



Michael A. Columbo
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October 13, 2021

VIA EMAIL

Molly MacLean
General Counsel
Marin Municipal Water District
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Re: Cease and Desist Impending Brown Act Violation for October 15 Board Meeting

Dear Counsel,

On behalf of the Coalition of Sensible Taxpayers, I am writing to demand that the Marin Municipal Water District (“MMWD” or “District”) cease and desist from its impending violation of the Brown Act. Specifically, the District has announced that its Board meeting on Friday will be held during a work day, offsite, and not permit remote public access. Further, the District intends to segregate the unvaccinated—including those with medical conditions that make them both vulnerable to the coronavirus and unable to take the vaccine—in a separate area outside the building in which the meeting will be taking place, denying them equal access to the meeting itself, the board, and District staff in attendance. Immune compromised individuals are effectively excluded altogether from participating because it is unsafe for them to either attend an indoor event or to congregate with an unvaccinated population, and the unvaccinated are most at risk by being in the company of other unvaccinated persons so the event as currently designed creates a public health threat.

To intentionally design a special board meeting that will endanger public health during a pandemic and limit public oversight of the Board during an unprecedented water crisis when the Board is under blistering public scrutiny for its management of the public’s water supply is illegal, unconscionable, and defies common sense. If MMWD does not determine by C.O.B. today, Wednesday, October 13, that all members of the public will be permitted to fully, equally, and safely observe and participate in this Friday’s Board meeting in person or remotely, we will have no choice but to consider filing for injunctive and declaratory relief to stop the violation and publicly hold accountable all those who are responsible.

The Notice

Yesterday, MMWD issued a public notice of a daytime weekday Board meeting on Friday, October 15, 2021, from 9:00 a.m. to 3:00 p.m., during a “retreat” it is taking in Sausalito. According to the notice, only vaccinated individuals will be granted full enjoyment of their rights under the

Brown Act to access the Board’s meeting while the unvaccinated—including those whose medical conditions or religion prevent them from being vaccinated—will be dangerously congregated together, outside the building. This is not only illegal, it denies science and needlessly departs from standard pandemic safety precautions the District has been regularly following, including allowing public participation through teleconferencing to avoid further transmission of the coronavirus.

The Law

MMWD would thus violate the Brown Act just weeks after the Governor renewed the pandemic-related revision to the Government Code allowing expanded use of remotely accessible meetings instead of requiring in-person access for all Californians. The Brown Act, at Government Code 54953(a), unambiguously requires that “All meetings . . . shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency.” During the current health emergency, public agencies have been permitted an exemption from this requirement if they allow remote access and participation. On September 16, the Governor signed AB 361 to allow local government to continue to conduct virtual meetings during a state of emergency. *See* Gov. Code 54953(e); Evan Symon, *New Newsom Executive Order Continues Remote Local Governmental Meetings Until 2024*, THE GLOBE, Sept. 21, 2021 (“AB 361 extends public meeting teleconferencing until January 1, 2024”).

And yet the District announced that only vaccinated individuals will be permitted to fully exercise their right under the Brown Act to attend the meeting, with no option for citizens to observe and fully participate in the meeting online and by conference call. Full and equal participation means an equal right to deliver oral public comments and ask questions at the District’s meeting, to have equal ability to view presentations and meeting materials, and an equal opportunity to observe the members of the Board as they speak. No provision of the Government Code permits the District to set up different classes of access to its meetings based on medical conditions, or religion, each of which could preclude vaccination, or based on one’s choice to not be vaccinated. While the law allows remote participation in lieu of or in addition to an in-person meeting with full and equal rights of participation, there is no exception allowing an in-person meeting without remote public access and unequal opportunities for participation. Instead of granting either full and equal in person access or remote access and participation for any who require it, the MMWD would allow neither, arbitrarily privileging one class of persons over another, deterring participation of those with medical conditions, and dangerously clustering the most at risk persons.

Further, MMWD appears to have not planned to make *any* accommodation whatsoever for those citizens who are unable to attend or be vaccinated due to serious medical conditions or for constitutionally protected reasons. This discrimination certainly implicates other laws beyond the Brown Act. And the District’s plan to encourage the unvaccinated to concentrate themselves together, in a second-class setting with lesser access to the meeting, is dangerous. If the District’s theory is that the unvaccinated pose a threat (especially to the unvaccinated), then concentrating them together would increase the likelihood of transmission and illness, or death—both to them and those with whom they subsequently come into contact. There is no safe option offered for immune compromised individuals who cannot be vaccinated, so MMWD would be condemning the most

vulnerable citizens to the greatest danger, or discouraging if not precluding their access and participation.

And if the District's theory is that vaccinated persons pose no danger, then it must consider that vaccination does not eliminate the possibility of transmission and the vaccinated in attendance could also bring the virus back to their homes and workplaces.

A public meeting indoors also requires that everyone wear a mask pursuant to County health orders. It is not clear why you would want to have a meeting where you must speak and try to hear others speak through masks if you did not have to.

The most baffling aspect of the District's choice to have an offsite in person, only, meeting at 9 a.m. on a Friday is that it has the technology and established practice of allowing remote participation, indicating it has made a deliberate choice to minimize transparency. Further, the pandemic is not over, and the District has the authority to continue with remotely accessible meetings, so why would it choose a less safe meeting arrangement, including grouping the unvaccinated together? A cynical public could be forgiven for suspecting the meeting's reckless arrangements will necessarily deter many members of the public from observing and fully participating in the MMWD's meeting and that this was the purpose of these arrangements. Even for those unvaccinated who might choose to attend, the prospect of being relegated to a special area *outside* the building where the meeting is taking place is not the access guaranteed by the Brown Act or equal to the access granted to the vaccinated, and this too may discourage attendance.

Common Sense and Optics

After an extended period of failing to bring a comprehensive plan for a reliable water supply before the public, MMWD's board is finally convening the October 15 meeting to look at the options the public demands to see. This is not the moment for the board to retreat to Sausalito, at the public's expense, for a meeting apparently timed and designed to minimize public oversight of the Board's deliberations and decisions, while also creating a public health threat.

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The Coalition of Sensible Taxpayers respectfully requests that the MMWD reconsider its decision to hold a meeting in which only the vaccinated will have proper access to the Board, the unvaccinated are segregated for lesser access, and no remote access or participation is permitted for those who cannot attend in person. There are two alternatives at this late date. The best way to cure your problem of unequal access is to convert the meeting to Zoom only and renote the public. A less perfect alternative is to quickly add the option of participation via Zoom (or the equivalent) for the meeting assuming that you can ensure that remote participants can participate in public

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comment and see all the speakers and slide presentations as if they were in the room. Please notify me by 5 p.m. today, Wednesday, October 13, 2021, of your decision.

Sincerely,



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On Behalf of the Coalition of Sensible Taxpayers

CC: Cynthia Koehler, ckoehler@marinwater.org; Larry Bragman, lbragman@marinwater.org; Jack Russell, jrussell@marinwater.org; Jack Gibson, jgibson@marinwater.org; Monty Schmitt, mschmitt@marinwater.org; Ben Horenstein, bhorenstein@marinwater.org; Jared Mills, jmills@marinwater.org.