



Employee Engagement Committee

Regular Meeting Agenda

Wednesday, August 23, 2023

4:00 pm

Zoom: <https://us06web.zoom.us/j/85635021375>

Phone: +1 669 900 9128 WEBINAR ID: 856 3502 1375

75 Nielson Street, Watsonville, CA 95076- CR 2 & 3

Pursuant to Pajaro Valley Health Care District Hospital Corporation (PVHCDHC) Resolutions adopted monthly, Assembly Bill 361, and guidance from the Santa Cruz County Health Department in response to concerns regarding COVID-19, Board Members of PVHCDHC are permitted to participate in this duly noticed public meeting via teleconference and certain requirements of The Brown Act are suspended.

TRANSLATION SERVICES/SERVICIOS DE TRADUCCIÓN

Spanish language translation is available on an as needed basis. Please make advance arrangements at least three business days before the meeting at by calling at (831) 763.6040 or by emailing at info@pvhcd.org

Las sesiones de la Mesa Directiva pueden ser traducidas del inglés al español y del español al inglés. Por favor llame por lo menos tres días hábiles antes de la junta al (831) 763.6040 o envíe un correo electrónico a info@pvhcd.org para solicitar interpretación.

ACCOMMODATIONS FOR PERSONS WITH DISABILITIES

The Pajaro Valley Health Care District Hospital Corporation does not discriminate based on disability, and no person shall, by reason of a disability, be denied the benefits of its services, programs, or activities. If you are a person with a disability and wish to participate in the meeting and require special assistance in order to participate, please call (831)763-6040 or email info@pvhcd.org at least three business days in advance of the meeting to make arrangements. Persons with disabilities may request a copy of the agenda in an alternative format.

Agenda documents are available for review in person at Watsonville Community Hospital, 75 Nielson Street, Hospital Main Lobby-Visitors Desk; and electronically on the Pajaro Valley Healthcare District's website, at: PVHCHC.ORG.

To view online, visit the Committee's website at: PVHCHC.ORG and select the meeting date to view the agenda and supporting documents. Written comments on agenda items may also be submitted to the Committee by email or US Mail. Comments received before the end of the meeting will be included with the minutes record.

Email: info@pvhcd.org

- Emailed documents may take up to 24 hours to be posted
- Please include the agenda item number

U.S. Mail:

PVHCDHC Employee Engagement Committee
75 Nielson Street
Watsonville, CA 95076

For additional information, call 831.763.6040 or email info@pvhcd.org

**Pajaro Valley Health Care District Hospital Corporation Employee Engagement
Committee Regular Meeting Agenda- Wednesday, August 23, 2023**

Call to Order/Roll Call

Agenda Modification Consideration

Public Comment on Matters Not on the Agenda

Time is set aside for members of the public to address the Committee on any item not on the Agenda (not to exceed two minutes), which is within the subject matter jurisdiction of the Committee.

Comments regarding items included on the Agenda will be heard before the item is discussed by the Committee.

No action or discussion shall be taken on any item presented except that any Committee Member may respond to statements made or questions asked or may ask questions for clarification. All matters of an administrative nature will be referred to staff. All matters relating to the board will be noted in the minutes and may be scheduled for discussion at a future meeting or referred to staff for clarification and report.

Comments from Committee Members

Consent

1. Minutes Approval June 14, 2023

Recommendation: Pass a Motion approving the Pajaro Valley Health Care District Hospital Corporation (PVHCDHC) Employee Engagement Committee minutes of June 14, 2023.

Contact: Dawn Bullwinkel, Consultant Committee Clerk

Discussion

2. Pajaro Valley Health Care District Hospital Corporation (PVHCDHC) Employee Engagement Committee Members and Oath of Office

Recommendation: Accept the Oath of Office from each approved Employee Engagement Committee Member and provide each member with a) a copy of their Oath; b) the PVHCDHC By Laws; c) Rosenberg's Rules of Order; and d) a Brown Act primer.

