

BOARD GUIDELINES



Dublin San Ramon
Services District

Water, wastewater, recycled water

Guidelines
for Conducting
Dublin San Ramon
Services District
Business

Third Edition
Revised July 2014

The purpose of these guidelines is to provide directors with information that will assist them in carrying out their duties and responsibilities as elected public officials of the Dublin San Ramon Services District, and assist the public in understanding how the district's Board of directors conducts its business.

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These *Guidelines for Conducting Board Business* (hereafter, “Guidelines”) describe the methods, means, customs, and practices that the board of directors (hereafter referred to as the “board”) employs in exercising its authority, complying with various legal requirements, working with the public and Dublin San Ramon Services District (hereafter referred to as the “district”) staff, and otherwise conducting the district’s business.

The board is the legislative body that governs the district, sets the district’s policies, hires its general manager, appoints district officers, and is ultimately responsible and accountable to the people of the district. It exercises these powers pursuant to the Community Services District Law (*California Government Code*, section 61000 et seq.).

No individual member of the board has any individual authority, since only the board as a whole can exercise authority. Using authority provided in the Community Services District Law or delegated by the board, the general manager is responsible for running the day-to-day business of the district and is accountable to the board.

The roles, responsibilities, duties, and authority of the board and individual directors are explained more fully in the various sections of these Guidelines.

CHAPTER

2

Director Roles and Duties

A successful director clearly understands the role of the board of directors as a whole, as well as his or her role as an individual director.

DIRECTOR ROLES AND DUTIES – AS A BODY AND INDIVIDUALS

Board of Directors

The board of directors is the legislative body that holds governing authority for the district and its roles and responsibilities are as follows:

- Establish policies, procedures, and regulations for district operations.
- Establish and oversee the district’s finances and its budgets, programs, and performance.
- Provide the resources needed by management and staff to carry out district policy.
- Determine the mission of the district.
- Approve and ensure the implementation of the district’s strategic plan and vision.
- Appoint and evaluate the general manager, general counsel, treasurer, and district secretary (appointments and evaluations of the latter two positions are limited to the statutory duties prescribed by law for those offices).

Individual Directors

Apart from his/her normal function as a part of the board of directors, each individual director’s roles and responsibilities are as follows:
Function only as one member of the board.

- Have no individual authority (other than ceremonial duties of the president and vice president of the board as described elsewhere).
- May not commit, nor represent that they can commit, the district to any policy, act, or expenditure.
- Support decisions made by the board.

Traits of Effective Directors

Directors most effectively represent the district when they do the following:

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- Represent all constituents of the district, considering the viewpoints of everyone as they conduct the district’s business.
 - Attend all board meetings and meetings of committees to which they are appointed; if a director cannot attend, he/she should follow the process outlined in *Chapter 6–Preparation for Committee Meetings* and notify the board president (or the other committee member for committee meetings) and the general manager as soon as possible.
 - Are decisive, making and accepting a decision and moving on.
 - Consider and set short-term and long-term policy.
 - Support district policy, once decided.
 - Ask the general manager routine or clarifying questions ahead of the board or committee meeting to avoid surprises and allow time for staff to prepare helpful answers.
 - Ask the general manager for supplemental information in advance of a board or committee meeting to avoid potential Brown Act conflicts.
 - Let staff administer and manage the district, provided that such actions are consistent with the policies set by the board.
 - Read board and committee agenda packets and prepare for all meetings.
 - Are a positive public face of the district.
 - Are inquisitive.
 - Are courageous about difficult decisions.
 - Clearly communicate their positions and reasoning and do not leave colleagues and staff guessing.
 - Think big picture.
 - Manage conflict carefully and use civil discourse.
 - Stay focused and efficient, using words carefully and concisely.
 - Are creative about solving problems.
 - Express optimism and open-mindedness.
 - Offer respect and consideration to each other, staff, guests from other agencies, and the public.
 - Work as a team.
 - Are timely with attendance and communications.
 - Remain policy oriented and avoid focusing overly on operational details.

Generally, at the first board meeting in December, the board of directors selects directors for the offices of board president and vice president. District policy is that these positions rotate among members of the board. The board has adopted a separate policy regarding the annual election and rotation of board officers.

CHAPTER
3

**President and Vice President
Roles and Duties**

**PRESIDENT AND VICE PRESIDENT ROLES
AND DUTIES**

Board President

The president has no additional powers beyond those of any other director. The following are the roles and responsibilities of the board president:

- Serve as presiding officer at board meetings that the president attends (if the president's attendance is via teleconference logistically it is better to allow the vice president to preside because that director is physically present at the board meeting).
- Maintain proper conduct of board meetings:
 - Run effective and efficient meetings, including but not limited to ensuring appropriate opportunities for public participation and managing the time.
 - Keep the board focused on the discussion at hand and true to its proper role and responsibility.
 - Avoid diversions from the agenda or disruptions in the conduct of district business.
 - Maintain proper and appropriate parliamentary procedure and agenda management (e.g. ensure that actions are taken with proper motions and seconds).
 - Acknowledge and diplomatically facilitate appropriate public participation in the activities of the board.
 - When necessary and appropriate, call a special board meeting.
- Vote, discuss, and make motions the same as other members of the board; however, the president will only rarely make motions and second motions.
- Allow other directors to complete their comments on an item before offering his/her own.
- Keep the meeting discussions focused on properly noticed agenda items and steadfastly move the board toward making decisions.
- Sign various board-approved documents on behalf of the board.

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- Propose for board approval standing and ad-hoc committees considering the policy and business needs of the district (see guidelines below).
 - Propose the membership of each committee, including two regular members and one alternate for each committee, subject to approval by the board.
 - Act as official head of the district for ceremonial purposes.
 - Serve as the primary interface for the board with the members of the media—though other directors may be contacted by the press and may also discuss matters with them (when contacted by the media, a director should inform the general manager).

Vice President

The vice president performs all duties of the president in the event of the president's absence.

GUIDELINES FOR ESTABLISHING COMMITTEES

Process

If the president so desires, the president will propose a set of standing board committees at the start of his/her term as well as propose which directors are to serve on each committee. The traditional process for doing so is as follows:

1. At the meeting at which the president is elected, the president asks the directors to let them know on which committees they might be interested in serving.
2. At the following meeting, generally using the criteria below, the board president proposes a set of standing committees and membership (including alternates) for each committee.
3. The board considers the president's proposal by Motion.
4. The committee term traditionally begins January 1.
5. Once established, staff will work with each committee to identify a schedule for standing committee meetings.
6. At the first meeting of each committee, that committee will develop a charter with the following elements:

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- Meeting time and place.
 - Committee Mission (staff will work with each committee to ensure there is no overlap in Missions between or among committees).
 - Goals for the year.

7. In early February, the charters from each committee are presented for the board's consideration by motion.

Criteria for Committee Assignment

There are no rules for assigning directors to committees. In past years, board presidents have used the following criteria as they develop their recommended committee assignments:

Continuity

- Exposure to all areas of the district's business
- Area of director Interest
- Developing working relationships among board members

GENERAL MANAGER'S ROLE

Legal Requirements

The Community Services District Law, the enabling statute under which the district was organized and now operates, defines the general manager as the highest level management appointee who is directly responsible to the board for the implementation of the policies established by the board (see *Government Code*, sections 61002(f), 61040, and 61050 et seq.). The general manager serves as the district's chief executive officer and is responsible for the day-to-day operations and functions of the district.

The powers and duties of the general manager specified by the law are as follows (*Government Code* section numbers are shown in parentheses):

- Implement the policies established by the board for the operation of the district (61051).
- Appoint, supervise, discipline, and dismiss district employees, consistent with the employee relations system established by the board (61051).
- Supervise the district's facilities and services (61051)
- Supervise the district's finances (61051).
- If authorized by the board, transfer funds between budget categories, other than transfers from the designated reserve for capital outlay (61111(b)).
- Co-sign promissory notes with the board president (61131(c)).
- Prepare and file various reports.

The general manager may not be a member of the board (61040(e)) but may serve as the district treasurer (61050(c)). Traditionally, the board has appointed a district treasurer different than the general manager. The Community Services District Law specifies that the general manager serves at the pleasure of the board and that the board sets the compensation of the general manager (61050(d) and (e)).

Appointed by the board, the general manager is a full-time district employee who serves under contract and at the pleasure of the board. The role of the general manager is defined in several ways: by law, by contract, through an adopted job classification, and by district practice based on principles of good governance.

Contractual Requirements

The terms and conditions of the general manager's employment are expressed in a contract with the District. That contract provides that the incumbent shall perform all duties and assume all obligations of the office of general manager described in the job classification for the position of general manager, and shall be subject to all pertinent provisions of the ordinances, resolutions, rules, regulations, and all other lawful orders and directives of the district or the board. The contract requires that all duties and obligations be performed in an efficient and professional manner and in conformance with the standard generally prevailing for the performance of the duties and obligations pertaining to the office of similar managerial positions of public or private entities, including but not limited to community services districts.

Job Classification

The job classification for the position of general manager is approved by the board and specifies the required minimum qualifications (experience and training), knowledge, skills, and abilities as well as the duties of the position. The duties specified in that job description are as follows:

- Serve as the chief executive officer of the district.
- Be in charge of the administrative affairs of the district.
- Be in charge of the engineering functions of the district.
- Represent the board's policies and programs with employees, customers, community organizations, governmental agencies, and the general public.
- Review budget requests and make recommendations to the board for expenditure levels.
- Be responsible for personnel matters including employee relations, employment procedures, grievances, affirmative action, and negotiations with employment representatives.
- Serve as district engineer overseeing the preparation of engineering designs, reviewing submittals, conferring with developers, preparing engineering standards and specifications, and reviewing and modifying construction standards and specifications.

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- Provide advice and consultation on the development of district programs and policies.
 - Coordinate the preparation of the agenda for board meetings.
 - Conduct special studies and surveys to determine the effectiveness of district programs and services.
 - Prepare grant applications.
 - Prepare leases and agreements with other agencies.

The general manager delegates many of these duties to other district managers and staff. In doing so, the general manager remains accountable to the board.

Practices Based on Good Governance

The role of the general manager is also defined by the relationship between the position and the board. In its simplest form, the relationship is defined as the board setting policy for the district or providing policy-level guidance to the general manager, and the general manager being responsible for implementing those policies. The general manager is responsible for the performance of the district within policy criteria established by the board and is accountable to the board for all aspects of district operation. As such, the board views all organizational successes and/or failures as those of the general manager.

The board's sole connection to the operational aspects of the district is through the general manager. Decisions or instructions of individual directors or committees are not binding on the general manager, who can only take direction from the board. The board can only give direction to the general manager and not to other district managers or staff. The general manager is available to all directors to discuss district issues and strategies. The general manager is the clearinghouse for all informational requests originating from directors.

The board establishes the general manager's annual performance plan and typically evaluates the performance of the general manager on an annual basis, but can do so more frequently if the situation warrants. Traditionally, the board also conducts an informal mid-year performance discussion with the general manager.

Appointed by and serving at the will of the board, the general counsel is an attorney whose law firm serves under contract to and at the pleasure of the board. The role of the general counsel is defined in several ways: by law, by contract, and by district practice based on principles of good governance. Special counsel from other law firms may be hired to assist under certain circumstances.

