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LEGAL UPDATE

April 5, 2017

To: Superintendents, Member School Districts (K-12)
From: Ellie R. Austin *ERA*
Schools Legal Counsel
Subject: Brown Act Requires Online Posting of Agendas for Meetings
Occurring on or After January 1, 2019 (AB 2257)
Memo No. 11-2017

Assembly Bill (“AB 2257”), signed by Governor Brown on September 9, 2016, amended Section 54952.2 of the Ralph M. Brown Act¹ to require local governing bodies, including school boards (such as those for school districts and county offices of education), to post current board meeting agendas online for all board meetings occurring on and after January 1, 2019. A copy of Government Code section 54954.2 is provided as an attachment to this Legal Update.²

Under current law, an agency must post its legislative body’s regular and special meeting agendas on the agency’s website, if one exists. AB 2257 adds to this requirement by specifying the location, platform, and methods by which the agenda must be accessible on the agency’s website.

Agencies have two options for providing the agendas online.

Option 1: Providing a Direct Link to the Agenda

The first method by which an agency can provide the current board meeting agenda online is by providing a link to the agenda.

Under this option, if an agency maintains a website, it must post a direct link to the current board meeting agenda on its website homepage.³ The link must provide direct access to the agenda, rather than access through a contextual (e.g., drop

¹ Cal. Gov’t Code § 54950 *et seq.*

² The new provisions of section 54954.2 are applicable to charter schools to the extent the Brown Act is applicable to charter schools.

³ Cal. Gov’t Code § 54954.2(a)(2)(A).



down or other) menu.⁴ The agenda must be retrievable, downloadable, indexable, and electronically searchable by commonly-used internet search applications, and must be available free of charge.⁵

In addition, the platform must be independent and machine readable.⁶ We interpret this to mean that the agenda must be accessible on commonly-used platforms (i.e., operating systems, such as Windows, Mac, or Linux) and readable (i.e., displayable) on commonly-used web browsers (e.g., Firefox, Safari, Internet Explorer, and/or Google Chrome). The agenda must not contain any restriction that impedes its reuse or redistribution.⁷

Option 2: Providing an Integrated Agenda Management Platform

The second method by which an agency can provide the current board meeting agenda online is by implementing an integrated agenda management platform. An integrated agenda management platform under the Brown Act means that the agency maintains a webpage dedicated to providing the entirety of the board meeting agenda information online.⁸

If an agency chooses this option, it is not required to post a link on the homepage to the current board meeting agenda; however, it is required to post a link on the homepage to the integrated agenda management platform (i.e., webpage) containing the current board agenda information.⁹ Again, the link may not be in a contextual menu, but must be listed directly on the agency's homepage.¹⁰ When a person clicks on the direct link to the integrated agenda management platform, the direct link must take the person directly to a website containing the board agendas.¹¹

The integrated agenda management platform may contain prior agendas, but the current agenda must be the first agenda available at the top of the integrated agenda management platform.¹²

As with the direct link option, agenda information posted on an integrated agenda management platform must be retrievable, downloadable, indexable, and electronically searchable by commonly used Internet search applications, and must be available free of charge.¹³ The platform must be independent and machine readable, and must not contain any restrictions that would impede its reuse or redistribution.¹⁴

⁴ Cal. Gov't Code § 54954.2(a)(2)(A).

⁵ Cal. Gov't Code §§ 54954.2(a)(2)(B)(i), (iii).

⁶ Cal. Gov't Code § 54954.2(a)(2)(B)(ii).

⁷ Cal. Gov't Code § 54954.2(a)(2)(B)(iii).

⁸ Cal. Gov't Code § 54954.2(a)(2)(D)(i).

⁹ Cal. Gov't Code § 54954.2(a)(2)(C).

¹⁰ Cal. Gov't Code § 54954.2(a)(2)(C)(i).

¹¹ For example, see Santa Rosa City Schools' integrated agenda management platform at <http://agendaonline.net/public/Agency.aspx?PublicAgencyID=1281&AgencyTypeID=1>.

