



The State Bar of California

OPEN SESSION AGENDA ITEM 702 NOVEMBER 2022

DATE: November 17, 2022

TO: Members, Board of Trustees

FROM: Brandon Stallings, Vice-Chair, Board of Trustees
Mark Toney, Board of Trustees
Louisa Ayrapetyan, Board Secretary, Office of the Executive Director
Roberta Boomer, Consultant

SUBJECT: Adoption of Written and Verbal Public Comment Policy for Board of Trustees and State Bar Subentity Meetings

EXECUTIVE SUMMARY

There exists no standard procedure for submitting written or providing verbal public comment at a Board of Trustees or State Bar subentity meeting, leading to variations in how the public interacts with each entity. At its meeting on July 22, 2022, Roberta Boomer, former secretary for the San Francisco Municipal Transportation Agency Board of Directors and Trustee Toney presented recommendations for public comment procedures. This agenda item requests that the Board of Trustees adopt the public comment policy as outlined in Attachment A. The policy will be applicable to both the Board of Trustees and State Bar subentities.

BACKGROUND

The State Bar complies with the Bagley-Keene Open Meeting Act which states “...the state body shall provide an opportunity for members of the public to directly address the state body on each agenda item before or during the state body’s discussion or consideration of the item...” (section 11125.7(a)). Bagley-Keene also states, “the state body may adopt reasonable regulations limiting the total time allocated for public comment on particular issues and for each individual speaker.” While the Board Policy Manual includes discussion of public comment on proposals for the Rules of the State Bar, it does not include “reasonable regulations” with respect to public comment at meetings.

Rosenberg's Rules of Order is likewise broad in its expectations regarding public comment, mostly indicating the need for a public comment period and noting the chair's ability to limit the period of discussion.

CURRENT PROCESS FOR RECEIVING WRITTEN PUBLIC COMMENT

Currently, members of the public may submit comments in writing before Board meetings by sending them directly to the Board secretary, or for subentity meetings, the committee coordinator. To allow sufficient time for the Board and subentity members to review written public comments, members of the public are encouraged to submit written comments generally no fewer than five days before a meeting. Some committees include a note with a deadline and email address for receiving written public comment. The Board and most other subentities do not follow the same approach, creating inconsistencies in how written public comment is received.

CURRENT PROCESS FOR RECEIVING ORAL PUBLIC COMMENT

Opportunities for oral public comment exist during all meetings of the Board and subentities, however, the approaches applied are not consistent. The Board generally calls for public comment at the beginning of each meeting and sets limits per speaker generally between two or three minutes during the comment period. When there are a large number of speakers who wish to comment on one item on the agenda, the chair decides to take the general public comment at the start of the meeting or take public comment on the agenda item when that item is called. Subentity meetings generally follow this approach but also use a model where public comment is taken prior to individual agenda items being discussed. In addition, some subentities set inconsistent time limitations per speaker or the total allotted time for public comment is not sufficient for the number of public commenters, limiting the opportunity for public comment overall. Furthermore, the State Bar lacks a policy outlining advanced sign up for public comment, limiting the ability to plan for or adjust agendas around high-interest items.

DISCUSSION

In an effort to standardize the process and ensure members of the public have an equal and consistent ability to address the Board and its subentities, Roberta Boomer and Trustee Toney presented a set of recommendations to the Board at its July [meeting](#). The main points of discussion were the ability of the chair to adjust the public comment period or setting that period as immutable; whether it is best to hold public comment at the beginning of the meeting or to have a dedicated period of time before the discussion of each item; and the costs and benefits of having a longer period for public comment at each meeting.

The outcome of this discussion was a recognition that Vice-Chair Stallings, Trustee Toney, Board Secretary Louisa Ayrapetyan, and Consultant Roberta Boomer would consider the recommendations outlined in the Board's July agenda item, along with the discussion had by the Board of Trustees at that meeting and develop a final proposal for public comment policy to be submitted to the Board for approval.

