



Meeting Disruptions, Workplace Violence Restraining Orders, and the Bane Act

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Meeting Disruptions, Workplace Violence Restraining Orders, and the Bane Act

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Introduction

California law has long recognized the authority of local bodies to establish rules that reasonably regulate the time, place, and manner of public comments at their meetings, as well as the authority to remove individuals who truly disrupt a meeting's orderly conduct. (Government Code section 54957.3; Penal Code section 403; Government Code section 54957.9; *See also Kindt v. Santa Monica Rent Control Board*). The California legislature reinforced this authority with the recent passage of SB 1100. As noted in the bill's legislative findings, orderly meetings are necessary to "preserve the rights of other members of the public at the meeting and allow the legislative body to continue its work on behalf of the public." In an era where political division and public frustration are as high as ever, it's important for legislative bodies to have a number of tools at their disposal to maintain decorum and conduct business. It's equally important that legislative bodies understand how to wield these tools carefully and thoughtfully.

Disruptions During Meetings

In General

Senate Bill 1100, authored by Sen. Dave Cortese, was signed into law on Aug. 22, 2022 and is now codified at Government Code section 54957.95. It amended the Brown Act to give presiding members of legislative bodies, or their designees, the statutory right to remove individuals who are "disrupting" a public meeting. "Disrupting" is defined as behavior during a meeting "that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting..." It includes failing to comply with reasonable and lawful regulations that have been adopted by the body (e.g. speaking beyond established time limits or otherwise speaking out of turn), as well as behavior that constitutes use of force or a true threat of force.

Generally, SB 1100 requires the presiding officer or their designee to warn an offending individual that they are disrupting the meeting and that their failure to cease may result in removal. After being so warned, an offending individual may be removed if they fail to "promptly" cease their disruptive behavior. However, when it comes to uses of force or true threats to use force, SB 1100 allows a presiding member to have an individual removed without a prior warning. In other words, SB 1100 recognizes the need to immediately deal with individuals who are using force or are truly threatening to use force during a meeting. Government Code Section 54957.95 defines a "true threat of force" as a threat that seems serious enough that a reasonable observer would perceive it to be an actual threat to use force.

While SB 1100 provides a very explicit statutory basis for removing disruptive individuals from meetings (and in many ways codifies prior legal precedent), it serves to supplement – not supplant – pre-existing law that empowers legislative bodies to regulate their meetings and deal with disruptive conduct. Courts have long recognized that an individual may be removed from a public meeting if they disturb the meeting in a way that truly impedes the progress of the meeting and the conduct of business. (*Norse v. City of Santa Cruz* (9th Cir. 2010) 629 F.3d 966, 976; *Kindt v. Santa Monica Rent Control Bd.* (9th Cir. 1995) 67 F.3d 266; see also California Penal Code section 403 [making it a misdemeanor to willfully disturb an otherwise lawful public meeting])

Furthermore, the Brown Act, at Government Code section 54954.3(b)(1), explicitly authorizes legislative bodies to adopt reasonable regulations to ensure that members of the public have the opportunity to address the legislative body on any item of public interest. Thus, there have historically been ways to deem a member of the public objectively out of order, such as by speaking out of turn or speaking beyond established time limits, such that they can be deemed disruptive. But legislative bodies cannot prohibit speech that is merely critical of their policies, procedures, programs or services. (Gov't Code § 54954.3(c).) Likewise, making personal attacks or using profanity, without an actual disruption, is not grounds for removing a member of the public or for curtailing their speech. (*Norse v. City of Santa Cruz* (9th Cir. 2010) 629 F.3d 966, 976; *Acosta v. City of Costa Mesa*, (9th Cir. 2013) 718 F.3d 800, 811)

Prior to SB 1100, the Brown Act at Government Code section 54957.9 also provided for the removal of “a group or group of persons” who disrupted a meeting, and also provided that the entire meeting room may be cleared out (with the exception of non-disruptive members of the press) in the event that order cannot be restored by removing the disruptive individuals.

Practice Pointers for Organized / Widespread Disruptions

A truly organized and widespread disruption is like a natural disaster; you are way better off having planned ahead of time. Below are some of the things an agency should think about before it finds itself facing an organized or otherwise widespread disruption.