¹² Cal. Gov't Code §§ 54954.2(a)(2)(C)(ii), (iii).

¹³ Cal. Gov't Code § 54954.2(a)(2)(C)(iv).

¹⁴ Cal. Gov't Code § 54954.2(a)(2)(C)(iv).



Recommendation

For all board meetings occurring on or after January 1, 2019, school districts and county offices of education must post the agenda online in accordance with the new requirements of Government Code 54952.2. Districts and county offices of education should work with their technology support staff to ensure that the online agenda postings will comply with all requirements outlined herein.

As a reminder, school districts and county offices of education must ensure that new, newly added, and modified online content is accessible to individuals with disabilities, and must remove current barriers to website accessibility. See Legal Update 06-2017(K-12) for more information regarding the legal requirements for website accessibility.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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State of California

GOVERNMENT CODE

Section 54954.2

54954.2. (a) (1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public and on the local agency's Internet Web site, if the local agency has one. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

(2) For a meeting occurring on and after January 1, 2019, of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state that has an Internet Web site, the following provisions shall apply:

(A) An online posting of an agenda shall be posted on the primary Internet Web site homepage of a city, county, city and county, special district, school district, or political subdivision established by the state that is accessible through a prominent, direct link to the current agenda. The direct link to the agenda shall not be in a contextual menu; however, a link in addition to the direct link to the agenda may be accessible through a contextual menu.

(B) An online posting of an agenda including, but not limited to, an agenda posted in an integrated agenda management platform, shall be posted in an open format that meets all of the following requirements:

(i) Retrievable, downloadable, indexable, and electronically searchable by commonly used Internet search applications.

(ii) Platform independent and machine readable.

(iii) Available to the public free of charge and without any restriction that would impede the reuse or redistribution of the agenda.

(C) A legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state that has an Internet Web site

and an integrated agenda management platform shall not be required to comply with subparagraph (A) if all of the following are met:

(i) A direct link to the integrated agenda management platform shall be posted on the primary Internet Web site homepage of a city, county, city and county, special district, school district, or political subdivision established by the state. The direct link to the integrated agenda management platform shall not be in a contextual menu. When a person clicks on the direct link to the integrated agenda management platform, the direct link shall take the person directly to an Internet Web site with the agendas of the legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state.

(ii) The integrated agenda management platform may contain the prior agendas of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state for all meetings occurring on or after January 1, 2019.

(iii) The current agenda of the legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state shall be the first agenda available at the top of the integrated agenda management platform.

(iv) All agendas posted in the integrated agenda management platform shall comply with the requirements in clauses (i), (ii), and (iii) of subparagraph (B).

(D) For the purposes of this paragraph, both of the following definitions shall apply:

(i) "Integrated agenda management platform" means an Internet Web site of a city, county, city and county, special district, school district, or political subdivision established by the state dedicated to providing the entirety of the agenda information for the legislative body of the city, county, city and county, special district, school district, or political subdivision established by the state to the public.

(ii) "Legislative body" has the same meaning as that term is used in subdivision (a) of Section 54952.

(E) The provisions of this paragraph shall not apply to a political subdivision of a local agency that was established by the legislative body of the city, county, city and county, special district, school district, or political subdivision established by the state.

(3) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated

below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(c) This section is necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

(d) For purposes of subdivision (a), the requirement that the agenda be posted on the local agency's Internet Web site, if the local agency has one, shall only apply to a legislative body that meets either of the following standards:

(1) A legislative body as that term is defined by subdivision (a) of Section 54952.

(2) A legislative body as that term is defined by subdivision (b) of Section 54952, if the members of the legislative body are compensated for their appearance, and if one or more of the members of the legislative body are also members of a legislative body as that term is defined by subdivision (a) of Section 54952.

(Amended by Stats. 2016, Ch. 265, Sec. 1. (AB 2257) Effective January 1, 2017.)