CHAPTER 5

The Role of General Counsel and Special Counsel

THE ROLE OF LEGAL COUNSEL

The primary obligation of both general counsel and special counsel is to provide all the legal options available, including advantages and disadvantages of each, and to advise of legal risks. (When the term *legal counsel* is used throughout this document, it shall mean both general counsel as well as special counsel). The public official receiving that advice has the right to make policy decisions, based on the legal options provided and legal risk entailed.

General Counsel

The Community Services District Law provides that a district may engage professional services, including legal counsel (*Government Code*, 61060(g)). The district board of directors appoints the general counsel. The general counsel serves as the primary legal advisor, is responsible for day-to-day legal questions, and provides ongoing legal advice and opinions regarding the long-term interests of the district. The general counsel is expected to provide high-quality, trustworthy, and responsive legal counsel in a professional manner to assist in accomplishing the district's goals and objectives. When necessary, the general counsel represents the district in litigation matters and before administrative agencies, and in some instances manages special counsel appointed for a particular matter. The general counsel should seek to practice preventative law in an effort to help the district recognize and manage risks in a timely and effective manner. Preventative law can limit the expenditure of district resources to defend legal actions, reduce the frequency and severity of disputes, and help the district maintain a positive image in the community.

Special Counsel

The district may, at the district's sole discretion and without approval or consultation with general counsel, hire outside special counsel. However, the district may, but is not required to, seek general counsel's assistance in determining whether to utilize outside special counsel or in the selection

process. The retention of special counsel may be necessary based on any number of factors, including the need for highly specialized knowledge, the provision of a defense by an insurer, or should a conflict of interest arise with the general counsel on a particular matter. Unless prevented by a conflict of interest, general counsel should facilitate and cooperate in the retention of special counsel services to ensure the district receives accurate and cost-efficient legal advice and services

The District as the Client

While the general practice of the district is for the board to delegate day-to-day management authority to the general manager, it is important to remember that legal counsel to the district represents the entity rather than any natural person (i.e., legal counsel is not the attorney for any individual director, district employee, or officer). The client in such a representation is the entity itself as embodied in the “highest authorized officer, employee, body or constituent overseeing the particular engagement” (*California Rules of Professional Conduct*, Rule 3-600(A)). In the case of the district, the highest authorized authority is generally the board of directors. The board may delegate this authority to the general manager by action of the board duly taken. The most common points of contact for legal counsel are the general manager, the district’s senior management, and to a lesser extent other district employees and individual directors.

During the course of representation, the legal counsel may become aware of information that indicates that the interests of a district official or employee may not be aligned with the interests of the district. Should such situations arise, legal counsel’s duty of loyalty and confidentiality is owed to the district and not the individual. In such a situation, the individual’s communications with the legal counsel are not confidential and cannot be withheld from others with authority over the matter at issue, whether the general manager or the board of directors.

Hiring and Termination

General counsel and special counsel are hired by and may only be terminated by the board unless those actions have been delegated to the general manager by duly taken action of the board.

Regular Performance Evaluations

The board, with the assistance of the general manager, establishes the general counsel's annual performance plan and typically evaluates performance on an annual basis.

SPECIAL ETHICAL CONSIDERATIONS FOR PUBLIC LAWYERS

In California, lawyers are regulated by both the legislature and the California Supreme Court, under Rules of Professional Conduct promulgated by the California State Bar board of Governors and approved by the court (see, generally, the *State Bar Act* and *California Business & Professions Code*, section 6000 et seq.). Public agency attorneys are also subject to the laws and rules contained in the Political Reform Act and *Government Code*, section 1090. Statutes may also impose a duty on public agency attorneys that they owe directly to the public. Further, the courts have enunciated the principle that lawyers for public agencies have special ethical obligations to further justice—i.e., these lawyers are held to a higher standard than other attorneys.

For example, under *California Rules of Professional Conduct*, Rule 3-600(B), an entity's lawyer who becomes aware of the conduct of an entity's agent which may be or is a violation of law that is "reasonably imputable to the organization" or that "is likely to result in substantial injury to the organization," may take the matter to the "highest internal authority within the organization." No confidential information may be disclosed beyond the organization, unless it is to prevent a criminal act that the attorney reasonably believes is likely to result in death of, or substantial bodily harm to, an individual, but only after the attorney has exhausted all options to convince the client not to commit the criminal act.

PROTECTING ATTORNEY-CLIENT PRIVILEGE, ATTORNEY WORK-PRODUCT DOCTRINE AND MAINTAINING THE CONFIDENTIALITY OF COMMUNICATIONS WITH COUNSEL

Protecting both the attorney-client privilege and the attorney work-product doctrine, and maintaining confidentiality of communications between the district and legal counsel, are vital to ensuring the district's ability to confide freely in its attorneys.

Attorney-Client Privilege

The district, acting through legal counsel, may claim the attorney-client privilege (see, generally, *California Evidence Code*, section 954). However, the privilege only protects communications and only extends to information given for the purpose of obtaining legal representation. Core information is not necessarily protected and the information will not be privileged simply because it has been told or provided to the general counsel. The privilege may be waived if the confidential communications are disclosed to third parties.

Whenever a director communicates in writing with staff on a matter that involves a legal matter, appropriate legal counsel should be copied on that correspondence.

Attorney Work-Product Doctrine

The Attorney Work-Product Doctrine protects the work of the attorney and includes the legal theories and strategies of legal counsel. Attorney work-product may be found in interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs, and countless other forms. The attorney work-product doctrine is broader than the attorney-client privilege in that it protects materials prepared by the attorney, whether or not disclosed to the client, and materials prepared by third parties for the attorney (see *Laguna Beach County Water District v. Sup. Ct. (Woodhouse)* (2004) 124 Cal.App.4th 1453 and *California Code of Civil Procedure*, section 2018).

Whenever a director receives a work-product from an attorney, that work-product must not be transmitted to any third party. The director shall also take great care in managing that document, keeping it only as long as needed and destroying or returning copies to the district or legal counsel.

Confidentiality of Communications

The duty of confidentiality is broader than the attorney-client evidentiary privilege and the attorney-client work-product doctrine. Legal counsel's duty of confidentiality runs to the district itself, including the board of directors as a whole, rather than to an individual board member, district official, or employee (see, generally, *California Business & Professions Code*, section 6068). When an individual board member receives advice from legal counsel, that advice is provided to the director in his/her official capacity and the advice is subject to disclosure to the entire board.

Information and advice provided to the board of directors or legal counsel during a closed session is generally confidential and may also be privileged. It is important to note that a board member may inadvertently waive the attorney-client privilege by discussing closed session matters with third parties. Directors and others present at a closed session should take care to prevent unauthorized disclosure of confidential information. There is a particular risk of a breach of confidentiality when a director maintains material distributed in a closed session in personal files.

WORKING WITH DISTRICT STAFF

The district's success in efficiently accomplishing its mission is partly due to the direct and regular access staff has to directors. This helps in that decisions are made in real time, with minimal re-work. However, even with the real-time communication that occurs at committee and board meetings, there are times when a director needs additional information from staff. The following guidelines will enable a director to quickly and efficiently get needed information without disrupting staff's routine work.

- Always start with the general manager, as he/she can obtain an answer or get the right person involved in the discussion, as needed.
- If the general manager is unreachable, contact the Assistant general manager.
- If neither the general manager nor the Assistant general manager is available, contact one of the senior managers.
- The district secretary can help you at any time with administrative matters (e.g. scheduling, expense reports, requirements such as Fair Political Practices Commission forms, and travel arrangements).
- The district's human resources staff can help a director at any time with issues dealing with a director's personnel benefits or issues of a similar personal nature.

Given the workload that staff faces and the general manager's expectation that each senior manager (and employee) is responsible to complete assigned work, it is important that management has the ability to adjust staff's priorities and not be surprised.

When discussing a matter with staff, please keep in mind the following principles.

The district offers directors a great degree of access to staff. If not handled properly, such access can lead to micro-management and political criticism. Micro-management by the board also leads to morale issues and undermines the authority of the general manager and senior staff.

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- **Don't make assignments.** It is quite easy for staff to interpret a simple question or comment from a director as direction to drop current assignments and undertake some project, research, or investigation, creating the risk that important priorities and assignments are not completed on time or that the district does not fulfill commitments made to others (very often customers).
 - **Take any information as work in progress.** Be cautious with the use of information. What is heard from a staff member may not be what the general manager ultimately recommends. Very often, there are differences of opinion among staff as an issue is vetted prior to being presented to the board. In addition, the general manager's opinion given at an early point in a project may change as more information becomes known and before the matter is formally presented to the board. Finally, keep in mind that it is hard for some staff members to say, "I don't know," when talking to a director.
 - **Request information judiciously.** The district is a public agency and therefore very little information, other than personal data about employees or customers, cannot be disclosed to directors. However, take care not to overwhelm the general manager and staff with requests for information.
 - **Let the general manager know if disappointed by any response.** Since the board judges the general manager on the performance of the whole staff, inform the general manager when improvement is needed.



BROWN ACT AND ROSENBERG'S RULES

The district's board meetings are conducted following the general guidelines of *Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century*, (League of California Cities, 2003, Appendix A). These Guidelines can be especially helpful when the board is discussing controversial issues.

TYPES OF BOARD MEETINGS

There are four types of board meetings: regular, special, adjourned, and emergency.

Regular Board Meetings

Most district business is conducted at regular board meetings. The dates, times, and locations of regular board meetings are established by resolution of the board. Currently, regular board meetings are held the first and third Tuesday of each month, beginning at 6:00 p.m., in the district boardroom located at 7051 Dublin Boulevard, Dublin, California. The agenda for regular board meetings must be posted in a public place at least 72 hours prior to the meeting.

Special Board Meetings

Occasionally, special board meetings are held for the purpose of discussing a special topic, for a workshop, or if it is necessary to hold a meeting at a time or date other than the regular board meeting. Special board meetings may be called at any time by the board president or a majority of the board. They may be held at a time and place desired by the board but generally must be convened within the district's service area. Written notice must be given to directors, the media, and the public 24 hours in advance of a special board meeting. The agenda for a special board meeting must be posted in a public place at least 24 hours prior to the meeting.

All board meetings are open to the public and are subject to the provisions of state law called the *Ralph M. Brown Act* (hereafter referred to as the "Brown Act"), also known as the Open Meeting Law (*California Government Code*, section 54950 et seq.). With limited exceptions, all board meetings must be publicly noticed in advance of the meeting to inform the public about the business of the district and to provide an opportunity for public participation.

Adjourned Board Meetings

After any regular or special board meeting has been called to order, it may be adjourned by the board to another date, time, and place if the business of that meeting has not been completed or if the board's deliberations would benefit from continuing the meeting at another time or in another location. Also, if less than a quorum is present, the directors who are present (or, if none are present, the board secretary) can adjourn the meeting to another date, time, and place.

Emergency Board Meetings

The board may hold an emergency board meeting when prompt action is necessary due to the disruption or threatened disruption of public facilities. There are two levels of emergency. An *emergency* is a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the board. A meeting to deal with such a situation may be called on one hour's notice to the newspapers and media outlets that have requested notice of meetings. A *dire emergency* is a crippling disaster, mass destruction, terrorist act, or threatened terrorist act that poses peril so immediate and significant that advance notice to media is not required. Newspapers and media outlets that have requested notice of meetings may be notified of the emergency meeting at or near the time directors are notified.

