

ARTICLE 100

GOVERNANCE POLICY

A. DISTRICT

1. Organization. The Orange County Cemetery District (the "District") is an "independent special District," as defined in Government Code Section 56044, duly organized and existing under and by virtue of the California Public Cemetery District Law, codified in Health and Safety Code Sections 9000 et seq. ("Public Cemetery District Law").

2. Formation. The District was formed in 1984 by Resolution No. 84-1150 of the Orange County Board of Supervisors.

3. Changing Name of District. The Board of Trustees ("Board"), by a two-thirds vote of its total membership, may adopt a resolution to change the name of the District, which must contain the words "Public Cemetery District" or "Cemetery District." The resolution shall comply with the requirements of Chapter 23 (commencing with Section 7530) of Division 7 of Title 1 of the Government Code. Within 10 days of its adoption, the Board must file a copy of the resolution with the California Secretary of State, the Orange County County Clerk, the Orange County Board of Supervisors, and Orange County's Local Agency Formation Commission. (HSC § 9043)

4. Purposes. The District serves the following purposes:

(a) The District has exclusive jurisdiction and control over the cemeteries it owns, and manages, operates, improves, and maintains them for the purpose of providing interment services within the District's boundaries. (HSC § 9040)

(b) The District sells interment rights in its cemeteries, columbariums, and mausoleums, subject to certain limitations set forth in the Public Cemetery District Law. (HSC § 9049)

5. Policies and Procedures. The purpose of the Policies and Procedures ("Policies") are to assist the Board of Trustees of the District ("Board") as it sets policy and conducts the business and affairs of the District as the legislative body of the District. It is the intent and purpose of these Policies to help clarify and define the responsibilities of the officials of the District. These Policies supplement state law and provide more specific guidelines for the actions of the Board which are fair, fiscally responsible, and protective of the interests of the people of the District. These Policies have been approved by the Board as to matters covered, but are not intended to be exhaustive, nor are they intended to restrict the otherwise lawful authority of the Board. Notwithstanding any other term,

provision or condition of these Policies, no otherwise lawful act of the Board or the officers of the District shall be invalidated by reason of any term, provision or condition of these Policies.

B. BOARD OF TRUSTEES

1. Legislative Body. The Board of Trustees (the “Board”) serves as the legislative body of District. (HSC § 9020)

2. Voter. Trustees shall be and remain a registered voter in the District. (HSC § 9022)

3. Length of Terms. Each trustee is appointed by the Orange County Board of Supervisors for a term of four years commencing at noon on the first Monday in January (§9024) and terminating on the first Monday in January at the end of the four-year term or until a qualified successor is appointed thereafter (HSC § 9024).

4. Number of Trustees. The Board consists of five (5) Trustees appointed by the Orange County Board of Supervisors.

5. Changing Number of Trustees. The Board may adopt a resolution requesting the Board of Supervisors to increase or decrease the number of members of the Board. The resolution must specify the number of members for which the board of trustees requests the increase or decrease. (HSC § 9025)

6. Oath or Affirmation. Pursuant to Government Code Section 1360, each Trustee shall take and subscribe to the oath or affirmation set forth in Section 1360 of Article 4 in Chapter 2, Division 4 of the Constitution of California prior to assuming the responsibilities and duties as a trustee.

7. Vacancy. Pursuant to Government Code Section 1770, a trustee vacates his or her office upon the happening of any of the following events before the expiration of the term:

- (a) Death.
- (b) An adjudication pursuant to a quo warranto proceeding declaring that the trustee is physically or mentally incapacitated due to disease, illness, or accident, and that there is reasonable cause to believe that the trustee will not be able to perform the duties of his or her office for the remainder of his or her term.
- (c) Resignation, upon the delivery of a letter of resignation by the resigning trustee to County Clerk, effective on the resignation date specified in the letter.
- (d) Removal from office.
- (e) Ceasing to be an inhabitant of the District.
- (f) Absence from the state without the permission required by law beyond the period allowed by law.

- (g) Ceasing to discharge the duties of his or her office for the period of three consecutive months, except when prevented by sickness, or when absent from the state with the permission required by law.
- (h) Conviction of a felony or of any offense involving a violation of his or her official duties. A person shall be deemed to have been convicted when trial court judgment is entered. "Trial court judgment" means a judgment by the trial court either sentencing the officer or otherwise upholding and implementing the plea, verdict, or finding.
- (i) Refusal or neglect to file his or her required oath or affirmation or bond within the time prescribed.
- (j) The decision of a competent tribunal declaring void his or her appointment.
- (k) The making of an order vacating his or her office or declaring the office vacant when the trustee fails to furnish an additional or supplemental bond.
- (l) His or her commitment to a hospital or sanitarium by a court of competent jurisdiction as a drug addict, dipsomaniac, inebriate, or stimulant addict; but in that event the office shall not be deemed vacant until the order of commitment has become final.
- (m) The trustee is listed in the Excluded Parties List System, as defined in Government Code Section 1770, and all of the following apply:
 - (1) The office is one that the incumbent holds ex officio, by virtue of holding another office, or as an appointee.
 - (2) The appointed or ex officio office is on the governing board of a local agency that is, or may reasonably be expected to be, a participant or principal in a covered transaction, pursuant to federal law.
 - (3) A federal agency head or designee has not granted the incumbent an exception, in writing, permitting the incumbent to participate in a particular covered transaction in which the local agency is, or may reasonably be expected to be, a participant or principal.

8. Filling Vacancy. A vacancy on the Board that occurs before the expiration of a term will be filled promptly pursuant to Section 1779 of the Government Code for the balance of any unexpired term. (HSC § 9024)

9. Election of Officers. The Board shall elect its officers not later than the first meeting of every calendar year. (HSC § 9028)

10. Officers. The officers of the Board shall include a chair, vice chair, and a secretary. (HSC § 9028)

(a) Chair. The Chair shall be a trustee. (HSC § 9028)

(b) Vice Chair. The Vice-Chair shall be a trustee. (HSC § 9028)

(c) Secretary. The Secretary may be either a trustee or a District employee. (HSC § 9028)

11. Duties of Officers. The officers of the Board shall have the following duties and responsibilities. (HSC § 9028)

(a) Chair. The Chair shall perform the duties prescribed as follows:

- (i) The Chair shall be the presiding officer at all Board meetings.
- (ii) The Chair shall preserve order and decorum consistent with the Board of Trustees Rules of Decorum.
- (iii) The Chair shall allocate the length of time for public discussion of any matter in advance of such discussion with the concurrence of the Board pursuant to Government Code section 54954.3.
- (iv) The Chair shall assign seating arrangements for Board Meetings.
- (v) The Chair shall execute official documents of the District, as required by law or direction of the Board.
- (vi) The Chair shall have other powers as may be prescribed by the Board.

(b) Vice-Chair. The Vice-Chair shall perform the duties of the Chair in the absence of the Chair.

(c) Secretary. The Secretary shall perform the duties prescribed as follows:

- (i) The Secretary shall attend each regular Board meeting and maintain a record of all proceedings thereof, as required by law. If the Secretary cannot attend a meeting, the General Manager shall designate someone attend the meeting and record the proceedings.
- (j) The Secretary shall attest to all District ordinances, resolutions and other official District records and documents requiring attestation.
- (k) The Secretary shall maintain a record of Board agendas, minutes, ordinances and resolutions.
- (l) The Secretary shall be responsible for the publication of legal notices, appropriate action, certification and filing of documents, such as but not limited to, the District's budgets, election reports, audits, ordinances, resolutions, other legal documents, as may be required by any applicable law, rule, regulation of policy.