Contact: Dawn Bullwinkel, Consultant Committee

3. Employee Engagement Committee (EEC) Scope and Workplan

Recommendation: Continue discussion regarding 1) identification of items that will routinely come before the Employee Engagement Committee; 2) a timeline to develop a Charter and workplan for the Employee Engagement Committee.

Contact: Allyson Hauck, Chief of Human Resources, Allyson_Hauck@watsonvillehospital.com

Adjournment

This agenda was posted in accordance with the California Brown Act. Any materials related to an item on this Agenda submitted to the Board after distribution of the agenda packet will be made available to the public in accordance with Government Section 54957.5.



Employee Engagement Committee Report

Meeting Date: August 23, 2023

Title: Employee Engagement Committee (EEC) Minutes

Recommendation: Pass a motion approving the Employee Engagement Committee April 14, 2023 Minutes.

Contact: Dawn Bullwinkel, Consultant Clerk; DBullwinkel@watsonvillehospital.com

Summary

After each EEC meeting, the Clerk composes the DRAFT minutes noting the action taken by the Committee. Those DRAFT minutes are presented to the Committee Members for their approval as a permanent record of the meeting actions.

Attachments:

- A. Employee Engagement Committee April 14, 2023 DRAFT Minutes

**Pajaro Valley Health Care District Hospital Corporation Employee Engagement Committee
Regular Meeting Minutes-Wednesday, June 14, 2023**

Call to Order 4:00 pm.

Roll Call

Committee Present: Members Joe Gallagher, Marcus Pimentel

Staff Present: Allyson Hauck, June Ponce (Executives), b) Yvonne Combs, Anna Anton (Manager/Director), c) Kelly Strickling (Front Line), d) Carol Kulik (At Large);

Agenda Modification Consideration-None

Public Comment on Matters Not on the Agenda-None

Comments from Committee Members

Consent

1. Minutes Approval March 8, 2023

Moved/ Seconded: Gallagher/Pimentel

Yes: Members Gallagher and Pimentel

Action: Passed Motion 002-2023 approving the Pajaro Valley Health Care District Hospital Corporation (PVHCDHC) Employee Engagement Committee minutes of March 8, 2023.

Contact: Dawn Bullwinkel, Consultant Committee Clerk

Discussion

2. Pajaro Valley Health Care District Hospital Corporation (PVHCDHC) Employee Engagement Committee (EEC) Appointees.

Moved/Seconded; Pimentel/Gallagher

Yes: Members Gallagher and Pimentel

Action: 1) Received information from those interested in serving on the Employee Engagement Committee and 2) **passed Motion 003-2023** to forward recommendations for Employee EEC appointments to the PVHCDHC board on 6/25, 2023 for: 1) Senior Executive, Allyson Hauck, Chief Human Resources Officer; 2) Senior Executive, June Ponce, Foundation Executive Director 3) Hospital Director/Manager – Anna Anton, Director of Acute Care; 4) Hospital Director/Manager – Yvonne Combs, Director of Rehab Services; 5) Staff – Elizabeth Smolanovich, Staff Nurse II Telemetry; 6) Staff – Carole Kulik, Nursing Supervisor; 7) Staff/Other – Leticia Suarez, Central Scheduler; 8) Staff/Other – Kelly Strickling, Lead Lab Technician 9) Provider – TBD; and 10) Provider – TBD to serve on the EE Committee.

Contact: Allyson Hauck, Chief of Human Resources, Allyson_Hauck@watsonvillehospital.com

3. Employee Engagement Committee (EEC) Scope and Workplan

Action: Continued discussion regarding 1) identification of items that will routinely come before the Employee Engagement Committee; 2) a timeline to develop a Charter and workplan for the Employee Engagement Committee.