Attachment A is the culmination of these efforts. Of note, the new policy codifies the process for advanced sign up that currently varies across entities. It provides a new priority order among those attending remotely and in person and outlines the expectations of decorum and the protections given to those speaking. The new policy dictates new time minimums of two hours per comment period and two minutes per person, while also permitting time extensions for individuals and groups directly affected by an agenda item. (A public comment period can end early if there is not two hours' worth of comments.) Altogether, this policy creates a uniformity that will not only improve the public's overall experience with giving public comment, but it will also grant members and staff more opportunity to plan for public comment in advance and better equip them to resolve time-consuming, procedural questions that lack a consistent response under existing rules.

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

Section 3.12 Public Comment

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

Goal 4. Protect the Public by Engaging Partners

- a. 3. Enhance visibility of and accessibility to State Bar meetings.

RECOMMENDATIONS

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees adopt the public comment policy, included as Attachment A, for all subsequent Board of Trustees and State Bar subentity meetings; and it is

FURTHER RESOLVED, that the Board of Trustees direct staff to implement and ensure that all meetings of the Board of Trustees and State Bar subentities follow the public comment policy as provided in Attachment A.

ATTACHMENTS LIST

- A. Public Comment Policy and Procedures

STATE BAR OF CALIFORNIA POLICY REGARDING PUBLIC COMMENT

The State Bar of California welcomes public comment at all of its public meetings and appreciates listening to a wide range of viewpoints that reflect the diversity of California. These public comment rules are designed to ensure that members of the public may exercise their right to be heard, as well as ensure that the State Bar is able to fulfill its obligation to conduct business on behalf of the people of California in a timely fashion.

Written Public Comment

Members of the public may submit comments in writing before any public meeting by sending them directly to the email address listed on the agenda.

To allow sufficient time for the Board and subentity members to review written public comments, members of the public are encouraged to submit written comments at least 24 hours prior to the start of a meeting. Written comments received less than 24 hours before the start of the meeting may not be provided to members prior to the meeting but in any event will be distributed the following business day.

Written materials brought to a meeting for distribution will be held by the Board secretary or committee coordinator and will be distributed after the meeting.

Information regarding how to provide public comment will be on each meeting webpage and all meeting agendas.

Oral Public Comment

The State Bar welcomes public comment in person, over the telephone, or by video conference. Instructions for making oral comment are posted on the State Bar's website and include the process for signing up to speak. Members of the public are encouraged to sign up to speak in advance of the meeting but may speak at the time public comment is called. Members of the public attending the meeting remotely will be called on in the order that they appear in the attendee list. Those who sign-up to provide oral comment in person will be recognized in the order in which they signed up. These instructions are consistent with the State Bar's Public Comment Policy and the Bagley-Keene Open Meeting Act.

Making A Written Request to Speak

Individuals may request to speak in advance of a meeting, or they can make the request at the meeting. Information about how to sign-up in advance will be on each meeting agenda as well as on the meeting webpage.

Those who submit a written request to speak will receive a written confirmation of receipt. Members of the public are asked to provide the speaker's first and last name and the topic or the number of the specific agenda item they wish to address. People will be called to speak in the order in which they signed-up.

The deadline for advance sign-up to speak is 24 hours prior to the start of the meeting.

The chair of all State Bar meetings generally calls for public comment at the beginning of each meeting. The chair will set a time limit for each speaker of not less than two minutes per speaker prior to the start of the public comment period. The time limit will be the same for all speakers on a particular item.

When a large number of speakers wish to comment on one item on the agenda, the chair may decide to take general public comment at the start of the meeting and take public comment on a specific agenda item when that item is called.

The State Bar encourages groups of people who have a shared position to appoint one or more spokesperson(s) to speak for their group. The chair shall verbally request those who share their views to stand up or raise their hands via Zoom to acknowledge the number of people signifying their support to communicate more fully to those who are unable to see because of vision impairment or because they are participating by telephone without video.

Members of the public cannot cede their time to another speaker.

The chair has the discretion to allow members of the public who wish to speak following closure of the public comment to make remarks at any time during the meeting.

Given time constraints, it is not guaranteed that all who request to speak will be accommodated. The time allotted for public comment will vary according to the number of requests received and the time available. If numerous requests are received, individual speaker time may be limited, but will be not less than two minutes per speaker prior to the start of the public comment period. After two hours of public comment, inclusive of a 10-minute break, or up to the first 100 speakers, whichever comes first, the chair may declare the public comment session closed.