Board Meetings Outside District Service Area

Regular or special meetings of the board may be held at a district-owned facility outside the district's service area provided that the topics of the meeting are limited to items directly related to that facility. There are other limited times when a board meeting may be held outside the district boundaries (examples include but are not limited to multi-agency meetings, meetings with legal counsel, or meetings to inspect real property). General counsel should be consulted for the particular requirements related to these and other limited exceptions.

TYPES OF COMMITTEES AND COMMITTEE COMMUNICATION

Deliberative Committees

A deliberative committee is one with a particular subject matter jurisdiction. The board establishes the committee's charter. The committee makes recommendations to the board upon matters within its scope. Currently, the External Affairs, Finance, Personnel, Water, and Wastewater Committees are deliberative committees. A deliberative committee may deliberate and recommend changes in district policy or direction but may not create or change policy or direction. Although they have commonly been called technical committees, a more precise description is deliberative committees because they permissibly perform some of the deliberative functions of the board, enabling the board to better focus on the policy questions raised by the particular matter.

Liaison Committees

Liaison committees enable the board to receive information from other agencies and to convey the board's policy positions to those agencies. There are two types of liaison committees: *traditional liaison committees* (e.g., board committees that meet with a subset of the members of the legislative bodies of the City of Dublin, City of San Ramon, and Zone 7 Water Agency), and *de facto liaison committees* that represent the district on the board of the joint powers authorities (JPAs) with which the district is involved (e.g., DERWA and LAVWMA). Unless specifically charged by the board with doing so, liaison committees do not deliberate or recommend changes to district policy.

Communications from Committees

To reduce the risk of communications that could result in impermissible deliberation or consensus building, there are ground rules for communicating between different committees (or their respective members) through either the board or the general manager. (Note: the board may only provide new policy direction to district staff or management via the general manager.)

Currently, the District has two types of Board committees, deliberative and liaison. Both are subject to the Brown Act. Although composed of only two members (less than a quorum), the committees are subject to the notice and open meeting provisions of the Brown Act, as they have a continuing subject matter jurisdiction.

The Brown Act prohibits directors from conducting district business outside board or committee meetings. The normal definition of a meeting is the congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body. However, it is possible to develop a consensus among a majority of the board without a majority of members being physically present at the same time and place. Effective in 2009, the Legislature amended the Brown Act to state that “a majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, direct or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body” (*Government Code*, section 54952.2(b)(1)). The Brown Act does not impose an absolute prohibition on all discussion outside meetings that may involve a majority of directors. This additional clarification took effect in 2009: “Paragraph (1) shall not be construed as preventing an employee or official of a local agency from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body” (*Government Code*, section 54952.2(b)(2)).

There are three basic ways to comply with the Brown Act while employing committees to address matters that do not fall within the jurisdiction of any of the current deliberative committees. Each alternative employs a different strategy to guard against improper deliberations or the development of a collective consensus in violation of the Brown Act. This does not diminish the importance of following the procedures regarding communication between committees discussed below.

- The first alternative is to ensure that no two committees consider the same policy matters. This is the reason for developing a mission statement within the charter of each committee.

- The second alternative entails creating a new committee specific to a major topic of importance as a separate deliberative committee and carving out the subject matter of the new committee from the existing deliberative committees. This approach avoids the same issue being addressed serially in more than one deliberative committee, so that a majority of directors would not have deliberated on the same topic except at a board meeting. While this approach could sidestep many Brown Act issues, there may be practical difficulties in actually carrying it out, given possible interrelationships of the subject matter of a new committee with the traditional committees.
- The third alternative is to have a given subject handled in its entirety by the board and thereby avoid any separate committee deliberations. This has been the district's past practice for certain labor negotiations and broad policy-level issues (such as the district's position on groundwater injection).

OPEN VERSUS CLOSED SESSION DISCUSSIONS

Board and committee meetings can have open as well as closed session topics for discussion.

Open Session Discussions

The board and its committees transact the vast majority of the public's business in open session. Open sessions are those portions of the board or committee meetings that are open to the public and at which the public can address the board or committee and comment on any item of business being considered or on any matter within the board's subject matter jurisdiction or the committee's charter that is not on the agenda.

Directors should remember that any form of communication between or among committees has the potential to result in impermissible deliberation or consensus building outside noticed board meetings. The most reliable way to avoid improper communication is to transmit information between committees only through the board or through the general manager. Deliberative committees must avoid deliberating on the same subjects. It is the responsibility of the general manager to identify when this is happening, or could happen, and to take action.

Matters discussed in closed session are strictly confidential. Disclosure of information from a closed session may prejudicially impact district interests and can result in the possible censure by the board of a director who breaches the confidentiality requirement, or the issuance of an injunction against such conduct by a court.

To protect the confidentiality of information presented in closed session, staff will collect all written material distributed during the session at the end of the session.

Closed Session Discussions

In general, the Brown Act directs the district to conduct all of its business in public. However, the board and its committees may also meet in closed session under a series of carefully defined exceptions to the Brown Act. Closed sessions are used when the public's interest could be adversely affected if the board's or committee's discussion took place in public. Closed sessions are used to give direction to district negotiators for labor contracts with district employees and for the acquisition or disposal of real property. The board and its committees may also meet in closed session to confer with general counsel regarding claims or threats of litigation, initiation of litigation, or to discuss actual litigation in which the district is involved. Finally, the board and its committees may meet in closed session when evaluating the performance of a public employee, when dealing with the hiring, dismissal, or discipline of a public employee; or with certain security matters.

CHAPTER
8

Placing an Item on the Board or Committee Agenda

PROCESSING MATTERS THAT REQUIRE BOARD ACTION

Any matter requiring board action will be presented initially to the board for consideration without committee review or involvement unless it is specifically identified as a matter that may be initially considered by a committee. When so presented, the board may:

- Consider the matter and render an appropriate decision (approve, disapprove).
- By motion, refer the matter to a board committee for deliberation, asking that committee to formulate a recommendation (in such cases, the maker of the motion should be as specific as possible as to exactly what question is being referred to the committee).

If a matter is referred to committee by the board, it will be handled in accordance with the normal process for handling committee items.

MATTERS THAT MAY BE CONSIDERED INITIALLY BY A COMMITTEE

The following matters may be considered by a committee without a formal referral from the board:

Development of committee charters

- Rates and fees (finance or related committee)
- Labor relations matters (personnel or related committee)
- District budgetary issues within the charter of a committee
- District operational issues within the charter of a committee
- Informational items requested by the committee
- Issues that a committee may wish to preliminarily explore ahead of formal consideration
- Issues that staff may wish to preliminarily explore with an appropriate committee ahead of formal consideration



Items on the Board agenda originate from a variety of sources: the General Manager, deliberative committees, Directors, and the public.

ITEMS THAT ARE ALWAYS TO BE CONSIDERED BY THE BOARD WITHOUT COMMITTEE REVIEW

Several types of items are always considered by the board without committee review, regardless of their origin, because they are routine or because it is proper or legally required that only the full board consider them. The following items are always placed on a board agenda without committee review.

Administrative Matters

- Proclamations
- Warrant list
- Notifications (availability of ethics training, etc.)
- Board organizational matters (appointment of president or vice president)
- Appointment of committee

Board Oversight

- Performance evaluations (general manager, general counsel, treasurer, district secretary)
- Mandated reports (e.g., annual \$100 list of expenses, annual aged receivables report)
- Consideration of conference attendance/day of service payments to a director

Procedural Streamlining

- Second reading of an ordinance
- Rejection of routine claims
- Acceptance of projects
- Acceptance of developer improvements
- Intention to levy assessments in existing assessment districts (mandated notification step in anticipation of formal action later)

-
- Routine construction project awards (e.g., project approved, under budget, no bid irregularities, no contractor issues, no public concern)
 - Items accomplished within previous direction given by board (e.g., labor MOUs that conform to negotiating direction, revisions to items as previously directed by board)
 - Follow-up on action items previously presented in workshops for discussion

District-Wide Matters

- Items with over-arching policy implications (e.g., budgeting, strategic planning)⁴
- Items spanning the adopted charter of two or more committees
- General informational items that keep the board current on a matter or allow members to discuss the implications of continuing with a previously agreed upon course of action
- Presentations requested by the board
- Actions required by law (e.g., consolidation of district elections, amending conflict of interest codes)

Matters to Protect the District's Interest

- Personnel appeals (that are before the board and on which the board must be unbiased and rule on the record before them)
- Environmental review documents where the administrative record must be developed in front of the entire board

⁴ *Individual components may go to a committee whose charter covers that area.*

PLACING AN ITEM ON AN AGENDA

Items Originating from the General Manager

Many items on the agenda originate with the general manager and district staff. The following types of items are typical:

- Matters on which policy direction from the board is required.
- Items with over-arching policy implications (e.g., labor negotiations, budgeting, strategic planning).
- Actions required by law (e.g., consolidation of district elections, amending a Conflict of Interest Code).
- Intermediate actions in the overall implementation of a board-approved project or program (e.g., awarding construction contracts, considering an environmental review document).
- Discretionary decisions for which authority has not been delegated to the general manager.
- Informational items to keep the board current on a matter or to allow them to discuss the implications of continuing on a previously agreed course of action.
- Items with critical timing.
- Proclamations honoring special events or individuals.

Items Originating from or of Interest to a Director

A director may ask that a new item be placed on a future committee or board agenda during the board member Items portion of a board meeting or during the committee comments portion of a committee meeting. However, in such cases, the advance notice requirements of the Brown Act only allow the committee to decide to place such a matter on a future agenda; the matter cannot be discussed at the meeting at which it was first mentioned.

If the director originating an item wishes the item to be discussed by the committee or board when he/she brings it up, the director should contact the general manager to explain the issue so that the agenda can be properly prepared to allow discussion. The director who placed the item on the agenda is cited as the reference and is expected to lead the discussion.

For any matter referred to or being discussed by a committee, the committee shall report its findings back to the board and capture its deliberations in the notes prepared for the committee. If, after reviewing the notes prepared by the committee, a director wishes to have the matter discussed by the full board, he/she may state this request at a board meeting or notify the general manager. The general manager shall then notify the committee of the director's request and schedule the matter for discussion at the next reasonably available committee meeting. This process allows the committee to complete its work and respond to concerns raised. Following that committee meeting, the general manager shall place the matter on the board agenda for discussion at the next reasonably available board meeting.

Items Originating from the Public

During the public comment portion of a board or committee meeting, members of the public may ask to have an item placed on a future board or committee agenda. If the board or committee desires to have the item placed on a future agenda, it will direct the general manager to do so through a properly seconded and approved motion. The committee or board may not discuss the matter brought up by the public at the same meeting at which it is first mentioned.



The Board meeting agenda is an informational, decision-making, and management tool. It presents the issues under consideration and provides a brief general description of actions the Board will consider taking. The agenda is accompanied by a packet of supporting materials designed to aid decision-making by presenting in sufficient factual detail the issues and options which are to be used in the decision-making process. Typically, each item presented to the Board includes recommendations for specific actions.

CHAPTER

9

The Board Meeting Agenda

BOARD MEETING AGENDA

The agenda of each board meeting includes the elements described below.

Preamble

Whenever a meeting is recorded, and before the meeting is called to order, the district secretary states for the record the date and time of the meeting and identifies the presiding director.