12. Treasurer. Except as provided in Section Health & Safety Code Section 9077, the County Treasurer shall act as the District Treasurer. (HSC § 9028) The County Treasurer shall receive no compensation for the receipt and disbursement of money of the District. (HSC § 9028)

13. Additional Officers. The Board may create additional officers and elect members to those positions. (HSC § 9028) No trustee shall hold more than one office. (HSC § 9028)

14. Establishment of Policies. The Board shall establish policies for the operation of the District. (HSC § 9020)

15. Implementation of Policies. The faithful implementation of the District's policies shall be the responsibility of the employees of the District. (HSC § 9020)

16. Independent Judgment. Trustees shall exercise their independent judgment on behalf of the interests of the residents, property owners, and the public as a whole in furthering the purposes and intent of the Public Cemetery District Law, by representing the interests of the public as a whole and not solely the interests of the Board of Supervisors that appointed them. (HSC § 9022(b))

17. Enumerated Powers. The Board, on behalf of the District, shall have and may exercise all rights and powers, expressed or implied, necessary to carry out the purposes and intent of Public Cemetery District Law, including, but not limited to, all of the following powers: (HSC § 9041)

(a) To sue and be sued. (HSC § 9041)

(b) To acquire by purchase, eminent domain, grant, gift, lease, or other lawful means, any real property within the District or any personal property that may be necessary or proper to carry out the purposes and intent of the Public Cemetery District Law. (HSC § 9041)

(c) To sell, lease, or otherwise dispose of any real or personal property, which the Board may exchange for equivalent properties if the Board determines that the exchange is in the best interests of the District. (HSC § 9041)

(d) To donate any surplus real or personal property to any public agency or nonprofit organizations. (HSC § 9041)

(e) To engage necessary employees, to define their qualifications and duties, and to provide a schedule of compensation for performance of their duties. (HSC § 9041)

(f) To engage counsel and other professional services. (HSC § 9041)

(g) To enter into and perform all necessary contracts. (HSC § 9041)

(h) To borrow money, give security therefore, and purchase on contract, as provided in the Public Cemetery District Law. (HSC § 9041)

(i) To adopt a seal and alter it at its pleasure. (HSC § 9041)

(j) To adopt ordinances following the procedures of Article 7

(commencing with Section 25120) of Chapter 1 of Part 2 of Division 2 of Title 3 of the Government Code. (HSC § 9041)

(k) To adopt and enforce rules and regulations for the administration, maintenance, operation, and use of the District's cemeteries. (HSC § 9041)

(l) To enter joint powers agreements pursuant to the Joint Exercise of Powers Act, Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code. (HSC § 9041)

(m) To provide insurance pursuant to Part 6 (commencing with Section 989) of Division 3.6 of Title 1 of the Government Code. (HSC § 9041)

(n) To provide training to trustees that will assist in the governance of the District. (HSC § 9041)

(o) To appoint one or more advisory committees to make recommendations for the ownership, improvement, expansion, and the operation of cemeteries owned by the District and the provision of interment services. (HSC § 9041)

(p) To take any and all actions necessary for, or incidental to, the powers expressed or implied by the Public Cemetery District Law. (HSC § 9041)

C. BOARD MEETINGS

1. Frequency. The Board shall meet at least once every three months. (HSC § 9029)

2. Brown Act. Board meetings shall be subject to the provisions of the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code. (HSC § 9029)

3. Presiding Officer. The Chair or designee shall serve as the presiding officer at all Board meetings.

4. Rules of Decorum. Trustees shall conduct themselves in a manner consistent with the Board of Trustees Rules of Decorum and the presiding officer at the Board meeting shall preserve decorum consistent with the Rules of Decorum. Any trustee who violates the Rules of Decorum during a Board meeting may be subject to removal from the Board meeting upon a two-thirds vote of the trustees present at the Board meeting.

5. Rules of Proceedings. Rosenberg Rules of Order shall be the parliamentary procedures for Board meetings. (See Exhibit A). Any trustee who violates the Rules of Proceedings during a Board meeting may be subject to removal from the Board meeting upon a two-thirds vote of the trustees present at the Board meeting.

6. Parliamentarian. The Chair shall appoint a parliamentarian, which may be the Chair, another trustee, employee or legal counsel.

7. Quorum. A majority of the Board shall constitute a quorum for the transaction of business. (HSC § 9030)

8. Notification of Impending Absence. If a trustee is unable to attend a meeting, the Trustee shall, if possible, notify the Chair or the General Manager, prior to the meeting, and include the reason for absence.

9. Excused Absences. The Board reserves the right to determine whether a trustee's absence under the circumstances at a particular Board Meeting is excused. An excused absence may include, but not be limited to, the following: (1) family illness; (2) automobile accident; (3) business commitment; (4) childcare issues; or (5) other unforeseen emergency. The absence (excused or unexcused) as determined by a four-fifths vote of the Board, shall be recorded in the minutes.

10. Voting Requirement. Except as otherwise specifically provided to the contrary in this Policy or any applicable law, a recorded vote of a majority of the total membership of the Board is required on each action. (HSC § 9030(b)) The Board must also publicly report any action taken and the vote on that action of each member present. (GC § 54957.1(a))

11. Conflict of Interest Code. Trustees shall complete and file Statements of Economic Interests ("Form 700"), as required by the District's Conflict of Interest Code, duly adopted by the Board. (See Exhibit B.)

12. Potential Conflicts of Interest. Trustees are prohibited from making, participating in, or in any way attempting to use their official position to influence a governmental decision in which they know or have reason to know they have a financial interest. (GC § 87100) If it is determined that the trustee has a potential conflict of interest under the Political Reform Act of 1974, as set forth in Government Code Section 81000 et seq., or under the Fair Political Practices Commission Regulations (<http://www.fppc.ca.gov>) the trustee must, immediately before consideration of the decision, do the following: (GC § 87105; 2 Cal Code Regs § 18707):

(a) Publicly identify in detail the financial interest that causes the conflict (except that he or she need not disclose the street address of a residence);

(b) Recuse himself or herself from discussing and voting on the matter;
and

(c) Leave the room until after the decision has been made, unless the matter is on the portion of the agenda reserved for uncontested matters (generally understood to mean the consent calendar).

A trustee who has a disqualifying conflict of interest is not counted towards achieving a quorum on a particular vote. (2 Cal Code Regs § 18705(c))

13. Common Law Bias. A trustee should consider whether he or she has a direct, personal, or pecuniary interest, in any particular agenda item to determine whether he or she should recuse himself or herself from participating in any discussion, debate, deliberation or decision regarding the item and abstaining from voting on the item based on any actual or perceived bias.

14. Recusals. A trustee may recuse him or herself from participating in the discussion, debate or deliberation of any agenda item for any reason, but if a trustee chooses to recusal, he or she must provide a brief explanation of the recusal which shall be recorded in the minutes.

15. Abstentions. A trustee may abstain from voting on any agenda item for any reason, but if a trustee chooses to abstain from voting on an agenda item he or she must provide a brief explanation of the abstention which shall be recorded in the minutes.