- **Consider having the presiding officer make a pre-emptive announcement.** If you're anticipating a disruption at a meeting – particularly an organized or widespread disruption – consider briefly reminding the public of the rules. Also, consider reminding everyone for the reasons *behind* the rules – i.e. to ensure that everyone has a fair opportunity to participate and that the agency's business can get done; peer pressure can sometimes dissuade would-be disrupters.
- **Try to de-escalate whenever possible.** When giving someone a warning, whether pursuant to SB 1100 or just as a matter of local policy / practice, think about who should give the warning. Does it make the most sense to have a peace officer approach and warn disruptive individuals in the first instance? Or (assuming it's otherwise safe) might it be better to have staff or a security guard give the initial warning?
- **Don't be afraid to recess if things get out of hand.** Recessing, in and of itself, can be a form of de-escalation, since it may allow a spontaneous disruption to run out of steam. But, at a minimum, it can allow the presiding officer, legal advisors, and safety personnel to caucus and assess next steps.
- **What is the chain of command?** Whether operating under SB 1100 or another process, it's unlikely that the presiding member of the body will actually be the person who puts their hands on a disruptive individual and removes them. In most cases, it will be a security guard or a peace officer. Unless there's been some discussion ahead of time, including with the appropriate supervisors and commanders, a security guard or peace officer may

understandably be reluctant to detain somebody based on the order of an individual at the dais.

- **Consider having your rules / script available to be displayed.** If a disruption is loud enough, or widespread enough, it may be the case that verbal warning – even warnings over a PA system – are inaudible. While you always want your presiding member to verbally recite the warning, consider also projecting the warning visually to get ahead of arguments that your warnings were somehow ineffective or inadequate.
- **Make your warnings specific, and your removals targeted.** In the event of a group disruption, there may be attendees who are clearly affiliated with the group but who are not themselves being disruptive. There may be people wearing matching shirts and holding related signs, but take care distinguish between those members of the group who are *actually disrupting* the meeting and those who are not. Disruptive individuals need to be described accurately when they are being warned, and in the event they need to be removed.
- **Who qualifies as a member of the press in 2023?** If you find yourself in the unenviable position of having to clear a room pursuant to Government Code section 54957.9, you’ll have to allow non-disruptive “representatives of the press or other news media” to remain. Who qualifies as a member of the press? And who in the agency will be responsible for making those determinations? Make a plan ahead of time.

Threats and Other Behavior that Extend Beyond Meetings

Workplace Violence Restraining Orders

A different set of concerns arise with behavior that is not isolated and merely disruptive, but which persists over time and reasonably makes others worry about their safety. In this context, it is helpful to remember that cities are employers, and they can therefore seek the protection of a workplace violence restraining order when their officials and employees have been subject to “unlawful violence or a credible threat of violence from any individual, that can reasonably be construed to be carried out or to have been carried out at the workplace.” (Code Civ. Proc., § 527.8. See Judicial Council Form WV-100-INFO, “How Do I Get an Order to Prohibit Workplace Violence?”) Two cases in particular show how this tool can not only limit a troubled individual’s access to city hall (i.e., the protected employees’ workplace), but can extend to restrictions on that individual’s participation in Brown Act meetings.

City of San Jose v. Garbett (2010) 190 Cal.App.4th 526. Mr. Garbett regularly attended San Jose’s Brown Act meetings over many years, and he often spoke during public comment, “always with reference to something negative impacting him or the City or that he’s just not in agreement with.” He also came to city hall multiple times with questions or public record requests, and he had reputation for being “angry and resentful” toward the city. (Id., pp. 529–530.)

Beyond this not-unusual “gadfly” behavior, however, Mr. Garbett also made statements and engaged in conduct that reasonably frightened city employees. The Court of Appeal describes these statements and this conduct in detail, but some are worth highlighting here:

- He attempted to run for city council in 2008, but returned his nomination papers with only one petition signature instead of the required fifty. While he initially acknowledged that this was insufficient, he later returned to city hall to ask if his papers were accepted. When staff reminded him of the fifty-signature rule, he began to rant about how the city had been “against him” for 40 years. He eventually said something to the effect of: “What does somebody have to do to change policy around here? Do you have to be — take matters into your own hands like the Black man in Missouri?” City employees understood this to be a reference to a recent mass shooting at a city hall in Missouri. (Id., pp. 530–532.)
- He referred to this mass shooting again to another city employee, stating that the Missouri murderer was “a good friend of his.” (Id., p. 533)
- He often became “enraged” and claimed the city was conspiring against him. (Id., p. 534)
- At multiple administrative hearings, Mr. Garbett claimed police officers had “shot into his house” from helicopters, barricaded his property to prevent garbage collection, and entered his house to rape his daughter. He further told one city employee at those hearings that he had “a six-foot plot” picked out for the employee in his backyard. (Id., p. 354.)
- When a parking control officer placed chalk marks on the tires of Mr. Garbett’s car, he ran up to her and yelled at her for approximately 30 minutes. (Id., p. 535)

As a result, multiple city employees reported they were “absolutely” afraid of Mr. Garbett. (Id., p. 533) The trial court agreed that his behavior constituted a credible threat under the workplace violence restraining order statute, and it issued an order with the following terms: “Other than for meetings, [Mr. Garbett] was to stay 300 yards from the protected individuals and from City Hall. [He] was to enter City Hall through specified entrances and be subject to search before entering the City Council chambers. During the meetings he was to sit in a specific row and use a particular stairway. He also was not to file any document personally with the City Clerk, but was required to mail it or have someone else deliver it for him.” (Id., p. 536, fn. 2.) Mr. Garbett appealed.

The Court of Appeal affirmed based on three findings most relevant here. First, the credible threats of violence described in CCP 527.8 are not protected speech, so the First Amendment did not protect Mr. Garbett if his behavior qualified as such a threat. (Id., p. 537.) Second, there was substantial evidence of a credible threat there. (Id., pp. 537–538.)

Importantly, Mr. Garbett apparently did not dispute the facts regarding his alleged behavior, but instead argued that *his* subjective intent should be dispositive — he never intended to threaten anyone, so there could be no credible threat regardless of how others reacted. (Id., p. 539.) The court rejected this position. Following clarifying amendments to the statute in 1998, the only intent required for a credible threat is that it be made “knowingly and willfully.” The character of the threat as such is objective — whether it “would place a reasonable person in fear for his or her safety.” (Id., p. 539.)

Third and finally, the court found the restrictions imposed on Mr. Garbett (quoted above) were not overbroad. Mr. Garbett argued that he never actually inflicted violence on anyone or planned to attack city hall, so (especially given his age of 70) the restrictions the trial court ordered were more than needed to prevent the kind of conduct that prompted the petition. (Id., p. 545.) Again, the appellate court disagreed, explaining: “Appellant’s view of the scope of the permissible remedy under [CCP] section 527.8 is too narrow. The content of a threat does not define the scope of the injunction; it offers a ground from which future violence may be anticipated. Consequently, threatening violence does not lead to an injunction against only a similar threat; the aim of the order is to prevent harm of the nature suggested by the threat.” (Id., p. 545.) Accordingly, because substantial evidence supported the trial court’s finding that Mr. Garbett’s behavior *could* escalate into violence, it was reasonable to restrict his participation in public meetings.

City of Los Angeles v. Herman (2020) 54 Cal.App.5th 97. This case concerned another individual who regularly attended city council meetings, this time in Los Angeles and Pasadena. By his own admission, Mr. Herman had been removed from these meetings more than 100 times. For unspecified reasons, over the course of those meetings he became fixated with a particular deputy city attorney for LA. (Id., p. 100.) At three council meetings during April and May 2019 (two in LA, one in Pasadena), Mr. Herman made threatening statements toward that attorney.

- At the first meeting, he loudly directed an expletive at the attorney and revealed that attorney’s home address in Pasadena, saying “everyone should know” where he lives.
- At the second meeting, Mr. Herman again disclosed the attorney’s home address, including the floor of his apartment, and described its location in relation to where the Pasadena Council meets. According to the record, he said all this “in an angry and threatening manner.” He also submitted public speaker cards, on which he drew antisemitic symbols (he believed the attorney was Jewish), wrote the attorney’s address again, and included more expletives.
- At the third meeting, he became disruptive and was escorted out. On his way out, he shouted the attorney’s name and said “I’m going back to Pasadena and f[***] with you.”

(Id., pp. 100–101.)