Call to Order

The president of the board shall strike the gavel and begin the board meeting. In the absence of the president, the vice president shall call the meeting to order. In the absence of both the president and vice president, but with the presence of a quorum, the district secretary shall call the meeting to order and as the first item of business facilitate the board deciding by motion which director will chair the meeting. If no such motion is passed, the district secretary will administratively facilitate the meeting by calling for agenda items; the district secretary shall not participate in any deliberations or considerations at the meeting.

Pledge to the Flag

The person calling the meeting to order shall lead the directors, staff, and public in the pledge of allegiance to the flag of the United States of America.

Roll Call, Determining and Maintaining a Quorum

The district secretary calls the roll of the directors and records the names of those present and those absent in the minutes of the meeting. If a director enters the meeting late or departs early, these times also are recorded in the minutes. If a quorum of the board (three directors) is not present, no further proceedings or discussions may occur and the district secretary announces that the meeting is adjourned for lack of a quorum.

The board must maintain a quorum throughout the meeting in order to conduct business. However, the meeting may be adjourned with less than a quorum by those directors who are present; if no directors are present, the district secretary can adjourn the meeting.

Special Announcements and Activities

During this section of the meeting, the general manager or staff members designated by the general manager address the board with matters such as introducing a new district employee, acknowledging or giving a special award, or recognizing an event, local students, or dignitaries.

If neither the president nor vice president is present, the district secretary asks for a motion to name a president pro-tem for that meeting. If the motion is made, seconded, and passed (requires a 3-0 vote) the director so named presides over the meeting. If there is no such motion or second, or if the motion does not pass, the district secretary presides over the meeting but cannot make motions or seconds, vote on any item, or enter into policy-level deliberations and discussions.

Public Comment

At every board meeting, members of the public are allowed to address the board on any item of interest within the subject matter jurisdiction of the board that is not already included on the posted agenda. The board president asks anyone desiring to make public comments to fill out a speaker card with his/her name and address so that the minutes accurately reflect the speaker's identity and affiliation, and so that the district can contact the speaker if necessary. Members of the public who decline to provide a speaker card shall be allowed to address the board. The president calls speakers to the lectern and asks them to identify themselves, announce their item, and address the board. Speakers may decline to identify themselves. Public comments are limited, as noted on the agenda, to five minutes per speaker. Directors may ask clarifying questions but cannot take any action on, discuss, or debate the matters presented during the public comment period. Members of the public also may make a request to have an item placed on a future agenda during the public comment portion of the meeting. After considering such a request, the board may provide direction to the general manager by motion, properly seconded and approved, regarding including that item on future board or committee agendas.

Reports by General Manager and Staff

The general manager, general counsel, or, at the general manager's direction, district staff verbally report on upcoming events, recent occurrences, and informational matters that may have significance to the district.

Board Correspondence

An announcement will be made identifying all correspondence received by the district as of the close of business on the day of the board meeting that is addressed or copied to the board or an individual director (correspondence addressed to a board committee is similarly reported to the appropriate board committee and is documented in the notes from that committee meeting). The announcement informs the public what correspondence has been received and documents that all material sent to the board have been transmitted to the board. Generally, staff makes the announcement, but if directors have received correspondence that has not been sent to staff, they are encouraged to make a similar announcement. The announcement should identify the sender, the subject, the form of communication (letter, email, etc.) and the date of the correspondence.

An announcement will also be made identifying all correspondence sent by the board in accordance with the Board Correspondence Policy. If directors have received correspondence that has not been sent to staff, they are encouraged to make a similar announcement.

All board correspondence reported under this item (as well as all material first made available on any agenda item at the board meeting) is maintained by the district in accordance with a Brown Act provision that took effect on July 1, 2008 (*Government Code*, section 54957.5). A binder containing this information is available for inspection by the public upon request.

Committee Reports

All directors receive written summaries of recent deliberative committee meetings. These summaries are noted on agendas and are public records. Directors may, but are not required to, call attention to any item discussed in committee. A director not on a committee may ask clarifying questions about a matter discussed at committee but must be cautious about discussing the matter before it is a properly noticed agenda item for the board. Once presented to the board, the committee notes are considered to be final.

Once any item is removed from the consent calendar, the remaining items are considered and approved by a single motion. The removed items are then discussed and considered individually.

The following are considered standing items for the consent calendar:

- Upcoming board calendar
- Report of checks and electronic disbursements

Board Business

Board business is the section of the agenda where the board considers and decides the more complex or significant matters of the district's business or conducts formal public hearings when required to do so by an applicable law or regulation. Some items require an action by the board; others are informational. In some cases, the board will discuss a matter without making a decision and refer the matter back to staff or a deliberative committee for further development. See *Chapter 4—Transacting Board Business* for appropriate protocol.

Board Member Items

During this section of the meeting, directors are invited to comment on their district-related activities or to suggest new ideas and concepts. At the direction of the president, and with the concurrence of at least one other director, any new item that requires board consideration will be calendared on a future board agenda for further discussion by the board or will be referred to a deliberative Committee for development and discussion. It is important that the board not deliberate new ideas at this time nor render any decisions, as extensive discussions and/or decisions not noticed on the agenda would constitute a violation of the Brown Act. The board may only discuss a new item for the following purposes: to allow understanding of what is being proposed, to enable district staff to understand the issue being raised, or to give direction to the general manager.

Closed Sessions

Closed sessions are typically scheduled at the end of the meeting (see *Agenda Management*, page 11).

Reports from Closed Sessions

Upon returning to open session, the board president will announce any reportable action taken in closed session. Such reports are required by law.

Adjournment

The board president will adjourn the meeting and announce the time of adjournment for the record. The meeting may be adjourned if there is less than a quorum present by action of those directors who remain in attendance; if no directors are present, the district secretary may adjourn the meeting. Occasionally, meetings are adjourned in memory of a loved one or close friend of the district, or in honor of a significant event.

Agenda Management

At this point in the meeting, a director or the general manager has an opportunity to propose rearranging the order of items on the agenda. The board president will rearrange agenda items if the need should arise. For example, a closed session may be moved to an earlier time in a meeting, or a board business item may be moved ahead of another item due to some unusual circumstance or if audience members are present for a particular agenda item. With the advent of the district's recording of board meetings, where possible closed session business should be transacted at the end of the meeting after all open session items have been handled or alternatively as a special board meeting called to order appropriately in advance of the start of the regular board meeting. For the benefit of viewers of the recordings of the board meetings, the board president should announce that the board meeting will continue while the board is in closed session but the recording may terminate (if the closed session is held at the end of the meeting) and advise the viewers that they may contact the district secretary for any reports from closed session that may have been made.



Approval of Minutes

At each regular board meeting, the board receives draft summary minutes of recent regular and special board meetings. The board considers and approves each set of minutes by motion. Directors may suggest revisions. The board then considers and may approve the proposed revision as part of the motion to approve the minutes, or they may take a separate action if the change being requested is complex or contentious. Directors may, but are not required to, vote on minutes of meetings they have not attended, based on their reading and consideration of the written minutes as drafted. The board has the sole discretion to approve the contents and the format of the minutes. A Director may vote on the approval of any minutes presented to the Board for consideration whether that Director was present at the subject meeting or not. Nevertheless, it is common practice for a director to abstain from voting on minutes from a meeting that they did not attend.

Consent Calendar

Matters listed under the consent calendar are considered routine and generally are acted upon by one motion. Directors normally do not discuss consent calendar matters. Items may be removed from the consent calendar in three ways.

- If a director has an unanswered question or concern about any of the items listed on the consent calendar, he/she must request that the matter be removed prior to a motion being made and approved. Any such request by a director is automatically granted. When a director wishes to remove an item from the consent calendar for discussion, it is helpful if he/she contacts the general manager before the board meeting to explain his/her concern. This enables staff to provide information that might be needed to further the board's discussion.
- On occasion, the general manager may request that the president remove an item from the consent calendar. Typically this occurs so staff can clarify for the record inaccuracies in the written material provided to the board, to present new information that came to staff's attention subsequent to the preparation of the agenda, or for other similar administrative reasons. Any such request by the general manager is granted unless a majority of the board objects.
- A member of the audience may request that the board remove an item from the consent calendar so that it may be discussed. Any such request must be made prior to the time the board votes on the matter as part of the consent calendar. Any such request from a member of the public will only be granted if a director agrees that the item should be removed from the consent calendar and makes a director request. Nevertheless, any member of the public has a right to comment on any item on the consent calendar and, if they desire to comment, should make their request known to the district secretary before the board considers the consent calendar. The member of the public should identify the item and proceed to make their comments. Such commenting does not automatically require that the board remove the item from the consent calendar unless a director so requests for discussion or a separate vote.

TRANSACTING BUSINESS ON AN ITEM

Introducing an Item

The board president announces each agenda item, referencing the item number and the nature of the matter.

Staff Presentation

The general manager, or at the general manager's direction, a staff member, summarizes the item being considered, including background, pertinent facts and details, analyses conducted by staff, and options available for the board's consideration. On occasion, a consultant may assist the general manager or staff in presenting an agenda item.

General Manager Recommendation

The general manager makes a recommendation on each action item. That recommendation is identified in the Summary and Recommendation (discussed in *Chapter 5—Meeting Preparation*) and typically is stated at the conclusion of the staff report. The general manager often delegates this responsibility to the senior managers.

Committee Recommendation

If a deliberative committee has reviewed the matter, the outcome of its deliberation will be noted in the Summary and Recommendation included in the board agenda packet. Should any of the directors on the committee so desire, this is the time to state the committee's recommendation and the reasons for it. On rare occasions the recommendation of the committee may differ from that of the general manager.

Clarifying Questions

Directors ask questions of the presenter and offer general comments about the subject matter after the staff presentation. Questions and comments at this time are to clarify the matter and the recommendation. Debates or deliberations occur after public comment and after a motion has been made.

Items presented for consideration at Board meetings are handled in a consistent manner to ensure that:

- Pertinent facts associated with a matter are presented not only for the benefit of the Board but also for the benefit of any member of the public who is present;
- Actions taken by the Board are properly approved; and
- The Board takes action only on items that are scheduled for action on the agenda. For example, the Board may discuss but may not take action on an item that is identified as being for Discussion and Information or as a Special Announcement.

Public Comment

The board president then opens up the meeting to the public for comment on the matter. The public must have an opportunity to comment on every agenda item. Sometimes this is done very formally through a public hearing. Other times, the president simply asks the audience if there are any comments. The president will ask speakers to fill out a speaker card¹ and to state their name, address (can be a business address), and affiliations for the record and for the benefit of others in the audience. If it is obvious that no potential speakers are present, there is no need to formally call for public comment. In the event the district has received written correspondence from the public on the matter after the publication of the agenda, that written correspondence will be presented to the board at this time.²

Motion and Second

After public comment, a board member may make a motion regarding the action to be taken on the item. The motion must be seconded before additional discussion, debate, or deliberation on the matter is permitted. No discussion may occur on a motion without a second. A motion fails if it does not receive a second.

Discussion

After a motion is properly made and seconded, the board discusses the merits of the item in an attempt to reach a decision. During this time the board may ask staff or the public additional questions or seek the advice of the general manager and/or general counsel. As deliberation by the board ensues, the motion may be amended or withdrawn, or a substitute motion offered. These actions must follow the procedures adopted by the board as noted in *Appendix A*.

¹ A person may not be denied the right to speak if he or she refuses to fill out a speaker card.

² Any written correspondence received on a matter before publication of the agenda will be included in the agenda packet.