16. Rule of Necessity. If there is no alternative means for the Board to take certain action on an item because the number of trustees disqualified from participating in the action has resulted in the inability of the Board to establish a quorum of the full membership of the Board, a minimum number of disqualified trustees needed to establish a quorum of the full membership of the Board may be invited back to participate in the action.

17. No Secret Ballots. The Board may conduct only public votes, with no secret ballots. (GC § 54953 (c))

18. Types of Action. The Board may act only by ordinance, resolution, or motion. (HSC § 9030)

19. Record of Actions. The Board shall keep a record of all of its acts, including financial transactions. (HSC § 9030)

20. Regular Meetings. The Board shall adopt by resolution, the date and time of regular Board meetings. At least seventy-two hours in advance of the meeting, notice of the meeting and the meeting agenda must be posted in areas that are freely accessible to the public at all times and on the local agency's website, if the local agency has one. (GC § 54954(a), § 54954.2(a)) Notice of a regular meeting must be mailed at the time the agenda is posted or mailed when the agenda is distributed to all or a majority of the Board, whichever occurs first, to those who request it, including each local newspaper, radio and television station that has requested it. (GC § 54954, § 54954.1)

21. Adjourned Meetings. The Board may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of

adjournment.^(GC § 54955) When a regular or adjourned regular meeting is adjourned, the resulting adjourned regular meeting shall be treated as a regular meeting for all purposes.^(GC § 54955) Within twenty-four hours after the time of the adjournment, a copy of the order or notice of adjournment must be conspicuously posted on or near the door of the place where the adjourned meeting was held.^(GC § 54955)

22. Adjournment by Secretary. If all the members of the Board are absent from any regular or adjourned regular meeting, the Secretary may declare the meeting adjourned to a stated time and place.^(GC § 54955) The Secretary must give written notice of the adjournment in the same manner as is provided for special meetings. If the order of adjournment fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings.^(GC § 54955) In addition, within twenty-four hours after the time of the adjournment, a copy of the order or notice of adjournment must be conspicuously posted on or near the door of the place where the adjourned meeting was held.^(GC § 54955)

23. Special Meetings. A special meeting may be called by the Chair or a majority of the Board, subject to the following:^(GC § 54956)

- (a) A special meeting must be conducted within the District except in limited circumstances.^{(GC § 54954 (b))}
- (b) A special meeting, however, may not be called regarding salaries, salary schedules, or fringe benefits of any District executive; this prohibition however does not apply to discuss the local agency's budget.^{(GC § 54956 (b))}
- (c) At least twenty-four hours prior to the special meeting, the following must be accomplished:
 - (i) The call and notice of the meeting must be posted in a location that is freely accessible to the public at all times, and on the District's website.^(GC § 54956)
 - (ii) The call and notice of the meeting agenda must describe each item of business to be transacted or discussed.^(GC § 54956) Action or discussion on any item not described in the special meeting agenda is prohibited.^(GC § 54956)
 - (iii) Written notice of the special meeting must be delivered to, and received by each trustee, unless the trustee has filed a written waiver of the notice or if the trustee is actually present at the special meeting when it convenes.^(GC § 54956)
 - (iv) Written notice of the meeting must be delivered to and received by each local newspaper of general circulation and

each radio or television station that requested written notice.^(GC § 54956)

24. Emergency Meetings. An emergency meeting may be called by the Chair or a majority of the Board, subject to the following:^(GC § 54956)

a. The Board may conduct an emergency meeting if the majority of the Board determines there is a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both.^{(GC § 54956.5 (a)(1))}

b. All special meeting requirements are applicable to the emergency meeting, except for the twenty-four hour notice requirement.^{(GC § 54956.5 (d))}

c. One hour prior to the emergency meeting, the Chair or his or her designee must notify by telephone each local newspaper of general circulation and radio or television station that has requested notice of special meetings. If telephone services are not functioning, the notice requirement is waived. As soon after the emergency meeting as possible, the media must be informed of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting.^{(GC § 54956.5 (b)(2))}

d. During an emergency meeting, the body may meet in closed session if agreed to by a two-thirds vote of the trustees present, or, if less than two-thirds of the trustees are present, by a unanimous vote of the trustees present.^{(GC § 54956.5 (c))}

e. As soon after the emergency meeting as possible, the minutes of the meeting, a list of persons who the District notified or attempted to notify, a copy of the roll call vote and any actions taken at the meeting must be posted in a public place and must remain posted for a minimum of ten days.^{(GC § 54956.5 (e))}

25. Teleconferenced Meetings. The Brown Act provides for the audio or video teleconferencing of any Board meeting subject to the following conditions:

(a) The teleconferenced meeting must comply with all other Brown Act requirements.^{(GC § 54953(b)(1))}

(b) All votes taken during the teleconferenced meeting must be accomplished by roll call.^{(GC § 54953(b)(2))}

(c) The notice and agenda of the meeting must identify the teleconference location and must provide the public with the opportunity to address the members at the teleconferenced location. (GC § 54953(b)(3))

(d) A meeting agenda must be posted at the teleconferenced location. (GC § 54953(b)(3))

(e) The teleconferenced location must be accessible to the public. (GC § 54953(b)(3))

(f) During the teleconference, at least a quorum of the members of the Board must participate from locations within the District's jurisdictional boundaries. (GC § 54953(b)(3))

26. Prohibited Serial Meetings. A series of private meetings (known as "serial meetings") by which majority of Board commit themselves to decision concerning public business or engage in collective deliberation on public business violates open meeting requirement imposed by the Brown Act.

(a) There may be nothing improper about the substance of a serial meeting; the problem is the process, which deprives the public of an opportunity for meaningful participation in decision-making.

(b) The Brown Act prohibits a majority of the Board, outside a public meeting, from using a series of communications of any kind, directly or through intermediaries, "to discuss, deliberate, or take action" on any item of business within the Board's jurisdiction. (GC § 54952.2(b)(1))

(c) "Taking action" means a collective decision by a majority of the Board, a collective commitment or promise by a majority to make a decision, or an actual vote of the Board upon a motion, proposal, resolution, order or ordinance. (GC § 54952.6)

27. One-Way Communications. The Brown Act does not prohibit the District employees or officials from engaging in separate conversations or communications with individual trustees outside of a Board meeting to answer questions or provide information regarding a matter, as long as that employee or official does not communicate a trustee's comments or position on a matter to any other trustee. (GC § 54952.2(b)(2)) Officials must be cognizant of the difference between informational exchanges and prohibited consensus-building; officials must take great care to neither elicit information from trustees nor share the comments or position of one trustee with other trustees outside the context of a Board meeting.