The trial court issued the requested restraining order, including directions for Mr. Herman not to further disseminate the attorney’s address in public, and to stay at least 10 yards from the attorney during public meetings. (Id., p. 101.) As in *Garbett*, the Court of Appeal affirmed this order, finding a credible threat based not on Mr. Herman’s subjective intent, but on the fact that Mr. Herman’s statements would make a reasonable person fear for his or her safety. “The relevant issue is not what the speaker intended, but what a reasonable listener would understand.” (Id., pp. 102–104.)

The court also highlighted the First Amendment distinction between restrictions on conduct and those on content. The only content restriction in *Herman* concerned disseminating the protected attorney’s home address, and this was based on specific prior threatening conduct. The rest of the order was content-neutral, allowing Mr. Herman to say whatever he wanted as long as he did so a certain distance from the protected individual. (Id., p. 105.)

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Garbett and *Herman* point the way to successful workplace violence restraining orders in similar contexts. That context will always be fact-specific, of course, but (1) the focus is on what a reasonable person would perceive, not whether the person engaging in the conduct at issue intends to threaten anyone, and (2) it can justify restrictions on an individual's attendance at Brown Act meetings.

Further, *Garbett* and *Herman* are both pre-pandemic cases, so they dealt with fact patterns that unfolded before many cities in California developed reliable means for the public to participate in Brown Act meetings remotely. When there are means to participate remotely but live (e.g., via Zoom), we have seen courts more willing to skip the sometimes-unwieldy restrictions on live participation imposed in those cases in favor of a more straightforward order to participate remotely. One need not worry whether Mr. Garbett used the correct staircase in city hall or sat in the correct seat, or whether Mr. Herman was always ten yards from the attorney he threatened, if neither man needs to enter city hall for a meeting to begin with. (See *R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 191 [restraining order did not violate respondent's free speech rights because it permitted her to say whatever she wants, "as long as she does so at a distance"].)

The Bane Act (Civ. Code, § 52.1)

Finally, the same conduct that frightens city officials and employees, and that therefore justifies a workplace violence restraining order, often also frightens other members of the public. This is especially the case when troubling behavior extends outside public meetings, for example when an individual begins following others to their cars, their workplaces, or even their homes. In short, your city may find itself in the situation where someone successfully intimidates other members of the public into limiting the exercise of their First Amendment rights at Brown Act meetings for fear of what that individual will do to them if they say something he or she does not like.

This admittedly extreme situation allows for multiple responses, but one is an action under the Tom Bane Civil Rights Act, which states:

If a person or persons, whether or not acting under color of law, interferes by threat, intimidation, or coercion, or attempts to interfere by threat, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state, ... any ... city attorney may bring a civil action for injunctive and other appropriate equitable relief in the name of the people of the State of California, in order to protect the peaceable exercise or enjoyment of the right or rights secured.

(Civ. Code, § 52.1(b).)

While mostly used by private plaintiffs against public-entity defendants, as California's state analog to a federal 1983 action, the Bane Act differs from federal civil rights law in that a private actor may be the defendant. (*Venegas v. County of Los Angeles* (2007) 153 Cal.App.4th

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1230, 1242.) It “sweeps more broadly” than other civil rights laws by design, protecting against interference with constitutional rights through “threats, intimidation, or coercion,” regardless of whether the interference is motivated by discrimination. (*Cornell v. City & County of San Francisco* (2017) 17 Cal.App.5th 766, 791.) The important points are that (1) the defendant must intend to interfere with another’s constitutional rights (although, as in other contexts, intent may be shown by reckless disregard for the other’s rights), and (2) the interference must be in the form of speech or conduct that makes the target reasonably fear violence to self or property. (*Shoyoye v. County of Los Angeles* (2012) 203 Cal.App.4th 947, 958–959; *Murchison v. County of Tehama* (2021) 69 Cal.App.5th 867, 897.)

To be clear, no published case has applied the Bane Act in contexts similar to those in *Garbett* and *Herman* — where the concern is to restrict the defendant’s participation in public meetings so that others may exercise their First Amendment rights in those meetings without fear. However, it can and should apply in this context under the right facts, and the author has had success using the Bane Act as a first step toward resolving situations like this through settlement. When multiple people are willing to come forward to say they are afraid to attend a Brown Act meeting when the defendant is also there, it can create powerful equities in your city’s favor toward an agreement for the defendant to participate in meetings remotely.