on official business. Cal. Gov’t Code § 54953(j)(1), (j)(2)(A)-(D).

identified, publicly accessible physical location situated within the territorial boundaries of the local agency's jurisdiction while one or more members of the legislative body (but less than a quorum) may request to participate remotely due to emergency circumstances (i.e., a physical or family medical emergency that prevents in-person attendance) or for just cause (i.e., childcare or family caregiving need, contagious illness, physical or mental disability need, or travel while on official public business).

Like A.B. 361, any teleconference authorized by A.B. 2449 must provide the public with the following:

- the means to remotely hear and visually observe the meeting, and to remotely address the legislative body (Cal. Gov't Code § 54953(f)(1)(A));⁹
- the opportunity to attend and address the legislative body directly via a call-in option, via an internet-based service option, and at the in-person location of the meeting (Cal. Gov't Code § 54953(f)(1)(C)); and
- the meeting agenda and notice that includes how members of public may access the meeting and offer public comment (Cal. Gov't Code § 54953(f)(1)(B)).

The legislative body may not require the public to submit comments in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time. Cal. Gov't Code § 54953(f)(1)(E).

Members of a legislative body may not participate remotely based on a just cause for more than two meetings per calendar year. Cal. Gov't Code § 54953(f)(2)(A)(i). Members are also limited to the total number of times they may participate by teleconference within a calendar year to no more than three consecutive months or 20 percent of regular meetings.¹⁰ Cal. Gov't Code § 54953(f)(3).

To participate remotely under A.B. 2449, a member of the legislative body must do the following:

- notify the legislative body at the earliest opportunity, including at the start of a regular meeting, of the need to participate remotely (Cal. Gov't Code § 54953(f)(2)(A)(i), (ii)(I));

⁹ The Brown Act only requires remote public access if meetings are held via teleconference under either A.B. 361 or A.B. 2449.

¹⁰ If the legislative body meets fewer than 10 times per calendar year, remote participation under A.B. 2449 is limited to two meetings. Cal. Gov't Code § 54953(f)(3).

- provide a general description, presumably into the record, of the circumstances relating to their need to appear remotely at a given meeting (Cal. Gov't Code § 54953(f)(2)(A)(i), (ii));¹¹
- in emergency circumstances, members must request to participate remotely as soon as possible, and make separate requests for each meeting in which they seek to participate remotely (Cal. Gov't Code § 54953(f)(2)(A)(ii)(I));
- when participating remotely, a member must 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 with the member and the general nature of the member's relationship with any such individual (Cal. Gov't Code § 54953(f)(2)(B)); and.
- remote participation must be through both audio and visual technology (Cal. Gov't Code § 54953(f)(2)(C)).¹²

Lastly, the legislative body must approve a member's request to teleconference for emergency circumstances at the earliest opportunity.¹³ Cal. Gov't Code § 54953(f)(2)(A)(ii)(II). If the member's request does not allow sufficient time to be placed on the meeting agenda for the meeting for which the request is made, the action may occur at the beginning of the meeting in accordance with California Government Code section 54954.2(b)(4). Cal. Gov't Code § 54953(f)(2)(A)(ii)(II).

The legislative body is also prohibited from taking any action while a disruption prevents the legislative body from broadcasting a hybrid meeting to members of the public using the call-in option or internet-based service option or prevents members of the public from offering public comments using the call-in option or internet-based service option. Cal. Gov't Code § 54953(f)(1)(D). The Council may wish to address how disruptions will be handled in its Rules or explain the process to the public at the start of each meeting, on the City Clerk's website, or the agenda itself. Any action taken during a disruption that prevents the legislative body from broadcasting the meeting may be challenged pursuant to California Government Code section 54960.1. *Id.*

CONCLUSION

S.B. 1100 and A.B. 2449 allow the City to address disruptive behaviors at open meetings and continue modified, but limited, teleconference procedures after the Governor's proclaimed

¹¹ A general description need not exceed 20 words and shall not require the member to disclose any medical diagnosis or disability, or any personal medical information already exempt under existing law.

¹² "Watching or listening to a meeting via webcasting or another similar electronic medium that does not permit members to interactively hear, discuss, or deliberate on matters, does not constitute remote participation." Cal. Gov't Code § 54953(j)(4).

¹³ There is no similar approval requirement when remote participation is based on just cause. Rather, in these circumstances, a member need only notify the legislative body at the earliest opportunity.

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COVID-19 state of emergency ends. This Office is available to assist with the implementation of any new procedures developed in response to these amendments and to answer any questions.

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