D. CLOSED SESSIONS

1. Closed Sessions. Closed sessions regarding only the subject matters set forth below may be conducted by the Board in the context of a Board meeting, subject to the following: ^(GC § 54962)

a. **Litigation Matters.** The Board may convene in a closed session to discuss with legal counsel pending litigation when discussion in open session concerning those matters would prejudice the District's position in the litigation. ^{(GC § 54956.9(a))}

(i) **Pending Litigation.** Litigation is pending when any of the following circumstances exist:

(1) Litigation, to which the District is a party, has been initiated formally. ^{(GC § 54956.9(d)(1))}

(2) A point has been reached where, in the opinion of the Board on the advice of legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the District. ^{(GC § 54956.9(d)(2))}

(3) Based on existing facts and circumstances, the Board is meeting only to decide whether a closed session is authorized under the Act. ^{(GC § 54956.9(d)(3))}

(4) Based on existing facts and circumstances, the Board has decided to initiate or is deciding whether to initiate litigation. ^{(GC § 54956.9(d)(4))}

(ii) **Party.** The District is considered to be a "party" or to have a "significant exposure to litigation" if a District officer or employee is a party or has significant exposure to litigation concerning prior or prospective activities or alleged activities during the course and scope of that office or employment. This includes litigation in which it is an issue whether an activity is outside the course and scope of the office or employment. ^{(GC § 54956.9(h))}

(iii) **Facts and Circumstances.** The facts and circumstances that indicate significant exposure to litigation are as follows: ^{(GC § 54956.9(e))}

(1) Facts and circumstances that might result in litigation against the agency but which the agency believes are not yet known to a potential plaintiff or plaintiffs. Such facts and circumstances need not be publicly stated on the agenda or announced immediately prior to the closed session.

(2) Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs. Such facts or circumstances must be publicly stated on the agenda or announced immediately prior to the closed session.

(3) The receipt of a claim pursuant to the Government Claims Act or some other written communication from a potential plaintiff threatening litigation. The claim or communication must be available for public inspection.

(4) A statement made by a person in an open and public meeting threatening litigation on a specific matter within the responsibility of the Board.

(5) A statement threatening litigation made by a person outside an open and public meeting on a specific matter within the responsibility of the Board so long as the official or employee of the District receiving knowledge of the threat makes a contemporaneous or other record of the statement prior to the meeting. That record must be available for public inspection. The record need not identify the alleged victim of unlawful or tortious sexual conduct or anyone making the threat on their behalf, or identify a public employee who is the alleged perpetrator of any unlawful or tortious conduct upon which a threat of litigation is based, unless the identity of the person has been publicly disclosed.

(iv) Safe Harbor Descriptions. The agenda must describe the litigation closed session matters in the following manner:^(GC § 54954.5)

(1) Conference with Legal Counsel Re: Existing Litigation Pursuant to Government Code Section 54956.9 (1)(d)
Case Name: (Specify by reference to claimant's name, names of parties, case or claim numbers)
or
Case Name Unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations)

(2) Conference with Legal Counsel Re: Anticipated Litigation Significant Exposure to Litigation Pursuant to Government Code Section 54956.9 (d)
Number of Potential Cases: (Specify number of potential cases)

(3) Conference with Legal Counsel Re: Anticipated Litigation
Potential Initiation of Litigation
Pursuant to Government Code Section 54956.9 (d)
Number of Potential Cases: (Specify number of potential cases)

(v) Post Closed Session Announcements. The Board must report the following actions:

(1) Appellate Review or Relief. The Board must report if approval was granted to legal counsel to defend, or seek or refrain from seeking appellate review or relief.

(2) Amicus Curiae (Friend of the Court). The Board must report if approval was granted to legal counsel to enter as an amicus curiae in any form of litigation.

(3) Settlement Proposals. The Board must report any approval given to legal counsel of a settlement of pending litigation at any stage prior to or during a judicial or quasi-judicial proceeding after the settlement is final, as specified below: (GC § 54957.1(a)(3))

i. If the Board accepts a settlement offer signed by the opposing party, the Board shall report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held. (GC § 54957.1(a)(3)(A))

ii. If final approval rests with some other party to the litigation or with the court, then as soon as the settlement becomes final, and upon inquiry by any person, the District shall disclose the fact of that approval, and identify the substance of the agreement. (GC § 54957.1(a)(3)(B))

iii. The Board's report shall identify, if known, the adverse party or parties and the substance of the litigation. If the approval is to initiate or intervene in an action, the report need not identify the action, the defendants, or other particulars, but must specify that the direction to initiate or intervene in an action was given and that the action, the defendants, and the other particulars must be disclosed to any person upon inquiry, once the litigation is formally commenced, unless the disclosure would jeopardize the agency's ability to effectuate service of process on one or more unserved parties, or if disclosure would jeopardize its

ability to conclude existing settlement negotiations to its advantage. (GC § 54957.1(a)(2))

b. **Liability Claims.** The Board may convene in closed session to discuss a claim for the payment of tort liability losses and public liability losses, subject to the following: (GC § 54956.95(a))

(i) **Safe Harbor Description.** The agenda must describe the liability claim closed session matters in the following manner: (GC § 54954.5(d))

Liability Claim

Pursuant to Government Code Section **

Claimant: (Specify name unless unspecified pursuant to Government Code Section 54961)

Agency Claimed File Against: (Specify name)

(ii) **Post Closed Session Announcements.** The Board must report the disposition of claims discussed in closed session as soon as reached in a manner that identifies the name of the claimant, the name of the agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant. (GC § 54957.1(a)(4))

c. **Personnel Matters.** The Board may convene in a closed session to discuss the appointment, employment, performance evaluation, discipline and complaints about or dismissal of a specific employee, unless the employee requests a public session. (GC § 54957(b)(1))

(i) **Employee.** The term "employee" includes an officer or an independent contractor who functions as an officer or an employee, but does not include a trustee or other independent contractors. (GC § 54957.6(b))

(ii) **Specific Complaints or Charges.** Prior to conducting a closed session on specific complaints or charges brought against an employee by another person or employee, the District must provide the employee written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session. The notice must be delivered to the employee personally or by mail at least twenty-four hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the Board against the employee based on the specific complaints or charges in the closed session is null and void. (GC § 54957(b)(2))

(iii) **Safe Harbor Descriptions.** The agenda must describe the personnel closed session matters in the following manner: (GC § 54954.5 (e))

(1) **Public Employee Appointment Title:** (Specify description of position to be filled)

- (2) Public Employment Title: (Specify description of position to be filled)
- (3) Public Employee Performance Evaluation Title: (Specify position title of employee being reviewed)
- (4) Public Employee Discipline/Dismissal/Release (No additional information is required in connection with a closed session to consider discipline, dismissal, or release of a public employee. Discipline includes potential reduction of compensation.)

(iv) Post Closed Session Announcements. The Board must report action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session at the public meeting during which the closed session is held. The report must identify the title of the position. The report of a dismissal or of the nonrenewal of an employment contract must be deferred until the first public meeting following the exhaustion of administrative remedies, if any. (GC § 54957.1(a)(5))

e. Labor Negotiations. The Board may convene into closed session with designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation. (GC § 54957.6(a)) The closed session with the agency's designated representative regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits may include discussion of the agency's available funds and funding priorities, but only insofar as those discussions relate to providing instructions to the agency's designated representative. (GC § 54957.6(a))

(i) Employee. The term "employee" includes an officer or an independent contractor who functions as an officer or an employee, but does not include elected officials, Trustees, or other independent contractors. (GC § 54957.6(b))

(ii) Open Session. Prior to the closed session, the Board must hold an open and public session in which it identifies its designated representatives. (GC § 54957.6(a))

(ii) Safe Harbor Descriptions. The agenda must describe the closed session in the following manner: (GC § 54954.5(f))

(iii)

(1) CONFERENCE WITH LABOR NEGOTIATORS

Agency designated representatives: (Specify names of designated representatives attending the closed session) (If circumstances necessitate the absence of a specified designated representative, an agent or designee may participate in place of the absent representative so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

(2) Employee organization: (Specify name of organization representing employee or employees in question)

(3) Unrepresented employee: (Specify position title of unrepresented employee who is the subject of the negotiations)

(iv) Limited Purpose. The closed session must be for the purpose of reviewing the Board's position and instructing the District's designated representatives (GC § 54957.6(a)) and may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees. (GC § 54957.6(a)) The closed sessions must not include final action on the proposed compensation of one or more unrepresented employees. (GC § 54957.6(a))

(v) Post Closed Session Announcements. The Board must publicly report (orally or in writing) the action taken in closed session and the vote or abstention of every Trustee present and voting concerning the approval an agreement that concludes labor negotiations with represented employees. The report must be made after the agreement is final and has been accepted or ratified by the other party and must identify the item approved and the other party or parties to the negotiation. (GC § 54957.1(a)(6))

f. Property Negotiations. The Board may convene into closed session to discuss with the agency's identified bargaining agent, the purchase, sale, exchange or lease of real property by or for the agency. (GC § 54956.8) A lease includes renewal or renegotiation of a lease.