Decision

When the board president senses that discussion has run its course, or when a motion to call the question is properly made and seconded, the board president calls for a vote on the motion on the floor. After hearing the results, the board president announces the vote. Voting may be by voice or roll call, at the president's option.

MAJORITY VOTE REQUIRED

A majority vote is required for any action to be taken by the board (i.e., there must be a minimum of three affirmative votes) regardless of how many directors are present. This requirement is mandated by state law. In certain instances, a supermajority vote³ of the board is required (e.g. to adopt a resolution of necessity to condemn real property or to add an emergency item to an agenda). In those cases, general counsel will provide guidance.

ACTIONS TAKEN BY THE BOARD

The board of directors approves items in the following ways:

- Motion
- Minute Order
- Resolution
- Ordinance

Motion

The board uses a motion to submit a matter for action. A motion can be a parliamentary tool used by a member of the board (plus another member who seconds the motion) to place a matter before the entire board for its consideration. A motion also can be a legislative action used to autho-

³ A vote that requires more than three votes for passage.

rize or approve action on simple matters that are routine in nature, such as providing direction to staff, communicating a district position, approving a task order, increasing a purchase order amount, or approving a proclamation. The minutes of the board meeting document the board's determination on these matters. A motion is always used to place a recommendation before the board to authorize a minute order, approve a resolution, or adopt an ordinance.

Minute Order

A minute order formalizes an action taken by the board for which a more formal document, such as a resolution or ordinance, is not required. The board's decision is recorded in the minutes as evidence that an action did occur, and the minute order provides formal documentation of the action. A minute order memorializes approval of a project acceptance, authorizes execution of a notice of completion, and authorizes minor amendments to agreements. A minute order typically is used when a third party requires written evidence of a board action. The district secretary may prepare a minute order, as necessary, to reflect past action of the board.

Resolutions

A resolution constitutes a more formal written expression of the will of the board as the district's legislative body. Resolutions represent an official board action and/or position taken on a particular issue that is considered to be more temporary in nature than an ordinance but for which a separate permanent record is needed. Resolutions preserve the history of the action taken in a separate official instrument in addition to documentation in the board's minutes. A resolution becomes effective immediately and remains in effect until rescinded, cancelled, or superseded by the board acting by means of a new resolution. Resolutions typically are used to adopt poli-

cies, approve agreements (e.g. master agreements, construction agreements, public facilities planning agreements, and transfer agreements), award contracts for materials or services, approve memoranda of understanding with bargaining groups, and establish or amend job classifications. Resolutions, if properly written, can be used to change the rates and charges the district imposes for the privilege of receiving service. Given the nuances of the law in this area, general counsel should always be consulted to determine the proper instrument for approving rates and charges.

Ordinance

An ordinance is the most formal form of action that can be taken by the board. Ordinances are used to establish the local laws that are within the district's power to enact and are applicable throughout the district. Ordinances may apply only to matters not covered by federal or state law. An ordinance is also the authorizing instrument to change the District Code, which is a compilation of the rules and regulations of the district. Ordinances also may be used to set the district's rates and charges after consultation with general counsel (see *Resolutions*, above). State law requires that some ordinances be published or posted. In some cases, a public hearing is required prior to consideration. An ordinance generally becomes effective 30 days after adoption unless it expressly provides otherwise. Ordinances remain in full force and effect until repealed, modified, or superseded by the board in another ordinance, or by action of the voters through initiative or referendum. Everyone at the district, including the board, is bound by the requirements of an ordinance (and the code it establishes). Ordinances are the law of the district and must be enforced by staff, who have no discretion to act otherwise. Only the board itself may waive, modify, or suspend an ordinance by the enactment of a subsequent ordinance. The only way to change an ordinance is to pass an ordinance that revises the original.

CHAPTER
11**Effective Participation in
Board Meetings****GROUND RULES FOR EFFECTIVE PARTICIPATION IN
BOARD MEETINGS**

The following ground rules apply to all directors.

- Come to meetings prepared. Contact the general manager ahead of any meeting if you have clarifying questions or need additional background. Many times your questions can be answered without taking up meeting time. Also, it helps staff to understand your concerns ahead of the meeting so they can be prepared with the information you need.
- During the meeting, express your thoughts and support them wherever possible with facts, figures, and references. Specifically identify your sources of information so as to establish their credibility with your colleagues. Specific statements are more persuasive to your colleagues on the board than generalized statements. Examples: (a) “I spoke with _____, who is the president of the _____ Homeowners’ Association and they would like the district to _____” is better than “The public thinks that we should do _____;” (b) “[Specific name] told me _____” is better than “I was told that _____;” (c) “[Specific organization] has a concern with _____” is better than “Everyone thinks that _____.”
- Be creative. Innovative ideas supported by sound reasoning are welcome on complicated matters when the board is attempting to arrive at a consensus.
- Take a positive approach. Keep an open mind. When a director proposes an idea, look for the value in that idea.
- Be enthusiastic. Enthusiasm can be contagious!
- Stay on the subject. Don’t introduce other agendas. Keep your comments brief but long enough to establish your points.
- When you don’t understand what someone is saying, ask for clarification. Make criticism positive and constructive. Direct critical comments to the issues being discussed, not toward the person expressing the idea.
- Protect the rights of others to have their opinions and feelings heard. Encourage silent members to participate.

- Help the board president when others take up outside issues. Interrupt gently and say, “We’re getting a little off the subject here, maybe we should get back to our topic.”
- Share your thoughts. Holding back when you have an idea robs the board and staff of your knowledge and opinion and prevents further development of your idea. Have confidence in yourself and speak up.
- Protect ideas. Help the board president set an atmosphere where people will feel comfortable expressing ideas even if they aren’t perfect. When someone begins attacking another’s idea, say, “That idea probably has faults, Fred, most ideas do. Let’s just let ideas come out for now and evaluate them later.”
- Attend and participate. Be on time and stay for the entire meeting. Advise the general manager or district secretary if you are unable to attend.
- Be an active listener. Be open-minded: listen and consider all points of view.
- At all times ask yourself, “What, right now, would help the board move ahead and get this problem solved? What can I do to help the board function more effectively? How can I help?”
- Always remember that civil discourse is one of the keys to effective communication.

OPTIONS TO IMPROVE PUBLISHED VIDEO RECORDINGS

When a meeting is being recorded, directors can take simple administrative steps to facilitate an orderly meeting that will be more understandable to viewers of the recording. However, the primary focus of any meeting, recorded or not, must be conducting the district’s business efficiently. As such, directors should not conduct themselves differently when the meeting is being recorded than when it is not. Refrain from “Playing to the camera.”

The board president carries a greater responsibility to make the meeting more understandable to the video audience. Examples of what the president can do include the following:

- When recognizing a director’s right to speak, use the person’s name.
- When motions and seconds are made, announce who did so by name.

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- When calling on staff to contribute to the discussion, call on them by name.
 - When a presenter is not speaking into the microphone, politely stop them and ask them to start over and speak clearly into the microphone.
 - PowerPoint presentations are often shown on the west screen, which is not visible to the video audience. If a PowerPoint presentation is included in the board agenda packet, the president should note where it can be found in the packet when the item comes before the board.
 - When members of the public or consultants are addressing the board, strongly encourage them to do so from the lectern.

In addition, directors and senior staff seated at the dais can help make the meeting more understandable to the video audience in the following ways:

- Address one another by name.
- Lean forward and speak clearly into the dais microphone. (For a voice to be picked up on the recording, it must be amplified through the room speakers. The recording system collects sound only via the speakers in the room.)
- Enunciate words and do not mumble.
- Maintain a level volume when speaking; do not lower the volume at the end of your sentences.
- While it is good to maintain eye contact with the individuals you are addressing, be aware that if you turn your head away from the microphone, the listening audience may not hear what you are saying.
- Do not rock or swivel the chair when speaking.
- Do not rustle papers near the microphone.
- Do not speak on top of another speaker.
- Minimize sidebars because it is difficult for the audience to hear anyone when several people are speaking at the same time.

BOARD MEETING INFORMATION

The board agenda packet may include various pieces of information for any given item, as described below.

SUMMARY AND RECOMMENDATION

The Summary and Recommendation is a one-page summary of an item. Each item to be considered by the board (including matters on the consent calendar as well as those listed as board business) will have a Summary and Recommendation. It includes the following information:

Title of Item

The title is a brief description that reveals the nature of the item. The title is the same on the Summary and Recommendation as on the agenda, and wording must comply with Brown Act requirements to provide a brief general description of the item. The title determines what action the board is allowed to take or the nature of the information that the board may receive. For example, if an item is identified on the agenda under “recommended action” as being for *discussion* or for *information*, the board may not vote on that item at that meeting. This requirement ensures the public is properly informed of actions the board may take so they can decide whether or not to participate.

Presenter Information

This identifies which staff member, director, or committee will present the item and the nature of the presentation (verbal, slides, etc.).

Anticipated Time

Staff estimates how long the board will take to hear and transact the item. These estimates are intended help to manage time during a board meeting but do not limit the actual time the board may spend on any item.

District staff prepares a detailed agenda packet summarizing the business to be transacted at a board meeting. Agenda packets are delivered to directors and are available to the public at that time, with allowances for copying time. Full agenda packets are also posted to the district’s website. Materials for the closed session portion of the agenda are not made available to the public. For regular meetings, agenda packets are prepared and delivered no later than Saturday of the week preceding the meeting because the board meets on Tuesdays and 72 hours advance posting of the agenda for the public is required. Directors prepare for board meetings by studying the agenda packet in detail in advance of the meeting.

If a Director has questions about the information in the packet, he/she should contact the General Manager for clarification or further explanation. District business is transacted in the most complete, efficient, and effective manner when Directors review and understand the information and issues presented for Board consideration before they arrive at the Board meeting.



Form of Action

The form of action (motion, minute order, resolution, or ordinance) required by the board is noted.

Committee Review and Recommendation

If an item was reviewed by committee, the name of the committee, the date it last discussed the item, and its recommendation are noted as applicable.

Legal Counsel Review

When staff has received legal counsel's review and/or opinion related to an item, the Summary and Recommendation notes that fact.

Costs and Funding Source

The cost (known or estimated) associated with a recommended action is noted, along with its funding source. The Summary and Recommendation only notes the cost of the item being presented to the board for decision. For example, if approval of a \$250,000 consulting agreement associated with a \$10 million project is being considered, the cost noted is \$250,000. When the board certifies an Environmental Impact Report (EIR) on a \$5 million project, the cost shown on the Summary and Recommendation is \$0, because there is no additional cost to the district associated with the certification.

Recommendation

The general manager's recommendation for action is presented at the top of the Summary and Recommendation. The recommendation is phrased in such a way so that, if a director concurs, he/she may read or make specific reference to the recommendation when making a motion.

Summary

The balance of the Summary and Recommendation provides a short, general summary of the action being considered by the board. Additional details are provided in staff reports or other documents.

Staff Reports

One or more staff reports may be included for an item if the board needs more information than can be provided in the one-page Summary and Recommendation.

Action Document

The recommended action document (minute order, resolution, or ordinance) typically follows the Summary and Recommendation.

Reports

Reports (or their executive summaries) may be attached if they are needed for the board to consider and deliberate.

CHAPTER
13

Preparation for Committee Meetings

Traditionally, the board has established various committees based on specific subject matter to facilitate the board's consideration of district business. Committee structure and membership are proposed by the board president and confirmed by the board. This is done every year in December when the new board president assumes office. There is no legal requirement for the board to form committees.

