CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

RULES AGENDA: 05/11/22
FILE: 22-216
ITEM: C(2)

CITY COUNCIL ACTION REQUEST			
Department(s): CMO/API	**Date:** 05/04/22	**Coordination:** CAO, City Clerk	**Dept. Approval:** /s/ Sarah Zárate **CMO Approval:**

SUBJECT: SB 1100 (CORTESE): OPEN MEETINGS - ORDERLY CONDUCT

RECOMMENDED POSITION: None

RECOMMENDED ACTION:

1. Adopt a position on SB 1100 (Cortese).

2. Recommend this item be agendized for a May 24, 2022 City Council Meeting so that the City's Legislative Representative can advocate the City's position for SB 1100 (Cortese).

BILL SYNOPSIS:

Under existing California law, the Ralph M. Brown Act authorizes a legislative body to address disruptions through removal of an individual or group of individuals who "willfully interrupt" the proceedings of a public meeting. If, after their removal, order still cannot be restored, the legislative body can order that a meeting room be cleared entirely, while allowing news media to still observe the meeting. In these cases, the legislative body can establish a process to allow individuals who did not cause the disturbance to reenter the meeting room.

This bill authorizes a legislative body's presiding member to remove an individual for disrupting the meeting after providing a warning that the individual is disrupting the proceedings, a request that the individual curtail the disruptive behavior or be subject to removal, and a reasonable opportunity to curtail the disruptive behavior. It defines "disrupting" as engaging in behavior that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting, and includes, but is not limited to, both: a) A failure to comply with reasonable and lawful regulations adopted by a legislative body; b) Engaging in behavior that includes the use of force or true threats of force. The warning is not required for behavior that includes use of force or true threats of force.

Please note the bill is still going through the legislative process and may be further amended.

IMPACTS TO CITY OF SAN JOSE:

Civic engagement is essential to the democratic process; an individual disrupting a public meeting (as defined by this bill) has the effect of limiting public participation. This bill's proposal would allow the presiding member of the City's Brown Act legislative bodies—including the City Council, City Council Committees, and various boards and commissions—to eject an individual for disrupting the orderly conduct of a legislative body meeting. This bill confirms and clarifies how to respond to disruptive behaviors during the course of a meeting by having it statutorily provided for. If passed, the City would review and update any applicable policies and resolutions (e.g., Council Rules of Conduct Resolution No. 79870, Section 11: Disorderly Conduct; Council Policy 0-37: Code of Conduct for Public Meetings in the Council Chambers and Committee Rooms.

POLICY ALIGNMENT:
This policy does not directly align with an existing 2022 Legislative Program policy position (Approved by Council on 11/30/21).
SUPPORTERS/OPPONENTS:
The bill is sponsored by the California State Association of Counties and the Urban Counties of California. The bill is supported by local agencies, associations representing local agencies, and a coalition of Indivisible chapters from around the state. The bill is opposed by Californians for Good Governance and Stand UP.
STATUS OF BILL:
Senator Cortese introduced this bill on 2/16/22. Double-referred to Senate Committee on Governance and Finance and the Senate Committee on the Judiciary on 2/23/22. Passed Committee on Governance and Finance on 3/17/22 (Ayes 4, Noes 1). Passed Committee on the Judiciary on 4/19/22 (Ayes 9, Noes 2). This bill has now passed the Senate floor (Ayes 29, Noes, 7). It is now due to be heard in the Assembly Local Government Committee in June.
FOR QUESTIONS CONTACT: Tom Westphal (thomas.westphal@sanjoseca.gov)

Attachment

AMENDED IN SENATE APRIL 21, 2022

AMENDED IN SENATE APRIL 7, 2022

AMENDED IN SENATE MARCH 21, 2022

AMENDED IN SENATE MARCH 9, 2022

SENATE BILL No. 1100

Introduced by Senator Cortese
(Principal coauthor: Assembly Member Low)

February 16, 2022

An act to add Section 54957.95 to the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

SB 1100, as amended, Cortese. Open meetings: orderly conduct.

(1) Existing law, the Ralph M. Brown Act, requires, with specified exceptions, that all meetings of a legislative body of a local agency, as those terms are defined, be open and public and that all persons be permitted to attend and participate. Existing law requires every agenda for regular meetings of a local agency to provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body. Existing law authorizes the legislative body to adopt reasonable regulations to ensure that the intent of the provisions relating to this public comment requirement is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. Existing law authorizes the members of the legislative body conducting the meeting to order the meeting room cleared and continue in session,

as prescribed, if a group or groups have willfully interrupted the orderly conduct of a meeting and order cannot be restored by the removal of individuals who are willfully interrupting the meeting.