(i) Open Session. Prior to the closed session, the Board must hold an open and public session in which it identifies its negotiators, the real property or real properties which the negotiations may concern, and the person or persons with whom its negotiators may negotiate. Negotiators may be Trustees. (GC § 54956.8)

(ii) Safe Harbor Descriptions. The agenda must describe the closed session in the following manner: (GC § 54954.5(b))

(1) CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: (Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation)

Agency negotiator: (Specify names of negotiators attending the closed session) (If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Negotiating parties: (Specify name of party (not agent))
Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both)

(ii) Post Closed Session Announcements. The Board must report its approval of an agreement concluding real estate negotiations after the agreement is final. (GC § 54957.1(a)(1)) If the Board's own approval renders the agreement final, it must report that approval and the substance of the agreement in open session at the same public meeting during which the closed session is held. (GC § 54957.1(a)(1)(A)) If final approval rests with the other party to the negotiations, the District must disclose the fact of that approval and the substance of the agreement upon inquiry by any person, as soon as the other party or its agent has informed the agency of its approval. (GC § 54957.1(a)(1)(B))

g. Joint Powers Agencies. When the controlling joint powers agency agreement or the joint powers agency's regulations or bylaws permit, any person who serves as both a member of the Board of a joint powers agency (JPA) and as a Trustee may disclose information to the District's legal counsel, or to other Trustees in a closed session when the information was obtained in a JPA's closed session and has direct financial or liability implications for the District. (GC § 54956.96(a)(1))

(i) Attendance. If the controlling joint powers agency agreement or the joint powers agency's regulations or bylaws permit, any person who serves as both a designated alternate member of the JPA and as a Trustee

may attend the JPA closed session in lieu of the District's primary representative. (GC § 54956.96(a)(2))

(ii) Limited Purpose. When the controlling joint powers agency agreement or the joint powers agency's regulations or bylaws permit, the Board, upon the advice of its legal counsel, may conduct a closed session in order to receive, discuss, and take action concerning information obtained in a JPA closed session. (GC § 54956.96(b))

(iii) Safe Harbor Descriptions. The agenda must describe the closed session in the following manner: (GC § 54954.5(j))

(1) CONFERENCE INVOLVING A JOINT POWERS AGENCY (Specify by name).

Discussion will concern: (Specify closed session description used by the joint powers agency.) Name of local agency representative on joint powers agency board: (Specify name)

(Additional information listing names of agencies or titles of representatives attending the closed session as consultants or other representatives.)

h. Other Permissible Closed Session Topics.

(i) Security of public buildings and services or a threat to the public's right of access to public services or facilities. (GC § 54957(a))

(ii) License applications for people with criminal records. (GC § 54956.7)

(iii) Threats to public services or facilities. (GC § 54957(a))

2. Permitted Closed Session Attendees. Only trustees and the support staff necessary to conduct business regarding a specified item (i.e., legal counsel, consultants, and negotiators) may attend a closed session. (86 Ops. Cal. Atty. Gen. 210, 215 (2003).)

3. Confidentiality of Closed Session Discussions. No person, including a trustee, may disclose confidential information that has been acquired by being present in a closed session to a person not entitled to receive it, unless the Board specifically authorizes disclosure of that confidential information. (GC § 54963(a))

(a) Confidential Information. "Confidential information" is defined by the Brown Act as a communication made in a closed session that is specifically related

to the basis for the Board to meet lawfully in closed session under the Act. (GC § 54963(b))

(b) Violations. Violations of the confidentiality provision may be addressed by the use of the remedies currently available by law, including, but not limited to the following: (GC § 54963 (c); (d))

(1) Injunctive relief to prevent the disclosure of confidential information.

(2) Disciplinary action against an employee who has willfully disclosed confidential information, provided the employee in question has received training as to the requirements of either this section or otherwise has been given notice of the requirements of this section.

(3) Referral of a trustee who has willfully disclosed confidential information to the grand jury.

(c) Non-Violations. It is not a violation of the confidentiality prohibition for a person to do any of the following: (GC § 54963 (e))

(1) Make a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts to a district attorney or grand jury that are necessary to establish the illegality of an action taken by a legislative body of a local agency or the potential illegality of an action that has been the subject of deliberation at a closed session if that action were to be taken by a legislative body of a local agency.

(2) Express an opinion concerning the propriety or legality of actions taken by a legislative body of a local agency in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action.

(3) Disclose information acquired by being present in a closed session that is not confidential.

4. Disclosure and Reporting of Items.

(a) Disclosure. Prior to holding a closed session, the Board must disclose, during open session, the item or items to be discussed in closed session. The disclosure may be by reference to the item as listed by number of letter on the agenda. During the closed session, the Board may consider only those items covered in the disclosure. (GC § 54957.7(a))

(b) Reporting. After the closed session, the Board must reconvene into open session and make the required reports of action taken and the vote or abstention of Trustees in closed session. (GC § 54957.7(b)) The required reports may be made orally or in writing. (GC § 54957.7(b))

(c) Release of Documents. The Board shall provide to anyone who has submitted a written request within 24 hours of the posting of the agenda, or to anyone who has made a standing request for all documentation, copies of any documents that were finally approved or adopted in the closed session, if the requester is present at the time the closed session ends. (GC § 54957.1(b)) If the documents require substantive amendments and retyping, the documents need not be released until the retyping is completed during normal business hours, provided that the Board's presiding officer, or his or her designee orally summarizes the substance of the amendments for the benefit of the requester or any other person present and requesting the information. (GC § 54957.1(b)) Documents finalized in closed session must be made available to the public on the next business day following the meeting. If the documents require substantial amendment or retyping, copies must be made available as soon as completed. (GC § 54957.1(c))

E. AGENDAS

The agenda must describe each item of business to be transacted or discussed and must provide the time, and location of the meeting and comply with the following: (GC § 54954.2(a)(1))

1. **Agenda Organization.** The business of each regular Board meeting shall be in the order as printed on the agenda or as directed by the Chairperson. Generally, the agenda shall be organized as follows:
 - Call to Order
 - Pledge of Allegiance
 - Roll Call
 - Public Comments
 - Consent Agenda
 - General Manager's Reports
 - General Counsel Report
 - Action and Information Items
 - Unfinished Business
 - New Business
 - Committee Reports
 - Items for Future Agendas
 - Board Comments
 - Announcements
 - Closed Session

- Post Closed Session Announcements
- Adjournment

2. Agenda Item Descriptions. Agenda item descriptions "generally" should not exceed 20 words in length. (GC §54954.2(a)(1)) However, agenda item descriptions should give enough information to permit a person to make an informed decision about whether they want to attend or participate in a discussion on an issue.