COMMITTEE MEETINGS

Committee meetings serve as venues for developing and deliberating issues before they reach the entire board for consideration. A committee by itself can take no action; only the board can take action. Committees may provide on-going guidance to staff so long as that guidance is consistent with the broad policy direction set by the board.

As is done for board meetings, district staff prepares a detailed agenda packet summarizing the business to be transacted at each committee meeting. The agenda packets are delivered to committee members and alternate members and are also made available to the public at that time.

SCHEDULING AND ATTENDANCE

Standing committee meetings generally are scheduled monthly, quarterly, or annually depending on the needs of the district. Monthly committee meetings in particular occur on a fixed schedule (e.g., the Thursday following the first board meeting of each month). Committee meetings generally occur during daytime work hours or immediately after (starting times approximately from 8:00 a.m. though 6:00 p.m.).

Many directors are employed or conduct their own business during those hours and may have expected or unexpected conflicts in schedule between committee meetings and their own employment or business needs. However, rescheduling committee meetings due to conflicts in directors' schedules can make it difficult for the public to attend, create scheduling difficulties for interested parties and consultants who are often present for discussion of an item, and increase the workload for district staff.

To minimize these impacts while allowing flexibility for directors, the following scheduling principles should be kept in mind:

- The public has a right to easy, timely, and predictable access to the deliberations of the board of directors and its committees.
- The district shall schedule and hold committee meetings only when needed to conduct district business.
- To the greatest extent practical, committee meetings should be scheduled on a regular, predictable basis. Directors and staff should make a deliberate effort to attend committee meetings as scheduled.

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- Often a director or key staff member knows of an upcoming schedule conflict well in advance. Examples are planned business trips or vacations, conference attendance, or other activities in which the district has a business interest.
 - Both directors and staff have a responsibility to bring such conflicts in schedule to the attention of others affected so that a committee meeting can be rescheduled well in advance.
 - Directors may, within the requirements of the Brown Act, attend a committee meeting via teleconference when they are unable to attend in person. Directors should make teleconferencing arrangements with staff well in advance and always before agendas are posted so the requirements of the Brown Act are satisfied.

If a director is unable to attend a committee meeting as scheduled, it is his/her responsibility to consider the options in the following priority order:

1. Ask the alternate to attend the meeting.
2. Arrange for attendance at the meeting via teleconference.
3. Do not attend, recognizing that a committee meeting can be held with only one member.
4. As a last resort, request rescheduling, realizing that this may impact the public, support personnel and consultants, and district staff. The other committee member must agree to the new schedule.

Guidelines for Cancelling Committee Meetings

To minimize the cost and administrative burden associated with preparing agendas for committee meetings, the following guidelines and process shall be employed to cancel committee meetings:

- Committee meetings will be cancelled if there is no business to be discussed.
- Committee meetings will be cancelled if the business that is to be conducted is judged by the general manager to be routine and non-controversial.
- Committee meetings will be cancelled if the business that is to be conducted is not time sensitive and can wait until a subsequent committee meeting.
- Committee meetings will be cancelled if the agenda consists entirely of information items (in which case the information reports shall be transmitted to the committee members).

Committee meetings will be canceled by proper notice posted in accordance with the Brown Act provided that district staff has notified the committee members of a proposed cancellation and no committee member objects within a 24-hour period. If a committee member objects, the committee member should identify the item(s) they would like to see placed on the agenda.

Posting

For regular meetings, agenda packets are prepared and posted on the Friday immediately preceding the week in which the committee meets. This is required for regular meetings held on Monday afternoons and conservatively meets the posting requirements for meetings on any other day of the week. For regular meetings held on Monday mornings, the agenda is posted on the previous Thursday to meet the 72-hour posting requirement.

For special committee meetings, there is a 24-hour posting requirement. It is the district's administrative goal to post agendas for all special committee meetings on the Friday immediately preceding the week in which the committee meets or earlier, conservatively meeting the requirement. Occasionally, the need for a special committee meeting arises mid-week; in those cases, the agenda must be posted 24 hours in advance of the meeting.

Additions to Committee Agendas

A committee may, on a two-thirds vote (unanimous for a two-member committee), add an item to the agenda of that committee meeting if the need to discuss that item became known after publication of the agenda and if the committee members who are present determine that there is a need for immediate action.

Posting Committee Agendas

The agenda packets for each committee are delivered to the committee members and alternate members on Friday or Saturday of the week preceding the meeting (or as soon as possible for a committee meeting newly scheduled mid-week). The full agenda for committee meetings is also posted on the district's website. The agenda packets are also made available to the public at the same time. Directors prepare for committee meetings by studying the agenda packet in detail in advance of the meeting.

Preparation

If a director has questions about the information in the packet, he/she should contact the general manager for clarification or for further explanation. Committee business is transacted in the most complete, efficient, and effective manner when directors have reviewed and understand the information and issues presented for consideration by the time they arrive at the committee meeting.

Format

Staff work on any given agenda item can be in various stages of completion at the time it is presented to the committee. Often the work is not in final form and the materials presented to the committee are less formal than those presented to the board.

The material presented to a committee may be in the form of a final or draft Summary and Recommendation, a memorandum from the general manager and/or district staff, executive summaries and/or excerpts from draft or final reports, simple tables, drawings, PowerPoint presentations, or similar work.

Staff will continue to work on items after the committee agenda has been posted. As a result, district staff will often bring additional written material to a committee meeting so as to present the latest information about the topic.

On occasion, the agenda will note, "Material to be available at the committee meeting." This is only done when the work is not completed by the preceding Friday. District staff strives to avoid this approach, as it compromises a committee member's ability to prepare properly for the meeting.

Anticipated Time

Staff estimates how long the committee will take to hear and transact the item. These estimates are intended to help manage time during committee meetings but do not limit the actual time the committee may spend on any item.

COMMITTEE RECOMMENDATIONS TO THE BOARD

A committee can make one of five recommendations to the board: approval, disapproval, neutral, no recommendation, and informational.

- A recommendation to approve is given when the committee endorses the general manager's recommendation or, alternatively, develops a recommendation of its own to present to the board. In the latter case, both the general manager's recommendation and that of the committee are presented to the board.
- A recommendation to disapprove is less common and occurs when board action is required on a matter (keeping in mind a committee cannot kill an item) or in those instances when the general manager's recommendation differs from the consensus developed by a committee.
- A neutral recommendation occurs in those instances when a committee is split on a matter; in such instances, the committee's discussions, if any, are summarized for the board.
- No recommendation occurs when the committee specifically decides not to make a recommendation; in such instances, the committee's discussions, if any, are summarized for the board.
- An informational recommendation is made when the committee desires input from the board in order to complete its deliberation; in this instance the item is calendared for discussion only by the board (no action) and subsequently returns it to the committee for additional discussion and deliberation.

USE OF ELECTRONIC DEVICES DURING MEETINGS

District Furnished Devices and Service

Directors are encouraged to use appropriate electronic devices such as laptop and tablet computers for district business. The district boardroom is enabled as a Wi-Fi hotspot enabling any such devices being used by a director, staff, or the public to access the internet without incurring usage charges.

Access to Agenda Materials

All board and committee agendas (agenda face sheet as well as all attachments) are posted at the district office, as well as on the district's website (www.dsrdsd.com), at essentially the same time. Board meeting minutes and committee meeting notes also are posted on the website, as are the recordings of district board meetings. Directors are encouraged but not required to download agenda material for board and committee meetings from the website, saving the district the cost of delivery. Directors should notify staff if they wish to not receive paper agenda materials.

Appropriate Use of Electronic Devices in Public Meetings

The appropriate use of electronic devices by directors can save money and increase the productivity of district staff. However, barring a personal emergency or similarly urgent situation, directors should not use such devices for any sort of communication (emailing, texting, checking voice-mails, etc.) while a public meeting is in progress. Doing so carries risks, including the following:

- The integrity of the open meeting can be questioned by anyone concerned that a director is communicating with someone not present at the meeting, an audience member, or even a fellow director or staff, about an agenda item in a manner that is not available to all present at the meeting.
- A violation of the Brown Act may be alleged if a director is communicating electronically about an agenda item during a public meeting.
- If there is a Brown Act violation, the actions that the board took related to that violation can be invalidated.

A Director has many opportunities to communicate effectively. Openness, timeliness, directness, and truthfulness are the traits of good communication, regardless of the format or venue.

CHAPTER

15

Effective Communications

EFFECTIVE COMMUNICATIONS

General Guidelines

- Make no promises for the board or the district.
- Be aware of how various forms of communication affect how messages are received: formal versus informal, written versus verbal, in-person versus over the phone versus electronic. Strive to use each form at the appropriate time.
- Confer with the general manager when in doubt—staff is always available to advise you on how best to proceed.
- Maintain neutrality when required by not discussing nor commenting upon matters that are quasi-judicial in nature—such as, but not limited to, administrative hearings on personnel matters or environmental impact reports—until the entire record is presented to the full board is imperative that a director maintain an open mind on such matters until after all information has been entered into the public record and presented to the full board.

Communicating with the Public

- A director can always communicate with district constituents.
- Inform the general manager as soon as possible about concerns you hear from your constituents. Many times the concern can be handled administratively or is already a work in progress.
- Don't make personal commitments or promises for the district because only the board can commit the district to an action or policy.
- Understand that very often there is a fair amount of background to an issue and you may have heard only one perspective.

Communication with Other Agencies

- It is acceptable to attend meetings of other public agencies and it is good to introduce yourself so everyone knows you are present.
- If you are speaking for the district at another agency's public meeting, always clearly state that what you are saying has been approved by the board and do not deviate from the message and/or position.

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- Be clear when the board has no position on an issue.
 - Take opportunities to develop relationships but always in a way that supports board policy and avoids accusations of deal making.
 - Be positive and cooperative in comments and attitudes about people and other agencies (particularly in public).
 - Communicate in a way that builds positive relationships.

Speaking as a Private Individual

- If you speak as a private citizen at a public gathering, clearly state that you are doing so.
- Keep in mind that even when you say you are speaking as a private individual, many in your audience nevertheless hear your comments in light of your position as a director of the district.
- Apply common sense.
- Avoid personal statements that might be interpreted as district policy.
- Support district policy, avoiding personal statements that conflict with policy and identify when your personal opinions deviate from board policy as determined by the board majority.
- It is acceptable to speak as an individual on issues not related to district business, but make it clear that your remarks are solely your own.

Communicating with the Media

- If you choose to talk with the media, the following practices can help you present your thoughts effectively.
- Do not use the phrase, “No comment,” as this phrase has been stigmatized and may be interpreted negatively.
- Feel free to refer media inquiries to the general manager or confer with the general manager prior to speaking with the media to ensure that you are fully briefed on the facts associated with the topic at hand.
- Feel free to use and ask staff to prepare talking points so as to convey a consistent message about district actions.
- Clarify when your view is dissenting, but support adopted board policy even when you are in the minority. Don’t stimulate or inflame controversy.

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- If you communicate with the media before you vote on a matter, you can inadvertently become a party to a serial meeting in conflict with the Brown Act if the media were to poll other directors and share with them your predisposition on a matter.