Contact: Allyson Hauck, Chief of Human Resources, Allyson_Hauck@watsonvillehospital.com

Adjourned



Employee Engagement Committee Report

Meeting Date: August 23, 2023

Report Type: Discussion

Title: Pajaro Valley Health Care District Hospital Corporation (PVHCDHC) Employee Engagement Committee Members and Oath of Office

Recommendation: Accept the Oath of Office from each approved Employee Engagement Committee Member and provide each member with a) a copy of their Oath; b) the PVHCDHC By Laws; c) Rosenberg's Rules of Order; and d) a Brown Act primer.

Contact: Dawn Bullwinkel, Consultant Committee Clerk

Executive Summary

On June 28, 2023 the Pajaro Valley Health Care District Hospital Corporation passed **Motion No. 034-2023** approving: 1) Senior Executive, Allyson Hauck, Chief Human Resources Officer; 2) Senior Executive, June Ponce, Foundation Executive Director 3) Hospital Director/Manager – Anna Anton, Director of Acute Care; 4) Hospital Director/Manager – Yvonne Combs, Director of Rehab Services; 5) Staff – Elizabeth Smolanovich, Staff Nurse II Telemetry; 6) Staff – Carole Kulik, Nursing Supervisor; 7) Staff/Other – Leticia Suarez, Central Scheduler; 8) Staff/Other – Kelly Strickling, Lead Lab Technician 9) Provider – TBD; and 10) Provider – TBD to serve on the Employee Engagement Committee.

Each committee member is required to take the "Oath of Office" and provide a signed copy to the committee clerk for the record.

As an orientation to the duties of the committee members and the various responsibilities that are required to serve, the following information is provided:

- Oath of Office
- Pajaro Valley Health Care District Hospital Corporation By Laws
- Rosenberg's Rules of Order
- Brown Act Primer

Financial Impact

None

Attachments:

- A. Oath of Office
- B. Pajaro Valley Health Care District Hospital Corporation By Laws
- C. Rosenberg's Rules of Order
- D. Brown Act Primer

Pajaro Valley Health Care District Hospital Corporation (PVHCDHC) Employee Engagement Committee



PAJARO VALLEY HEALTH CARE DISTRICT
HOSPITAL CORPORATION



I, _____, do solemnly swear [or affirm] that I will support the Constitution of the United States and the Constitution and laws of the State of California, and all local ordinances, and that I will faithfully and impartially perform and discharge the duties of the Employee Engagement Committee, according to the law and the best of my ability.

Date:

Signature:



EXERPT:

AMENDED AND RESTATED BYLAWS: Pajaro Valley Health Care District Hospital Corporation, a California nonprofit public benefit corporation (approved 01/25/2023)

Employee Engagement Committee.

The Employee Engagement Committee shall consist of minimum of two (2) Board members, with a total minimum of at least twelve (12) persons including, two (2) senior executives; two (2) hospital directors or managers, two (2) providers with medical staff privileges at Watsonville Community Hospital i.e. physicians or advanced practice providers and two (2) hospital front line staff. The Employee Engagement Committee shall consider human resource issues and policies as warranted and shall review and recommend for Board approval employee compensation, pension and benefits programs (other than executive officer level).

AMENDED AND RESTATED BYLAWS

OF

**Pajaro Valley Health Care District Hospital Corporation,
a California nonprofit public benefit corporation**

ARTICLE I

NAME AND PRINCIPAL OFFICE

1.1. Name. The name of the Corporation shall be as listed in the Articles of Incorporation, namely, Pajaro Valley Health Care District Hospital Corporation (“PVHCDH”), a nonprofit public benefit corporation organized under the laws of the State of California.

1.2. Principal Office and Place of Business. PVHCDH shall have and continuously maintain a registered office in Santa Cruz County and may have other offices within the State of California, as the Board may from time to time determine.