Organizational entities who will be directly affected by an action will receive additional time to address the body, however time limits will be placed on either the total time or the number of official representatives that can address the body. Comment by affected entities will be heard at the time the respective agenda item is called. Entities who wish to address the body must contact the Board secretary or committee coordinator not less than 72 hours in advance of the meeting for scheduling purposes.

Requests for Accommodation

Individuals in need of interpreters or other reasonable accommodations must contact the Board secretary or committee coordinator at least three business days in advance of the

meeting. Reasonable accommodations will be provided free of charge. Public speakers who require interpreters shall be given at least twice the time limit for other speakers. The granting of additional time for speakers who require other accommodations is at the discretion of the chair but must be sufficient to allow people needing special accommodations to have an equal opportunity to address the State Bar as those who do not.

Maintain Decorum at Meetings

A meeting is a limited public forum, and State Bar policy bodies must give broad rein to a speaker's right of self-expression so long as comments made relate to the specific agenda item or to items under the jurisdiction of the State Bar of California. Members of the public have the right to comment on or criticize the State Bar's programs, practices, policies, and services, as well as its members and staff.

The State Bar of California invites public comment about its operations, including comment about the performance of its public officials and employees. However, any person—whether that person is attending in person, by phone, or by video conference—who engages in disorderly conduct or utters loud, threatening, offensive, or abusive language that disrupts, disturbs, or otherwise impedes the orderly conduct of the meeting shall, at the discretion of the chair, be barred from further audience before the body at that meeting.

In addition, State Bar policies, along with federal and state laws, prohibit discrimination against or harassment of State Bar employees based on race, color, ancestry, national origin, ethnicity, citizenship, sex (including pregnancy, childbirth, breastfeeding, or related medical conditions), age, religion, religious creed, disability or medical condition, HIV/AIDS status, genetic information, sexual orientation, marital status (including domestic partnership), gender, gender identity, gender expression, sexual orientation, military and veteran status or any other status protected by state or federal laws. Should there be any such discriminatory or harassing comments during public comment, at the discretion of the chair, the following actions shall be taken:

1. The chair shall read, at the chair's option, the State Bar's policy regarding discrimination and harassment into the record. That policy is as follows:
 "The State Bar maintains zero tolerance for unlawful harassment, discrimination, and retaliation. Employees must, at all times, treat all other employees, job applicants, and persons providing services to the State Bar with respect and dignity in accordance with this policy. Likewise, the State Bar will not tolerate harassment, discrimination, or retaliation against its employees, job applicants, or members of the public by any employees, or by any person with whom the State Bar has a business, service, or professional relationship."
2. The chair shall state that comments in violation of State Bar policy regarding discrimination and harassment will not be condoned and inform the speaker that their language is unwanted, unwelcome and/or inappropriate, and that they interfere with the ability of those present to listen and understand;
3. The chair shall further state that any State Bar employee who is offended or otherwise does not wish to attend due to the remarks is excused from attendance at

- the meeting during the remarks;
4. The speaker's time will be held during the chair's admonishment and the speaker will receive their full allotment of time unless the speaker's comments disrupt, disturb, or otherwise impede the orderly conduct of the meeting;
 5. The speaker will be allowed to continue after the admonishment; and
 6. The chair may call a recess to allow staff or public to leave and/or provide de-escalation.

In-person attendees at the meeting attendees shall not wear or display signs, placards, banners, hats, costumes, or similar items at any time in the room where the meeting is held that obstruct the view of other audience members. In no event shall signs, placards, banners, props, or similar items be larger than 8 ½ by 11 inches, taped to wall or doors, be illuminated, or be attached to any pole, stick or other device. Signs, placards, or banners attached to any pole, stick, or device must be left outside of the security screening.

Waive Rules in Case of Emergency Situations

The State Bar may waive or override the above rules in case of emergency situations as defined in Section 11125.5(a–b) of the Bagley–Keene Open Meetings Act, or to maintain the orderly conduct of the meeting as defined by Section 11126.5 of the Bagley-Keene Open Meetings Act.

Please note that comments and materials received will, in full, become part of the public record.