This bill would authorize the presiding member of the legislative body conducting a meeting to remove an individual for disrupting the meeting. *The bill, except as provided, would require removal to be preceded by a warning by the presiding member of the legislative body that the individual is disrupting the proceedings, a request that the individual curtail their disruptive behavior or be subject to removal, and a reasonable opportunity to curtail their disruptive behavior.* The bill would define "disrupting" for this purpose. By establishing new requirements for local legislative bodies, this bill would impose a state-mandated program.

(2) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(3) The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares as follows:

(a) It is the intent of the Legislature to prescribe requirements for governing public meetings that are consistent with subdivision (c) of Section 54954.3 of the Government Code, which provides that a legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body.

(b) It is further the intent of the Legislature to prescribe requirements for governing public meetings to protect civil liberties

in accordance with the United States Constitution, the California Constitution, and relevant law.

(c) It is further the intent of the Legislature to codify the authority and standards for governing public meetings in accordance with Acosta v. City of Costa Mesa, 718 F.3d 800, 811 (9th Cir. 2013), in which the court explained that an ordinance governing the decorum of a city council meeting is not facially overbroad if it only permits a presiding officer to eject an attendee for actually disturbing or impeding a meeting.

SEC. 2. Section 54957.95 is added to the Government Code, to read:

54957.95. (a) ~~In~~ *(1) In* addition to authority exercised pursuant to Sections 54954.3 and 54957.9, the presiding member of the legislative body conducting a meeting may remove an individual for disrupting the meeting.

(2) Removal pursuant to this subdivision shall be preceded by a warning from the presiding member of the legislative body that the individual is disrupting the proceedings, a request that the individual curtail their disruptive behavior or be subject to removal, and a reasonable opportunity to curtail their disruptive behavior. This paragraph does not apply to any behavior described in paragraph (2) of subdivision (b).

(b) As used in this section, "disrupting" means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, both of the following:

(1) A failure to comply with reasonable and lawful regulations adopted by a legislative body pursuant to Section 54954.3 or 54957.9 or any other law.

(2) Engaging in behavior that includes use of force or true threats of force.

SEC. 3. The Legislature finds and declares that Section 2 of this act, which adds Section 54957.95 to the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

This act is necessary to give legislative bodies clear authorization to restore order to meetings in the event of actual disruptions that are disturbing, disrupting, impeding, or rendering infeasible the orderly conduct of the meeting and, thereby, 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.

SEC. 4. The Legislature finds and declares that Section 2 of this act, which adds Section 54957.95 to the Government Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

This act is necessary to give legislative bodies clear authorization to restore order to meetings in the event of actual disruptions that are disturbing, disrupting, impeding, or rendering infeasible the orderly conduct of the meeting and, thereby, 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.

O

SENATOR DAVE CORTESE
SB 1100 – Brown Act Modernization to Ensure Open & Safe Meetings

SUMMARY

SB 1100 will ensure safe, open, and accessible public meetings by creating a process to restore order when disruptions occur that prevent a meeting from continuing in accordance with law.

BACKGROUND

The Ralph M. Brown Act was enacted in 1953 to govern the conduct of public meetings for local legislative bodies.

The Brown Act in the California Government Code has been amended before to expand public accessibility while also remaining consistent with the California Constitution and First Amendment principles, including through SB 274 (Wieckowski, 2021) and AB 361 (Robert Rivas, 2021).

The Brown Act, as it stands, authorizes a legislative body to address disruptions through removal of an individual or group of individuals who "willfully interrupt" the proceedings of a public meeting. If, after their removal, order still cannot be restored, the legislative body can order that a meeting room be cleared entirely, while allowing news media to still observe the meeting. In these cases, the legislative body can establish a process to allow individuals who did not cause the disturbance to reenter the meeting room.

ISSUE

It has become increasingly clear that the mechanisms provided by the Brown Act to deal with disruptions during public meetings are insufficient. Across California, public officials and attendees continue to deal with disorderly conduct during meetings at such a high magnitude that critical business and the legislative process as a whole becomes impaired.

We must take steps to clarify what behavior should be deemed as disruptive to ensure that this definition is only used with absolute neutrality for those rare occurrences and prioritize the safety of our officials who sit on local governing bodies as well as the public.

THIS BILL

This bill would modernize the Brown Act to meet the needs of our present-day local governance systems by:

- Defining what a "willful interruption" is to ensure an individual(s) is removed from a public meeting if they substantially impair or render infeasible the orderly conduct of the meeting in accordance with law; and

- Establishing a warning system to require that removal of an individual(s) causing a willful interruption be preceded by a request that the individual curtail their disruptive behavior or be subject to removal.

FOR MORE INFORMATION

Tara Sreekrishnan
Office of Senator Dave Cortese
Tara.sreekrishnan@sen.ca.gov