ARTICLE II

PURPOSES

PVHCDH was formed for the purposes set forth in its Articles of Incorporation. The property of PVHCDH is irrevocably dedicated to public, charitable, educational and hospital purposes which meet the requirements of Section 501(c)(3) of the Internal Revenue Code and Sections 23701 and 214 of the California Revenue and Taxation Code.

ARTICLE III

MEMBERSHIP

3.1. Member. There shall be one member of PVHCDH who shall be the Pajaro Valley Health Care District, a political subdivision of the State of California (the “Member”). The Member, and only the Member, shall be entitled to exercise fully all rights and privileges of members of nonprofit corporations under the California Nonprofit Public Benefit Corporation Law, and all other applicable laws. The rights and powers of the Member shall also include, without limitation, the following: the limitation on liabilities described in Section 3.3 of these Bylaws; the right to dissolve PVHCDH upon a majority vote in favor of dissolution; and the exercise of all of the rights set forth in Article X and XI of these Bylaws. The Member may not be expelled or suspended as the Member without its consent. Any reference in these Bylaws to the “member,” “Member” or any similar such reference, shall mean the Pajaro Valley Health Care District, a political subdivision of the State of California.

3.2. Exercise of Membership Rights. The Member shall exercise its membership rights through its own Board of Directors. Subject to the provisions of the Member’s own bylaws, and except as otherwise provided in these Bylaws, the Board of Directors of the Member may, by resolution, authorize a person or committee of persons to exercise its vote on any matter to come

before the membership of PVHCDH. In addition, the Member may exercise its membership rights at any regular or special meeting of the Board of Directors of the Member. The functions required by law or by these Bylaws to be performed at the annual membership meeting or any regular or special meeting of the members of PVHCDH may be performed at any regular or special meeting of the Member's own Board of Directors.

3.3. Liabilities and Assessments. The Member shall not be liable for the debts of PVHCDH. The Board of PVHCDH shall have no power to levy and collect assessments on the Member. The provisions of this paragraph cannot be amended in any manner.

ARTICLE IV BOARD OF DIRECTORS

4.1. Responsibility. Except as otherwise provided by the Articles of Incorporation or by these Bylaws, the management of the affairs of PVHCDH shall be vested in a Board of Directors (the "Board") composed of the persons described in Section 4.2 of these Bylaws (the "Directors" and each a "Director"). Specifically, the Board of Directors shall be empowered as follows:

(a) To control and be responsible for the overall governance of Watsonville Community Hospital, including the provision of management and planning.

(b) To implement Compliance Program oversight consistent with Watsonville Community Hospital wide compliance programs and procedures, including, responsibility for an effective Compliance Program and adoption of related policies, review of routine and special Compliance reports on a regular basis, appropriate delegation of implementation to senior management, and Board training on Compliance Program oversight and implementation.

(c) To appoint a Chief Executive Officer and to define the powers and duties of such appointee, and to delegate to such person overall responsibility for operations of the Watsonville Community Hospital, and affiliated entities, as specified herein and consistent with Board of Directors' Policies.

(d) To determine policies and approve procedures for the overall operation and affairs of Watsonville Community Hospital and its facilities according to the best interests of the public health and to assure the maintenance of quality patient care.

(e) To evaluate the performance of Watsonville Community Hospital in relation to its vision, mission and goals.

(f) To provide for coordination and integration among Watsonville Community Hospital's leaders to establish policy, maintain quality care and patient safety, and provide for necessary resources.

(g) To be ultimately accountable for the safety and quality of care, treatment and services at Watsonville Community Hospital.

(h) To review and approve annual operating and multi-year capital budgets.

(i) To assure through implementation of appropriate processes that all individuals who provide patient care services, but who are not subject to the Medical Staff privilege delineation process, are competent to provide such services, and receive reports of quality assurance information regarding competency of care providers not subject to the privilege delineation process.

(j) To oversee the Medical Staff and the quality of professional services as described in Article VII and Article VIII of these Bylaws.