3. Non-Agenda Items. Action or discussion on any item not described in the agenda is prohibited, unless one of the urgency exemptions is applicable. (GC § 54954.2(a)(3), §54954.2(b)) However, trustees may briefly respond to statements made or questions asked by the public. (GC § 54954.2(a)(3)) Additionally, trustees may: (GC § 54954.2(a)(3))

- ask a question for clarification
- make a brief announcement
- make a brief report on activities
- provide a reference to staff or other sources for factual information
- request staff report to the body at a future meeting
- direct staff to place a matter of business on a future agenda

4. Urgency Items. The Board may take action on items of business not described in the agenda under any one of the following urgent conditions:

a. A majority of the Board determines that an emergency exists, such as a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both. (GC § 54956.5(a)(1))

b. Two-thirds of the trustees present (or all of the trustees if less than two-thirds are present) determine that there is a need to take immediate action and the need for that action came to the attention of the Board after the agenda was posted. (GC § 54956.2(c))

c. The item appeared on the agenda of a Board meeting held not more than five days earlier and the item was continued from that meeting. (GC § 54954.2(b)(3))

5. Adding Items To Future Agendas. It is the policy of the District that an item be placed on the agenda and discussed by the Board prior to having District staff and legal counsel perform extensive research on an issue. There shall be included in each regular meeting agenda a section titled "Items to be considered for Future Agendas." Each trustee shall have the opportunity to add any item to a future agenda. Without discussing the item, the Board may provide direction to staff and legal counsel as to what

level of research they should conduct prior to the Board meeting at which the item will be discussed. Since the Board only meets once a month, if a trustee becomes aware of a subject that the Trustee believes should be discussed by the Board and the trustee did not have the opportunity to request it at the previous meeting, then that Trustee may notify the General Manager of his or her request. The General Manager shall use his/her discretion as to the level of outside assistance that can be used to prepare information for the report on the item requested. However, extensive legal research or work from outside consultants shall not be conducted. The General Manager, outside counsel and/or consultants will perform limited research in order to enable the Board to have an informed discussion regarding the item once it is agendaized. Preparation of resolutions or ordinances shall not take place until the Board takes action on an item unless it is a routine ordinance required by another agency. Once the draft agenda that includes the requested item is produced, the General Manager shall send a copy to the Chair. The General Manager shall then produce the full agenda packet for distribution to all trustees and prepare it for public viewing.

F. PUBLIC PARTICIPATION AT BOARD MEETINGS

1. Attendance. The Board may not require the public to register their names, provide other information, complete a questionnaire, or otherwise fulfill any condition to attend a Board meeting. (GC § 54953.3) If an attendance list, register, questionnaire or similar document is circulated to the public present at the meeting, the document must clearly state that signing, registering or completing the document is voluntary and all persons may attend regardless of filling out the document. (GC § 54953.3) Moreover, the Board's meeting place must not prohibit the admittance of any person based on sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation and must be accessible to disabled persons. Members of the public must be able to gain admittance without making a payment or purchase. (GC § 54961)

2. Public Participation – Regular Meetings. Every regular meeting agenda must provide an opportunity for the public to address the Board on any item of interest to the public that is within the Board's subject matter jurisdiction. (GC § 54954.3(a)) At a regular meeting, the public must be provided an opportunity to address the Board concerning any item described on the meeting agenda before or during consideration of that item. (GC § 54954.3(a)) However, an agenda for a regular meeting need not provide the public with the opportunity to address the body on any item that has already been considered by a committee composed exclusively of trustees at a public meeting at which the public was given an opportunity to address the committee before or during its consideration of the item, unless the item has been substantially changed since the committee heard the item. (GC § 54954.3b)

3. Public Participation – Special Meetings. Every notice for a special meeting must provide an opportunity for the public to address the Board concerning any item described in the notice before or during consideration of that item.^{(GC § 54954.3(a))} At a special meeting, public comment can be limited to only those items on the special meeting agenda.

4. Reasonable Regulations. The Board may adopt reasonable regulations regarding public participation, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

5. Speaker Time Limitations. The Board must allow each speaker at a meeting at least three minutes to speak.

6. Use of Translators. The Board must provide at least twice the allotted time to a member of the public who utilizes a translator, unless the Board uses a simultaneous translation equipment in a manner that allows the Board to hear the translated public testimony simultaneously.^{(GC § § 54954.3(b)(2-3))}

7. Access to Meeting Records. If a writing is a public record and relates to an agenda item for an open session of a regular Board meeting and the writing is distributed less than 72 hours prior to the meeting, the writing must be made available for public inspection when the writing is distributed to all, or a majority of all, of the members of the legislative body.^{(GC § 54957.5(b)(1))} The District must make the writing available for public inspection at the District's office. The District must also post the writing on its website in a position and manner that makes it clear that the writing relates to an agenda item for an upcoming meeting.^{(GC § 54957.5(b)(2))}

8. Right to Record Proceedings. Any person attending an open and public meeting of the Board has the right to record the proceedings with an audio or video tape recorder or a still or motion camera providing the recording can proceed without noise, illumination or obstruction of views that would be a persistent disruption to the meeting.^{(GC § 54953.5(a))} Any person may inspect any audio or film recording of an open and public meeting of the Board. The inspection must be provided without charge on a video or tape player made available by the agency.^{(GC § 54953.5(b))} The agency may erase or destroy the recording thirty days after the taping or recording.^{(GC § 54953.5 (b))} Any inspection of an audio or video recording shall be provided without charge on equipment made available by the Agency.

9. Disorderly Conduct of the Public. The Chair may order the meeting room cleared, in the event a group or groups of individuals willfully interrupt the meeting and orderly conduct is unfeasible and cannot be restored by removal of individuals.^(GC § 54957.9) News media representatives must be permitted to attend the session, except those who

participated in the disturbance.^(GC § 54957.9) Only matters appearing on the agenda shall be considered at a meeting which has been ordered cleared.^(GC § 54957.9)

G. BROWN ACT EXCEPTIONS.

Nothing in the Brown Act prevents a majority of members of a Board from attending a function. The test is not whether a majority attends the function, but whether business of a specific nature within the subject matter jurisdiction of the agency is discussed. So long as the members do not discuss agency business, there is no violation of the Brown Act.