Communicating at Liaison Committees

- Liaison committees do not make policy, but simply gather information and present district policy. (If the district has no policy, say so.)
- Always bring the information back to the board.
- Communicate critical issues promptly to the general manager to avoid surprises.
- Officials at other agencies are busy, so liaison committee meetings should focus on current issues; avoid meeting just for meeting's sake (do need-based scheduling).

Communicating at Joint Powers Authority Meetings

- At meetings of a joint powers authority (JPA), your role is different from that of your role at a liaison meeting because you also serve as a director of the JPA, which is an independent governmental agency.
- When serving on a JPA board, the California Attorney General has opined and the Joint Powers Act suggests that a director has independent discretion apart from the agency board to which he/she was elected. In other words, a JPA director owes his/her primary duty to the JPA when acting in that capacity. However, since a district director serves on a JPA board at the pleasure of the district board, the district board can terminate the director's appointment to the JPA at its sole discretion and without a showing of cause for the termination of that appointment.
- Subject to the points above, if the district board has discussed a matter and arrived at a decision, the JPA representatives should advocate and vote as decided by the district board.
- Problems can arise when there is a conflict around a specific issue, either between the best interest of the JPA versus the best interest of the district or between the majority district position and the

representative's individual view. In such situations, prior consultation with the general manager and/or general counsel is advised.

- The board president considers the individual views of a director when suggesting appointments to JPA positions to avoid potentially awkward situations.
- If the representative knows there is a serious personal conflict, he/she can ask to be replaced by the alternate for those meetings dealing with the issues of concern.
- Matters discussed in a closed session of the JPA are subject to the same confidentiality obligations as a district closed session. However, there are certain exceptions and exemptions to this general rule. Specific concerns over what may be discussed with the district board and under what circumstances should be addressed with the general counsel.

Building Goodwill with Other Agencies

- Remain positive in outlook, comments, and tone, particularly in public.
- Work on building and improving positive relationships and mending previously strained relationships.
- Remember that the professional staff of the district and other agencies can, and do, work things out with input and guidance from their respective boards. Sometimes it may be more efficient not to say anything.
- Learn about and understand the interests and needs of the other agencies.
- Informal interactions help build connections better than formal interactions.
- Don't force relationships; work on them to the extent they are needed.
- There is an appropriate time and place for applying pressure to get desired results; grandstanding at public meetings rarely achieves this purpose.
- Whatever happens, model good behavior, keep communications professional and civil, and always show others the same respect you hope to receive in return.

Communicating in Writing

Refer to and follow the Board Correspondence Policy and consult with the general manager on all correspondence and other written communications. In addition:

- **Corresponding as an individual director related to district business.** Directors may send correspondence stating their personal views related to district business (and may use their title as a director). Such correspondence should clearly state that the statements are the view of the sending director and not the official position of the district. The sending director should convey a copy of such correspondence to the general manager and/or district secretary who shall circulate it to the other directors for their information. When corresponding as an individual, the director may not use district letterhead, the district logo or seal or any functional electronic equivalent thereof.
- **Corresponding as an individual director unrelated to district business.** Directors may send correspondence to other public agencies if the correspondence states that it is being sent by the director as a private citizen and represents their personal views on a public matter that is not related to district business. While not required, the director is encouraged to provide a copy of such correspondence to the general manager and/or district secretary.

Communicating Electronically

- All communications to and from a director related to district business, including email, mobile-to-mobile texting, mobile instant messaging, computer-based instant messaging, chat logs, and similar modes of electronic communication, could be considered a public record (even those originating from personal email) and are subject to disclosure under the Public Records Act to the same extent as traditional written materials.
- Electronic communications are potentially discoverable if legal proceedings are involved.
- Keep in mind that these forms of electronic communication are often retained by and can be retrieved from electronic devices, software programs, and/or the companies that provide such services, even if deleted from display.

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- With constituents and other agencies, generally it is better to communicate in person rather than through email. When you communicate face to face, the other party is more likely to interpret your message correctly.
 - When you receive an email related to district business, consider:
 - Copying the email (and any response you make) to the general manager;
 - Using the email response as an opportunity to open a subsequent verbal communication with the constituent; and
 - Referring the matter to the general manager for assistance in preparing a response (with suggestions for what might be included in the response).
 - When writing back, refer to and rely on board policy to address the concerns raised.
 - Be careful about using *Reply to All* and features that automatically fill in email addresses when emailing or posting on discussion boards, social media messages, and social networking sites. This can lead to inadvertent serial meetings that are prohibited by the Brown Act.

Rosenberg's Rules of Order:
Simple Parliamentary
Procedures for the 21st Century



MISSION:

To restore and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.

VISION:

To be recognized and respected as the leading advocate for the common interests of California cities.



About the League of California Cities

Established in 1898, the League of California Cities is a member organization that represents California's incorporated cities. The League strives to protect the local authority and autonomy of city government and help California's cities effectively serve their residents. In addition to advocating on cities' behalf at the state capitol, the League provides its members with professional development programs and information resources, conducts educational conferences and research, and publishes *Western City* magazine.

About *Western City* Magazine

Western City is the League of California Cities' monthly magazine. *Western City* provides lively, interdisciplinary analyses of issues affecting local governance. Its goal is to offer immediately practical ideas, information and bigger-picture policy issues and trends. For more information, visit www.westerncity.com.

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About the Author

Dave Rosenberg is an elected county supervisor representing the 4th District in Yolo County. He also serves as director of community and intergovernmental relations, director of operations, and senior advisor to the governor of California. He has served as a member and chair of numerous state and local boards, both appointed and elected, and also served on the Davis City Council for 12 years, including two terms as mayor. He has taught classes on parliamentary procedure and has served as parliamentarian for large and small governing bodies. In the fall of 2003, Gov. Davis appointed Rosenberg as a judge of the Yolo County Superior Court.

Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century

by Dave Rosenberg

The rules of procedure at meetings should be simple enough for most people to understand. Unfortunately, that hasn't always been the case. Virtually all clubs, associations, boards, councils and bodies follow a set of rules, *Robert's Rules of Order*, which are embodied in a small but complex book. Virtually no one I know has actually read this book cover to cover.

Worse yet, the book was written for another time and purpose. If you are running the British Parliament, *Robert's Rules of Order* is a dandy and quite useful handbook. On the other hand, if you're running a meeting of a five-member body with a few members of the public in attendance, a simplified version of the rules of parliamentary procedure is in order. Hence, the birth of "Rosenberg's Rules of Order."

This publication covers the rules of parliamentary procedure based on my 20 years of experience chairing meetings in state and local government. These rules have been simplified and slimmed down for 21st century meetings, yet they retain the basic tenets of order to which we are accustomed.

"Rosenberg's Rules of Order" are supported by the following four principles:

1. Rules should establish order. The first purpose of the rules of parliamentary procedure is to establish a

framework for the orderly conduct of meetings.

2. Rules should be clear. Simple rules lead to wider understanding and participation. Complex rules create two classes: those who understand and participate and those who do not fully understand and do not fully participate.

3. Rules should be user-friendly. That is, the rules must be simple enough that citizens feel they have been able to participate in the process.

4. Rules should enforce the will of the majority while protecting the rights of the minority. The ultimate purpose of the rules of procedure is to encourage discussion and to facilitate decision-making by the body. In a democracy, the majority rules. The rules must enable the majority to express itself and fashion a result, while permitting the minority to also express itself (but not dominate) and fully participate in the process.

The Chairperson Should Take a Back Seat During Discussions

While all members of the governing body should know and understand the rules of parliamentary procedure, it is the chairperson (chair) who is charged with applying the rules of conduct.

The chair should be well versed in those

rules, because the chair, for all intents and purposes, makes the final ruling on the rules. In fact, all decisions by the chair are final unless overruled by the governing body itself.

Because the chair conducts the meeting, it is common courtesy for the chair to take a less active role than other members of the body in debates and discussions. This does *not* mean that the chair should not participate in the debate or discussion. On the contrary, as a member of the body, the chair has full rights to participate in debates, discussions and decision-making. The chair should, however, strive to be the last to speak at the discussion and debate stage, and should not make or second a motion unless he or she is convinced that no other member of the body will do so.

The Basic Format for an Agenda Item Discussion

Formal meetings normally have a written, published agenda; informal meetings may have only an oral or understood agenda. In either case, the meeting is governed by the agenda and the agenda constitutes the body's agreed-upon road map for the meeting. And each agenda item can be handled by the chair in the following basic format.

First, the chair should clearly announce the agenda item number and should clearly state what the subject is. The chair should then announce the format that will be followed.

Second, following that agenda format, the chair should invite the appropriate people to report on the item, including any recommendation they might have. The appropriate person may be the chair, a member of the governing body,

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire to move on.

a staff person, or a committee chair charged with providing information about the agenda item.

Third, the chair should ask members of the body if they have any technical questions for clarification. At this point, members of the governing body may ask clarifying questions to the people who reported on the item, and they should be given time to respond.

Fourth, the chair should invite public comments or, if appropriate at a formal meeting, open the meeting to public input. If numerous members of the public indicate a desire to speak to the subject, the chair may limit the time of each public speaker. At the conclusion of the public comments, the chair should announce that public input has concluded (or that the public hearing, as the case may be, is closed).

Fifth, the chair should invite a motion from the governing body members. The chair should announce the name of the member who makes the motion.

Sixth, the chair should determine if any member of the body wishes to second the motion. The chair should announce the name of the member who seconds the motion. It is normally good practice for a motion to require a second before proceeding with it, to ensure that it is not just one member of the body who is interested in a particular approach. However, a second is not an absolute requirement, and the chair can proceed with consideration and a vote on the motion even when there is no second. This is a matter left to the discretion of the chair.

Seventh, if the motion is made and seconded, the chair should make sure everyone understands the motion. This is done in one of three ways:

1. The chair can ask the maker of the motion to repeat it;
2. The chair can repeat the motion; or
3. The chair can ask the secretary or the clerk of the body to repeat the motion.

Eighth, the chair should now invite discussion of the motion by the members of the governing body. If there is no desired discussion or the discussion has ended, the chair should announce that the body will vote on the motion. If there has been no discussion or a very brief discussion, the vote should proceed immediately, and there is no need to repeat the motion. If there has been substantial discussion, it is normally best to make sure everyone understands the motion by repeating it.

Debate on policy is healthy; debate on personalities is not. The chair has the right to cut off discussion that is too personal, too loud or too crude.

Ninth, the chair takes a vote. Simply asking for the “ayes” and then the “nays” is normally sufficient. If members of the body do not vote, then they “abstain.” Unless the rules of the body provide otherwise or unless a super-majority is required (as delineated later in these rules), a simple majority determines whether the motion passes or is defeated.

Tenth, the chair should announce the result of the vote and should announce what action (if any) the body has taken. In announcing the result, the chair should indicate the names of the members, if any, who voted in the minority on the motion. This announcement might take the following form: “The motion passes by a vote of 3-2, with Smith and Jones dissenting. We have passed the motion requiring 10 days’ notice for all future meetings of this governing body.”

Motions in General

Motions are the vehicles for decision-making. It is usually best to have a motion before the governing body prior to discussing an agenda item, to help everyone focus on the motion before them.

Motions are made in a simple two-step process. First, the chair recognizes the member. Second, the member makes a motion by preceding the member’s desired approach with the words: “I move ...” A typical motion might be: “I move that we give 10 days’ notice in the future for all our meetings.”