(k) To establish, maintain and support, through the Chief Executive Officer and the Medical Staff and its designated committees, a comprehensive, hospital-wide program for quality assessment and improvement, to receive reports of performance improvement information on a regular basis from the Medical Staff, and to assure that all aspects of the program are performed appropriately and that administrative assistance is available to the Medical Staff.

(l) To oversee programs for continuing medical education for Medical Staff members, and appropriate in-service education programs for hospital employees, for the purpose of maintaining and improving clinical and employee performance.

(m) To make recommendations to the Chief Executive Officer regarding the kinds and quality of service to be made available at Watsonville Community Hospital.

(n) To review and consult with the Chief Executive Officer concerning the long-range plan for Watsonville Community Hospital.

(o) To consult directly with the Chief of Staff or his/her designee, or through a subcommittee by the Board to include the Chief of Staff, on no less than two occasions per year, on matters including but not limited to: the scope and complexity of hospital services offered, specific patient populations served by Watsonville Community Hospital and any issues of patient safety and quality of care; promptly addressing any urgent request for consultation presented by the Chief of Staff or his/her designee.

(p) To assist in the accreditation process, including participation in the summation conference, and assist in maintaining compliance with current accreditation standards set by The Joint Commission, in conjunction with the Chief Executive Officer and the Medical Staff.

(q) To assist the Chief Executive Officer in establishing medical record policies respecting composition, retention, confidentiality and other aspects of recordkeeping, maintaining confidentiality with respect to the records and affairs of Watsonville Community Hospital, except as disclosure is authorized or required by law.

(r) To approve bylaws for Watsonville Community Hospital auxiliary organizations or for any other similar organizations.

(s) To conduct an annual evaluation of its own activities and performance and an annual evaluation of the Chief Executive Officer and to implement programs to improve such activities and performance.

(t) To perform any other functions designated in these Bylaws but not specifically referred to in this Section and to do any and all other act and things necessary to carry out the provisions of these Bylaws or of the provisions of the California Nonprofit Public Benefit Corporation Law.

All powers of the Board of Directors, which are not otherwise restricted by law, agreement, or herein, may be delegated by an employment agreement, policies, and by direction of the Board to the Chief Executive Officer or to others employed or engaged by or with responsibilities to PVHCDH, to be exercised in accordance with that delegation

4.2. Number, Designation, Term, Removal of Directors. The number of Directors shall be five (5) and shall be comprised of the five (5) publicly elected Directors of the Board of the Member. Directors who no longer serve on the Member's Board of Directors shall be automatically removed as Directors of PVHCDH.

4.3. Voting Rights. Each Director shall be entitled to one vote on all matters before the Board. There shall be no voting by proxy.

4.4. Organizational Meeting. As soon as reasonably possible after each January 1, the Board of Directors shall meet for the purposes of organizing the Board, the election of officers, and the transaction of such other business as may come before the meeting. The initial Board of Directors shall meet for such purposes as soon as reasonably possible after such Board is first constituted.

4.5. Regular Meetings. The Board shall hold meetings at least monthly at such time and place as the Board shall from time to time determine.

4.6. Special Meetings. Special meetings of the Board for any purpose or purposes shall be called by the Secretary upon the request of the Chair, the Chief Executive Officer or any two (2) Directors.

4.7. Notice and Conduct of Meetings; Brown Act. Notice of meetings and meeting agendas shall be in conformance with the California Ralph M. Brown Act, and meetings of the Board shall be conducted consistent with the Brown Act.

4.8. Quorum. A majority of the members of the Board then serving shall constitute a quorum at any meeting of the Board provided that the minimum number of members of the Board which may constitute a quorum shall be three (3). The act of a majority of the voting power present at any meeting at which a quorum is present shall be considered the act of the Board.

4.9. Place. The Board shall hold its meetings at the principal office of the Member, or such other place as the Chair or the Directors requesting the meeting may designate.