Following are the five exceptions that permit a majority of members of a body to gather without prompting the Brown Act meeting requirements:

(1) Conference. A majority of the Board may attend a public conference or similar gathering that addresses issues of general interest to the public, provided that a majority of the trustees do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the body's subject matter jurisdiction.^{(GC § 54952.2(c)(2))}

(2) Open and Publicized Meeting. A majority of the Board may attend an open and publicized meeting organized by another organization to address a topic of concern to the community provided that a majority of the trustees do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the Board's subject matter jurisdiction.^{(GC § 54952.2(c)(3))}

(3) Another Local Agency Meeting. A majority of the Board may attend a meeting of a Board of another local agency, or a legislative body of another local agency. A majority of trustees cannot discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the Board's subject matter jurisdiction, provided that it is an open and publicized meeting.^{(GC § 54952.2(c)(4))}

(4) Standing Committee. A majority of the Board may attend an open and noticed meeting of a Board standing committee. The trustees who are not standing committee members may attend only as observers, meaning that they cannot speak or otherwise participate in the meeting. A majority of the trustees must not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the Board's subject matter jurisdiction.^{(GC § 54952.2(c)(4))}

(5) Social or Ceremonial Occasion. A majority of the Board may attend a purely social or ceremonial occasion. A majority of trustees cannot discuss business among themselves of a specific nature that is within the Board's subject matter jurisdiction. ^{(GC § 54952.2(c)(5))}

Adopted: February 7, 2006

Reference: Resolution No. 2022-09

EXHIBIT A
ROSENBERG'S RULES OF ORDER



Rosenberg's Rules of Order

REVISED 2011

Simple Rules of Parliamentary Procedure for the 21st Century

By Judge Dave Rosenberg



MISSION AND CORE BELIEFS

To expand 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's 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 education conferences and research, and publishes Western City magazine.

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ABOUT THE AUTHOR

Dave Rosenberg is a Superior Court Judge in Yolo County. He has served as presiding judge of his court, and as presiding judge of the Superior Court Appellate Division. He also has served as chair of the Trial Court Presiding Judges Advisory Committee (the committee composed of all 58 California presiding judges) and as an advisory member of the California Judicial Council. Prior to his appointment to the bench, Rosenberg was member of the Yolo County Board of Supervisors, where he served two terms as chair. Rosenberg also served on the Davis City Council, including two terms as mayor. He has served on the senior staff of two governors, and worked for 19 years in private law practice. Rosenberg has served as a member and chair of numerous state, regional and local boards. Rosenberg chaired the California State Lottery Commission, the California Victim Compensation and Government Claims Board, the Yolo-Solano Air Quality Management District, the Yolo County Economic Development Commission, and the Yolo County Criminal Justice Cabinet. For many years, he has taught classes on parliamentary procedure and has served as parliamentarian for large and small bodies.



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INTRODUCTION

The rules of procedure at meetings should be simple enough for most people to understand. Unfortunately, that has not 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 for another purpose. If one is chairing or running a parliament, then *Robert's Rules of Order* is a dandy and quite useful handbook for procedure in that complex setting. On the other hand, if one is running a meeting of say, 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*.

What follows is my version of the rules of parliamentary procedure, based on my decades of experience chairing meetings in state and local government. These rules have been simplified for the smaller bodies we chair or in which we participate, slimmed down for the 21st Century, yet retaining the basic tenets of order to which we have grown accustomed. Interestingly enough, *Rosenberg's Rules* has found a welcoming audience. Hundreds of cities, counties, special districts, committees, boards, commissions, neighborhood associations and private corporations and companies have adopted *Rosenberg's Rules* in lieu of *Robert's Rules* because they have found them practical, logical, simple, easy to learn and user friendly.

This treatise on modern parliamentary procedure is built on a foundation supported by the following four pillars:

1. **Rules should establish order.** The first purpose of 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 the public is invited into the body and feels that it has participated in the process.
4. **Rules should enforce the will of the majority while protecting the rights of the minority.** The ultimate purpose of rules of procedure is to encourage discussion and to facilitate decision making by the body. In a democracy, 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, while fully participating in the process.

Establishing a Quorum

The starting point for a meeting is the establishment of a quorum. A quorum is defined as the minimum number of members of the body who must be present at a meeting for business to be legally transacted. The default rule is that a quorum is one more than half the body. For example, in a five-member body a quorum is three. When the body has three members present, it can legally transact business. If the body has less than a quorum of members present, it cannot legally transact business. And even if the body has a quorum to begin the meeting, the body can lose the quorum during the meeting when a member departs (or even when a member leaves the dais). When that occurs the body loses its ability to transact business until and unless a quorum is reestablished.

The default rule, identified above, however, gives way to a specific rule of the body that establishes a quorum. For example, the rules of a particular five-member body may indicate that a quorum is four members for that particular body. The body must follow the rules it has established for its quorum. In the absence of such a specific rule, the quorum is one more than half the members of the body.


The Role of the Chair

While all members of the body should know and understand the rules of parliamentary procedure, it is the chair of the body who is charged with applying the rules of conduct of the meeting. The chair should be well versed in those rules. For all intents and purposes, the chair makes the final ruling on the rules every time the chair states an action. In fact, all decisions by the chair are final unless overruled by the body itself.

Since the chair runs the conduct of the meeting, it is usual courtesy for the chair to play a less active role in the debate and discussion than other members of the body. This does not mean that the chair should not participate in the debate or discussion. To the contrary, as a member of the body, the chair has the full right to participate in the debate, discussion and decision-making of the body. What the chair should do, however, is strive to be the last to speak at the discussion and debate stage. The chair should not make or second a motion unless the chair is convinced that no other member of the body will do so at that point in time.

The Basic Format for an Agenda Item Discussion

Formal meetings normally have a written, often 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 roadmap for the meeting. 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 agenda item subject is. The chair should then announce the format (which follows) that will be followed in considering the agenda item.

Second, following that agenda format, the chair should invite the appropriate person or persons to report on the item, including any recommendation that they might have. The appropriate person or persons may be the chair, a member of the body, a staff person, or a committee chair charged with providing input on the agenda item.

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

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

Fifth, the chair should invite a motion. The chair should announce the name of the member of the body 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 of the body who seconds the motion. It is normally good practice for a motion to require a second before proceeding 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 vote on a 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 body. If there is no desired discussion, or after the discussion has ended, the chair should announce that the body will vote on the motion. If there has been no discussion or very brief discussion, then the vote on the motion should proceed immediately and there is no need to repeat the motion. If there has been substantial discussion, then it is normally best to make sure everyone understands the motion by repeating it.

Ninth, the chair takes a vote. Simply asking for the “ayes” and then asking for the “nays” normally does this. 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), then a simple majority (as defined in law or the rules of the body as delineated later in these rules) determines whether the motion passes or is defeated.

Tenth, the chair should announce the result of the vote and what action (if any) the body has taken. In announcing the result, the chair should indicate the names of the members of the body, 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 a 10-day notice for all future meetings of this body.”

Motions in General

Motions are the vehicles for decision making by a body. It is usually best to have a motion before the body prior to commencing discussion of an agenda item. This helps the body focus.

Motions are made in a simple two-step process. First, the chair should recognize the member of the body. Second, the member of the body 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 a 10-day notice in the future for all our meetings.”


The chair usually initiates the motion in one of three ways:

1. **Inviting the members of the body to make a motion**, for example, “A motion at this time would be in order.”
2. **Suggesting a motion to the members of the body**, “A motion would be in order that we give a 10-day 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 should normally do so only if the chair wishes to make a motion on an item but is convinced that no other member of the body is willing to step forward to do so at a particular time.

The Three Basic Motions

There are three motions that are the most common and recur often at meetings:

The basic motion. The basic motion is the one that puts forward a decision for the body’s consideration. A basic motion might be: “I move that we create a five-member committee to plan and put on our annual fundraiser.”



The motion to amend. If a member wants to change a basic motion that is before the body, they 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.

The substitute motion. If a member wants to completely do away with the basic motion that is before the body, and put a new motion before the body, they 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 their effect (if passed) is quite different. A motion to amend seeks to retain the basic motion on the floor, but 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 if a member makes what that member calls a “motion to amend,” but the chair determines that it is really a “substitute motion,” then the chair’s designation governs.