The chair usually initiates the motion by:

1. Inviting the members to make a motion: “A motion at this time would be in order.”
2. Suggesting a motion to the members: “A motion would be in order that we give 10-days’ notice in the future for all our meetings.”
3. Making the motion.

As noted, the chair has every right as a member of the body to make a motion, but normally should do so only if he or she wishes a motion to be made but no other member seems willing to do so.

The Three Basic Motions

Three motions are the most common:

1. **The basic motion.** The basic motion is the one that puts forward a decision for consideration. A basic motion might be: “I move that we create a five-member committee to plan and put on our annual fundraiser.”
2. **The motion to amend.** If a member wants to change a basic motion that is under discussion, he or she would move to amend it. A motion to amend might be: “I move that we amend the motion to have a 10-member committee.” A motion to amend takes the basic motion that is before the body and seeks to change it in some way.

3. The substitute motion. If a member wants to completely do away with the basic motion under discussion and put a new motion before the governing body, he or she would “move a substitute motion.” A substitute motion might be: “I move a substitute motion that we cancel the annual fundraiser this year.”

Motions to amend and substitute motions are often confused. But they are quite different, and so is their effect, if passed.

A motion to amend seeks to retain the basic motion on the floor, but to modify it in some way.

A substitute motion seeks to throw out the basic motion on the floor and substitute a new and different motion for it.

The decision as to whether a motion is really a motion to amend or a substitute motion is left to the chair. So that if a member makes what that member calls a motion to amend, but the chair determines it is really a substitute motion, the chair's designation governs.

When Multiple Motions Are Before The Governing Body

Up to three motions may be on the floor simultaneously. The chair may reject a fourth motion until the three that are on the floor have been resolved.

When two or three motions are on the floor (after motions and seconds) at the same time, the *first* vote should be on the *last* motion made. So, for example, assume the first motion is a basic “motion to have a five-member committee to plan and put on our annual fundraiser.” During the discussion of this motion, a member might make a second motion to “amend the main motion to have a 10-member committee, not a five-member committee, to plan and put on our annual fundraiser.” And perhaps, during that discussion, a member makes yet a third motion as a “substitute motion that we not have an annual fundraiser this year.” The proper procedure would be as follows.

First, the chair would deal with the *third* (the last) motion on the floor, the substitute motion. After discussion and debate, a vote would be taken first on the third motion. If the substitute motion *passes*, it would be a substitute for the basic motion and would eliminate it. The first motion would be moot, as would the second motion (which sought to amend the first motion), and the action on the agenda item would be complete. No vote would be taken on the first or second motions. On the other hand, if the substitute motion (the third motion) *failed*, the chair would proceed to consideration of the second (now the last) motion on the floor, the motion to amend.

If the substitute motion failed, the chair would then deal with the second (now the last) motion on the floor, the motion to amend. The discussion and debate would focus strictly on the amendment (should the committee be five or 10 members). If the motion to amend *passed*, the chair would now move to consider the main motion (the first motion) as *amended*. If the motion to amend failed, the chair would now move to consider the main motion (the first motion) in its original format, not amended.

The challenge for anyone chairing a public meeting is to accommodate public input in a timely and time-sensitive way, while maintaining steady progress through the agenda items.

Third, the chair would now deal with the first motion that was placed on the floor. The original motion would either be in its original format (five-member committee) or, if amended, would be in its amended format (10-member committee). And the question on the floor for discussion and decision would be whether a committee should plan and put on the annual fundraiser.

To Debate or Not to Debate

The basic rule of motions is that they are subject to discussion and debate. Accordingly, basic motions, motions to amend, and substitute motions are all eligible, each in their turn, for full discussion before and by the body. The debate can continue as long as members of the body wish to discuss an item, subject to the decision of the chair that it is time to move on and take action.

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire of the body to move on. The following motions are *not* debatable (that is, when the following motions are made and seconded, the chair must immediately call for a vote of the body without debate on the motion):

A motion to adjourn. This motion, if passed, requires the body to immediately adjourn to its next regularly scheduled meeting. This motion requires a simple majority vote.

A motion to recess. This motion, if passed, requires the body to immediately take a recess. Normally, the chair determines the length of the recess, which may range from a few minutes to an hour. It requires a simple majority vote.

A motion to fix the time to adjourn.

This motion, if passed, requires the body to adjourn the meeting at the specific time set in the motion. For example, the motion might be: “I move we adjourn this meeting at midnight.” It requires a simple majority vote.

A motion to table. This motion, if passed, requires discussion of the agenda item to be halted and the agenda item to

be placed on "hold." The motion may contain a specific time in which the item can come back to the body: "I move we table this item until our regular meeting in October." Or the motion may contain no specific time for the return of the item, in which case a motion to take the item off the table and bring it back to the body will have to be taken at a future meeting. A motion to table an item (or to bring it back to the body) requires a simple majority vote.

A motion to limit debate. The most common form of this motion is to say: "I move the previous question" or "I move the question" or "I call for the question." When a member of the body makes such a motion, the member is really saying: "I've had enough debate. Let's get on with the vote." When such a motion is made, the chair should ask for a second to the motion, stop debate, and vote on the motion to limit debate. The motion to limit debate requires a two-thirds vote of the body. Note that a motion to limit debate could include a time limit. For example: "I move we limit debate on this agenda item to 15 minutes." Even in this format, the

the motion fails. If one member is absent and the vote is 3-3, the motion still fails.

All motions require a simple majority, but there are a few exceptions. The exceptions occur when the body is taking an action that effectively cuts off the ability of a minority of the body to take an action or discuss an item. These extraordinary motions require a two-thirds majority (a super-majority) to pass:

Motion to limit debate. Whether a member says, "I move the previous question," "I move the question," "I call for the question" or "I move to limit debate," it all amounts to an attempt to cut off the ability of the minority to discuss an item, and it requires a two-thirds vote to pass.

Motion to close nominations. When choosing officers of the body, such as the chair, nominations are in order either from a nominating committee or from the floor of the body. A motion to close nominations effectively cuts off the right of the minority to nominate officers, and it requires a two-thirds vote to pass.

pend the rules for a particular purpose. For example, the body (a private club) might have a rule prohibiting the attendance at meetings by non-club members. A motion to suspend the rules would be in order to allow a non-club member to attend a meeting of the club on a particular date or on a particular agenda item.

The Motion to Reconsider

There is a special and unique motion that requires a bit of explanation all by itself: the motion to reconsider. A tenet of parliamentary procedure is finality. After vigorous discussion, debate and a vote, there must be some closure to the issue. And so, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to reconsider is made.

A motion to reconsider requires a majority vote to pass, but there are two special rules that apply only to the motion to reconsider.

First is the matter of timing. A motion to reconsider must be made at the meeting where the item was first voted upon or at the very next meeting of the body. A motion to reconsider made at a later time is untimely. (The body, however, can always vote to suspend the rules and, by a two-thirds majority, allow a motion to reconsider to be made at another time.)

Second, a motion to reconsider may be made only by certain members of the body. Accordingly, a motion to reconsider may be made only by a member who voted *in the majority* on the original motion. If such a member has a change of heart, he or she may make the motion to reconsider (any other member of the body may second the motion). If a member who voted *in the minority* seeks to make the motion to reconsider, it must be ruled out of order. The purpose of this rule is finality. If a member of the minority could make a motion to reconsider, then the item could be brought back to the body again and again, which would defeat the purpose of finality.

If you are running the British Parliament, Robert's Rules of Order is a dandy and quite useful handbook.

motion to limit debate requires a two-thirds vote of the body. A similar motion is a *motion to object to consideration of an item*. This motion is not debatable, and if passed, precludes the body from even considering an item on the agenda. It also requires a two-thirds vote.

Majority and Super-Majority Votes

In a democracy, decisions are made with a simple majority vote. A tie vote means the motion fails. So in a seven-member body, a vote of 4-3 passes the motion. A vote of 3-3 with one abstention means

Motion to object to the consideration of a question. Normally, such a motion is unnecessary, because the objectionable item can be tabled or defeated straight up. However, when members of a body do not even want an item on the agenda to be considered, then such a motion is in order. It is not debatable, and it requires a two-thirds vote to pass.

Motion to suspend the rules. This motion is debatable, but requires a two-thirds vote to pass. If the body has its own rules of order, conduct or procedure, this motion allows the body to sus-

If the motion to reconsider passes, then the original matter is back before the body, and a new original motion is in order. The matter may be discussed and debated as if it were on the floor for the first time.

Courtesy and Decorum

The rules of order are meant to create an atmosphere where the members of the body and the members of the public can attend to business efficiently, fairly and with full participation. And at the same time, it is up to the chair and the members of the body to maintain common courtesy and decorum. Unless the setting is very informal, it is always best for only one person at a time to have the floor, and it is always best for every

It is usually best to have a motion before the governing body prior to discussing an agenda item, to help everyone focus.

lege relate to anything that would interfere with the normal comfort of the meeting. For example, the room may be too hot or too cold, or a blowing fan might interfere with a person's ability to hear.

Order. The proper interruption would be: "Point of order." Again, the chair would ask the interrupter to "state your point." Appropriate points of order

Withdraw a motion. During debate and discussion of a motion, the maker of the motion on the floor, at any time, may interrupt a speaker to withdraw his or her motion from the floor. The motion is immediately deemed withdrawn, although the chair may ask the person who seconded the motion if he or she wishes to make the motion, and any other member may make the motion if properly recognized.

Motions to amend and substitute motions are often confused. But they are quite different, and so is their effect, if passed.

speaker to be first recognized by the chair before proceeding to speak.

The chair should always ensure that debate and discussion of an agenda item focus on the item and the policy in question, not on the personalities of the members of the body. Debate on policy is healthy; debate on personalities is not. The chair has the right to cut off discussion that is too personal, too loud or too crude.

Debate and discussion should be focused, but free and open. In the interest of time, the chair may, however, limit the time allotted to speakers, including members of the body. Can a member of the body interrupt the speaker? The general rule is no. There are, however, exceptions. A speaker may be interrupted for the following reasons:

Privilege. The proper interruption would be: "Point of privilege." The chair would then ask the interrupter to "state your point." Appropriate points of privi-

lege relate to anything that would not be considered appropriate conduct of the meeting; for example, if the chair moved on to a vote on a motion that permits debate without allowing that discussion or debate.

Appeal. If the chair makes a ruling that a member of the body disagrees with, that member may appeal the ruling of the chair. If the motion is seconded and after debate, if it passes by a simple majority vote, then the ruling of the chair is deemed reversed.

Call for orders of the day. This is simply another way of saying, "Let's return to the agenda." If a member believes that the body has drifted from the agreed-upon agenda, such a call may be made. It does not require a vote, and when the chair discovers that the agenda has not been followed, the chair simply reminds the body to return to the agenda item properly before them. If the chair fails to do so, the chair's determination may be appealed.

Special Notes About Public Input

The rules outlined here help make meetings very public-friendly. But in addition, and particularly for the chair, it is wise to remember three special rules that apply to each agenda item:

Rule One: Tell the public what the body will be doing.

Rule Two: Keep the public informed while the body is doing it.

Rule Three: When the body has acted, tell the public what the body did.

Public input is essential to a healthy democracy, and community participation in public meetings is an important element of that input. The challenge for anyone chairing a public meeting is to accommodate public input in a timely and time-sensitive way, while maintaining steady progress through the agenda items. The rules presented here for conducting a meeting are offered as tools for effective leadership and as a means of developing sound public policy. ■

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