4.10. Telephonic Meetings. Members of the Board may participate in a meeting through use of a conference telephone or similar communications equipment, consistent with Brown Act requirements.

4.11. Interested Directors. Not more than forty-nine percent (49%) of the persons serving on the Board at any time may be interested persons. An “interested person” is (i) any person being compensated, directly or indirectly, by PVHCDH for services rendered to it within the previous twelve (12) months, whether as a full-time or part-time employee, independent contractor, or otherwise (excluding any reasonable compensation paid to a director for serving in such capacity); and (ii) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, mother-in-law, or father-in-law of any such person. However, any violation of the provisions of this paragraph shall not affect the validity or enforceability of any transaction entered into by PVHCDH.

4.12. Conflict of Interest Policy. The Board shall develop and adhere to a conflict of interest policy that incorporates the provisions of Section 5233 of the California Nonprofit Corporation Law. The initial Conflicts Policy shall be that adopted by the Member prior to adoption of these Bylaws. PVHCDH’s Conflicts Policy shall be consistent with laws and regulations applicable to California special districts.

4.13. Self-Dealing. Prior to conducting a business session at a meeting of the Board, Board members shall disclose and discuss their individual conflicts or potential conflicts and that of other members of the Board. Actual conflicts shall be subject to resolution pursuant to the Conflicts Policy, applicable federal and state non-profit corporation laws and conflict of interest laws related to public agencies including, but not limited to, Gov’t Code 1090 and the Political Reform Act. In the exercise of voting rights by members of the Board, no individual shall vote on any issue, motion or resolution which directly or indirectly inures to his or her benefit financially or with respect to which he or she has any other conflict of interest, except that such individual may be counted in order to qualify a quorum and, except as the Board may otherwise direct, may participate in the discussion of such an issue, motion or resolution if he or she first discloses the nature of his or her interest and such discussion is allowed under conflict of interest laws applicable to public agencies. Board members shall adhere to the Conflict of Interest Policy enacted pursuant to section 4.12 of these Bylaws.

4.14. Access to Board Records and Reports. Upon request, officers of the Member shall have access to Watsonville Community Hospital documents for review (but not possession) that have been reviewed by the Board of Directors. Such review shall be subject to the officer executing an agreement to maintain the confidentiality (no disclosure beyond officers and Board members of the Member) of information reviewed. Documents that are protected by legal privileges and confidentiality (e.g., personnel, peer review, legal, vendor contractual confidentiality), those containing pending competitive business transaction information, and physician agreements, shall not be subject to review. Subject to the execution of an agreement to maintain confidentiality, Board member and Board selected candidate conflict disclosure filings shall be available for review at PVHCDH’s offices only to the chief executive or designated legal counsel of the Member upon request.

4.15. Bylaws Review. Consistent with regulatory and industry standards, the Board shall periodically conduct a review of these Bylaws in order to update and improve them. At least every two (2) years, commencing in January 2024, the Board shall seek the input of the Member in connection with such a review.

ARTICLE V OFFICERS

5.1. Officers of this Corporation. The officers of PVHCDH shall be a Chair, a Vice Chair, a Chief Executive Officer, a Secretary, and a Treasurer (which office shall be separate from PVHCDH's Chief Financial Officer). No officer may hold more than one office at a time, with the exception of cases in which there is a vacancy in the office due to death, resignation, removal, disqualification or otherwise of a director pursuant to Section 4.2 above in which case more than one office may be held by a single director until the vacancy on the Member Board had been filled.

5.2. Officers Elected by the Board. The Chair, Vice Chair, Treasurer, and Secretary shall be elected annually by the Board at its organizational meeting. Nominations shall be submitted in advance of the selection by a nominating committee appointed by the Board. Each officer elected by the Board shall hold office at the pleasure of the Board and until his or her successor shall be elected and qualified to serve. A vacancy in any office because of death, resignation, removal, disqualification or otherwise of a director, may be filled by the Board for the unexpired term at any meeting of the Board.

