

Managing Individual and Organized Meeting Disruptions

PRESENTED BY RYAN RICHARDSON

CHIEF ASSISTANT CITY ATTORNEY
CITY OF OAKLAND



SB 1100

Sen. Dave Cortese
Government Code § 54957.95
Effective 1/1/2023

- Presiding officers or their designees may remove, or cause the removal of, individuals who are “disrupting” a public meeting.
- Behavior must actually disrupt, disturb, or impede an orderly meeting.
- May include failing to comply with the body’s reasonable and lawful rules.
- Individual must first be warned that they are disrupting and that failure to cease may result in removal....
- ...unless the individual uses force or credibly threatens force, in which case no warning is needed.

Pre-Existing Law

Kindt v. Santa Monica Rent Control Bd.
(9th Cir. 1995) 67 F.3d 266

Norse v. City of Santa Cruz
(9th Cir. 2010) 629 F.3d 966

Acosta v. City of Costa Mesa
(9th Cir. 2013) 718 F.3d 800

- The Brown Act, at Government Code § 54954.3(b)(1), explicitly lets legislative bodies adopt reasonable regulations for public speaking.
- Courts have recognized that individuals may be removed for actually disturbing a meeting – i.e. impeding the meeting’s progress and the conduct of business.
- Malicious destruction of property, assault, and credible threats of violence are all crimes.
- California Penal Code § 403 makes it a misdemeanor to willfully disturb a lawful public meeting.

Core Tenets

Common standards:

- An attendee using force or making a credible threat of force may be removed immediately.
- Otherwise, removing an attendee is reasonable and appropriate if they are actually disrupting the meeting and they have been warned.
- Removal will be easier to defend when a specific, reasonable rule has been violated.

Organized & Widespread Disruptions

Government Code § 54957.9

- Prior to SB 1100, the Brown Act explicitly provided for the removal of “a group or group of persons” who disrupted a meeting
- The entire meeting room may be cleared out if order cannot be restored by removing the disruptive individuals.
- Except non-disruptive members of the press may not be removed.

Organized & Widespread Disruptions

Practice Pointers &
Food For Thought

- Consider having the presiding officer make a preemptive announcement
- Try to de-escalate whenever possible.
- Don't be afraid to recess if things get out of hand.
- What is the chain of command?

Organized & Widespread Disruptions

Practice Pointers &
Food For Thought


- Consider having your rules / warning script available to be displayed overhead.
- Make your warnings specific, and your removals targeted.
- Who qualifies as a member of the press in 2023?



Beyond Disruptions

Restraining Orders & The Bane Act

Presented by
Jon R. di Cristina
COLANTUONO, HIGHSMITH & WHATLEY, PC
JdiCristina@chwlaw.us
(530) 432-7357



COLANTUONO
HIGHSMITH
WHATLEY, PC

Workplace Violence Restraining Orders

- Code of Civil Procedure, § 527.8: Protection when employees have been subject to a “credible threat of violence” reasonably connected to the workplace
- *City of San Jose v. Garbett*
(2010) 190 Cal.App.4th 526
- *City of Los Angeles v. Herman*
(2020) 54 Cal.App.5th 97

City of San Jose v. Garbett

- Consistent angry complaints that city is “against” him
- Reference to then-recent mass shooting at a city hall
- Delusional claims that police shot into his house from helicopters
- Commented that he had “a six-foot plot” in his backyard for particular employee
- Yelled at parking control officer for 30 minutes

City of San Jose v. Garbett

Terms of Restraining Order

- Stay at least 300 yards from protected persons, and from city hall except when attending meetings
- Obtain and file documents via mail or by having someone else go to city hall for him
- When attending Brown Act meetings, (1) enter through particular door, (2) subject to search, (3) sit in designated row in audience

City of San Jose v. Garbett

Key Findings

- Credible threats under CCP § 527.8 are not protected speech
- Objective test for credible threat: whether it “would place a reasonable person in fear for his or her safety”
- Restrictions were not overbroad

City of San Jose v. Garbett

“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.”

City of Los Angeles v. Herman

Fixation with particular deputy city attorney

- Disclosed attorney's home address during public comment, and described its location relative to city hall
- Drew antisemitic symbols and expletives on public speaker cards
- "I'm going back to Pasadena and fuck with you."

City of Los Angeles v. Herman

Terms of Restraining Order

- Cease disclosing attorney's address in public
- May attend meetings, but stay at least 10 yards away from attorney at all times

City of Los Angeles v. Herman

Key Findings

- Reinforced *Garbett's* standard for credible threat: "The relevant issue is not what the speaker intended, but what a reasonable listener would understand"
- Distinction between restrictions on conduct and those on content

Lessons from *Garbett & Herman*

- Credible threats are not protected speech
- Standard for credible threat is objective – what a reasonable person would perceive
- May justify restrictions on access to city hall and Brown Act meetings
- May justify requiring remote attendance at Brown Act meetings, where remote participation is live (e.g., Zoom) (see *R.D. v. P.M.* (2011) 202 Cal.App.4th 181)

Bane Act (Civ. Code, § 52.1)

“The essence of a Bane Act claim is that the defendant, by the specified improper means (i.e., ‘threats, intimidation or coercion’), tried to or did prevent the plaintiff from doing something he or she had the right to do under the law or to force the plaintiff to do something that he or she was not required to do under the law.” (*Cornell v. City & County of San Francisco* (2017) 17 Cal.App.5th 766, 791-792)

See also CACI No. 3066

Colantuono, Highsmith & Whatley, PC

Northern California

420 Sierra College Dr., Suite 140
Grass Valley, CA 95945-5091
(530) 432-7357

333 University Ave., Suite 200
Sacramento, CA 95825
Phone: (916) 400-0370

670 West Napa Street
Sonoma, CA 95476
(707) 996-9690

Southern California

790 E. Colorado Blvd., Suite 850
Pasadena, CA 91101-2109
(213) 542-5700

440 Stevens Avenue, Suite 200
Solana Beach, CA 92075
(858) 682-3665

www.chwlaw.us
www.californiapubliclawreport.com