A “friendly amendment” is a practical parliamentary tool that is simple, informal, saves time and avoids bogging a meeting down with numerous formal motions. It works in the following way: In the discussion on a pending motion, it may appear that a change to the motion is desirable or may win support for the motion from some members. When that happens, a member who has the floor may simply say, “I want to suggest a friendly amendment to the motion.” The member suggests the friendly amendment, and if the maker and the person who seconded the motion pending on the floor accepts the friendly amendment, that now becomes the pending motion on the floor. If either the maker or the person who seconded rejects the proposed friendly amendment, then the proposer can formally move to amend.

Multiple Motions Before the Body

There can be up to three motions on the floor at the same time. The chair can reject a fourth motion until the chair has dealt with the three that are on the floor and has resolved them. This rule has practical value. More than three motions on the floor at any given time is confusing and unwieldy for almost everyone, including the chair.

When there are two or three motions on the floor (after motions and seconds) at the same time, the vote should proceed *first* on the *last* motion that is made. 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 *passed*, 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 completed on the passage by the body of the third motion (the substitute motion). No vote would be taken on the first or second motions.

Second, 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 then move to consider the main motion (the first motion) as *amended*. If the motion to amend *failed*, the chair would then move to consider the main motion (the first motion) in its original format, not amended.

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). 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):

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

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 be a few minutes or an hour. It requires a simple majority vote.

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.



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 can 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 can 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.

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 the question” or sometimes someone simply shouts out “question.” As a practical matter, when a member calls out one of these phrases, the chair can expedite matters by treating it as a “request” rather than as a formal motion. The chair can simply inquire of the body, “any further discussion?” If no one wishes to have further discussion, then the chair can go right to the pending motion that is on the floor. However, if even one person wishes to discuss the pending motion further, then at that point, the chair should treat the call for the “question” as a formal motion, and proceed to it.

When a member of the body makes such a motion (“I move the previous question”), 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, stop debate, and vote on the motion to limit debate. The motion to limit debate requires a two-thirds vote of the body.

NOTE: 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 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, a simple majority vote determines a question. 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 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 come up when the body is taking an action which 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,” or “I move the question,” or “I call 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.

Motion to object to the consideration of a question. Normally, such a motion is unnecessary since 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 suspend 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.

Counting Votes

The matter of counting votes starts simple, but can become complicated.


Usually, it’s pretty easy to determine whether a particular motion passed or whether it was defeated. If a simple majority vote is needed to pass a motion, then one vote more than 50 percent of the body is required. For example, in a five-member body, if the vote is three in favor and two opposed, the motion passes. If it is two in favor and three opposed, the motion is defeated.

If a two-thirds majority vote is needed to pass a motion, then how many affirmative votes are required? The simple rule of thumb is to count the “no” votes and double that count to determine how many “yes” votes are needed to pass a particular motion. For example, in a seven-member body, if two members vote “no” then the “yes” vote of at least four members is required to achieve a two-thirds majority vote to pass the motion.

What about tie votes? In the event of a tie, the motion always fails since an affirmative vote is required to pass any motion. For example, in a five-member body, if the vote is two in favor and two opposed, with one member absent, the motion is defeated.

Vote counting starts to become complicated when members vote “abstain” or in the case of a written ballot, cast a blank (or unreadable) ballot. Do these votes count, and if so, how does one count them? The starting point is always to check the statutes.

In California, for example, for an action of a board of supervisors to be valid and binding, the action must be approved by a majority of the board. (California Government Code Section 25005.) Typically, this means three of the five members of the board must vote affirmatively in favor of the action. A vote of 2-1 would not be sufficient. A vote of 3-0 with two abstentions would be sufficient. In general law cities in



California, as another example, resolutions or orders for the payment of money and all ordinances require a recorded vote of the total members of the city council. (California Government Code Section 36936.) Cities with charters may prescribe their own vote requirements. Local elected officials are always well-advised to consult with their local agency counsel on how state law may affect the vote count.

After consulting state statutes, step number two is to check the rules of the body. If the rules of the body say that you count votes of “those present” then you treat abstentions one way. However, if the rules of the body say that you count the votes of those “present and voting,” then you treat abstentions a different way. And if the rules of the body are silent on the subject, then the general rule of thumb (and default rule) is that you count all votes that are “present and voting.”

Accordingly, under the “present and voting” system, you would **NOT** count abstention votes on the motion. Members who abstain are counted for purposes of determining quorum (they are “present”), but you treat the abstention votes on the motion as if they did not exist (they are not “voting”). On the other hand, if the rules of the body specifically say that you count votes of those “present” then you **DO** count abstention votes both in establishing the quorum and on the motion. In this event, the abstention votes act just like “no” votes.

*How does this work in practice?
Here are a few examples.*

Assume that a five-member city council is voting on a motion that requires a simple majority vote to pass, and assume further that the body has no specific rule on counting votes. Accordingly, the default rule kicks in and we count all votes of members that are “present and voting.” If the vote on the motion is 3-2, the motion passes. If the motion is 2-2 with one abstention, the motion fails.

Assume a five-member city council voting on a motion that requires a two-thirds majority vote to pass, and further assume that the body has no specific rule on counting votes. Again, the default rule applies. If the vote is 3-2, the motion fails for lack of a two-thirds majority. If the vote is 4-1, the motion passes with a clear two-thirds majority. A vote of three “yes,” one “no” and one “abstain” also results in passage of the motion. Once again, the abstention is counted only for the purpose of determining quorum, but on the actual vote on the motion, it is as if the abstention vote never existed — so an effective 3-1 vote is clearly a two-thirds majority vote.

Now, change the scenario slightly. Assume the same five-member city council voting on a motion that requires a two-thirds majority vote to pass, but now assume that the body **DOES** have a specific rule requiring a two-thirds vote of members “present.” Under this specific rule, we must count the members present not only for quorum but also for the motion. In this scenario, any abstention has the same force and effect as if it were a “no” vote. Accordingly, if the votes were three “yes,” one “no” and one “abstain,” then the motion fails. The abstention in this case is treated like a “no” vote and effective vote of 3-2 is not enough to pass two-thirds majority muster.

Now, exactly how does a member cast an “abstention” vote?

Any time a member votes “abstain” or says, “I abstain,” that is an abstention. However, if a member votes “present” that is also treated as an abstention (the member is essentially saying, “Count me for purposes of a quorum, but my vote on the issue is abstain.”) In fact, any manifestation of intention not to vote either “yes” or “no” on the pending motion may be treated by the chair as an abstention. If written ballots are cast, a blank or unreadable ballot is counted as an abstention as well.

Can a member vote “absent” or “count me as absent?” Interesting question. The ruling on this is up to the chair. The better approach is for the chair to count this as if the member had left his/her chair and is actually “absent.” That, of course, affects the quorum. However, the chair may also treat this as a vote to abstain, particularly if the person does not actually leave the dais.

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 consider is made and passed.

A motion to reconsider requires a majority vote to pass like other garden-variety motions, 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. 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 — including a member who voted in the minority on the original motion — 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 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 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. 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 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 focuses on the item and the policy in question, not 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, is too loud, or is 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 privilege 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 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, “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.

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.

Special Notes About Public Input

The rules outlined above will 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.



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