5.3. Resignation or Removal. Any officer of the Board may resign at any time or be removed by the vote of the Board.

5.4. Vacancies in Office. A vacancy in any office because of death, resignation, removal, or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointments.

5.5. Chair. The Chair of the Board shall preside at all meetings of the Board. Unless the signature of the Chief Executive Officer is required by law, the Chair of the Board shall possess the same power as the Chief Executive Officer to sign all certificates, contracts, or other instruments of PVHCDH when he or she is so authorized by the Board. The Chair of the Board shall exercise and perform such other powers and duties as may be prescribed by the Board from time to time. The Chair of the Board shall serve as the Board's liaison to the Chief Executive Officer.

5.6. Vice Chair. In the absence of the Chair of the Board or in the event of the Chair's disability, inability, or refusal to act, the Vice Chair of the Board shall perform all of the duties of the Chair and in so acting shall have all of the powers of the Chair. The Vice Chair shall have such other powers and perform such other duties as may be prescribed from time to time by the Board or by the Chair.

5.7. Chief Executive Officer.

(a) Appointment and Removal. The Chief Executive Officer of PVHCDH shall be engaged by the Board and shall serve at the pleasure of the Board, which may terminate the services of the Chief Executive Officer of PVHCDH subject to any employment agreement.

(b) Responsibilities and Authority. The Chief Executive Officer shall be the general manager, administrator and Chief Executive Officer of PVHCDH. The Chief Executive Officer shall be given the necessary authority and responsibility to operate PVHCDH in all of its activities, including without limitation, quality of services, safety matters, cost effectiveness and economic performance, subject to the following: with respect to safety and quality of care, treatment and services, policy development, program planning, employee and community relations, the Chief Executive Officer shall be subject to such policies as may be adopted and such orders as may be issued by the Board of PVHCDH or by any of its committees to which the Board has delegated the power for such action; with respect to program execution and overall management performance, the Chief Executive Officer shall be subject to the authority of and shall report to the Board. The Chief Executive Officer shall act as the duly authorized representative of the Board of PVHCDH in all matters in which the Board has not formally designated some other person to so act.

5.8. Treasurer. The Treasurer of PVHCDH shall keep and maintain or cause to be kept and maintained adequate and correct account of the properties and business transactions of PVHCDH, including accounts of its assets, liabilities, receipts, disbursements, gains and losses. The books of account shall at all times be open to inspection by any Board member. The Treasurer shall be charged with safeguarding the assets of PVHCDH and he or she shall sign financial documents on behalf of PVHCDH in accordance with the established policies of PVHCDH. He or she shall have such other powers and perform such other duties as may be prescribed by the Board from time-to-time. The Treasurer may fulfill these responsibilities and perform his or her duties through appropriate delegation, with Board oversight, to individuals or firms charged with the financial management of PVHCDH.

5.9. Secretary. The Secretary shall keep or cause to be kept a book of minutes at the principal office or at such other place as the Board may order of all meetings of the Board with the time and place of holding, whether regular or special, and if special how authorized, the notice thereof given, the names of those present at the Board meetings, and the proceedings thereof. The Secretary shall give or cause to be given notice of all the meetings of the Board required by these Bylaws or by law to be given, and the Secretary shall keep the seal of PVHCDH in safe custody and shall have such other powers and perform such other duties as may be prescribed by the Board from time to time.

ARTICLE VI
COMMITTEES

6.1. Establishment of Committees. PVHCDH shall have the standing committees set forth in Section 6.5 of these Bylaws, and such other standing committees or special committees as may be established by the Board from time to time in accordance with these Bylaws.

6.2. Composition of Committees. Unless otherwise stated, standing committees shall not be limited to members of the Board, but consistent with California Nonprofit Corporation Law shall include at least two (2) members of the Board. Special committees and any subcommittees of any standing committee or special committee that may be established from time to time shall not be limited to members of the Board but may, by direction of the Board, include any number of persons the majority of whom need not be Directors. The Chair of the Board shall recommend committee members and Chairs of the committees to the Board, subject to the approval of the Board. The Board shall create committees as deemed necessary. Member's interests in appointment to certain committees shall be considered by the Chair. The Board may appoint alternate members of any committee who shall act on behalf of any committee member who is absent from a committee meeting. The Board or the committee may select other persons, whether or not members of the Board, to attend meetings of the committee and to participate in the discussion and activities of the committee; provided, however, that such additional persons attending the committee meeting shall not be entitled to vote and shall participate only at the discretion of the committee.

6.3. Powers; Restrictions and Limitations.

(a) Standing Committees. Subject to the duty of the Board to exercise ultimate direction over the activities and affairs of PVHCDH, the Board may delegate to any standing committee the power, subject to applicable law, to manage or direct any activity of PVHCDH. In addition to powers so delegated and the general duties of the standing committees described in the provisions of these Bylaws, the standing committees shall undertake duties or specific tasks assigned by the Board, or the Chair of the Board of Directors, and shall consider matters requested by other committees or the Chief Executive Officer of PVHCDH.

(b) Special Committees. The Board may authorize any special committee to carry out certain specified functions or responsibilities, or to provide such advice and recommendation as the Board shall require, but no special committee shall have the authority to determine PVHCDH policy or otherwise exercise any powers of the Board with respect to the business and affairs of the PVHCDH. Internal conflicts concerning Medical Staff affairs shall be referred to a special committee created and appointed by the Chair of the Board on an as needed basis for resolution.

(c) Subcommittees. The Board or any standing or special committee may authorize any subcommittee to carry out certain specified functions or responsibilities, or to provide such advice and recommendation as the Board or any such committee shall require, but no subcommittee shall have the authority to determine PVHCDH policy or otherwise exercise any powers of the Board with respect to the business and affairs of PVHCDH.

6.4. Meetings and Actions of Committees.

(a) Meetings. Meetings and actions of any standing committee, special committee or subcommittee shall be governed by, and held and taken in accordance with, the

provisions of these Bylaws concerning meetings of the Board, including, but not limited to Section 4.7, with such changes in the content of these Bylaws as are necessary to substitute the committee or subcommittee and its members for the Board and its members, except a quorum of a committee shall be a majority of the voting members of the committee. The time for regular meetings of any committee or subcommittee may be determined either by direction of the Board or by direction of such committee or subcommittee. Special meetings of any committee or subcommittee may also be called by direction of the Board. Notice of special meetings of any committee or subcommittee shall also be given to any and all alternate members, who shall have the right to attend such meetings, subject to the discretion of the committee or subcommittee. Minutes shall be kept of meetings of any committees and subcommittees and shall be filed with the corporate records. The Board may adopt rules for the governing of any committee or subcommittee not inconsistent with the provisions of these Bylaws.

(b) Subcommittee membership. Subject to Board approval, each standing or special committee may establish such subcommittees as it deems necessary, the members of which need not be members of the Board. The Chair of the parent committee shall recommend to the Board formation of any subcommittee and shall nominate initial membership and the proposed chair of any new subcommittee to the Board for approval. Thereafter, the Chair of a subcommittee shall recommend to the Chair of the parent committee annual appointments or reappointments to the subcommittee, or recommend individuals to fill vacancies. The Chair of the parent committee shall have discretion to accept or reject such recommendations, and shall submit nominations for annual subcommittee membership (including appointment of the subcommittee chair), or nominations to fill vacancies on subcommittees, to the Board of Directors for approval.

6.5. Establishment of Standing Committees. Standing Committees of the Board of Directors as established and appointed pursuant to these Bylaws shall be as follows:

(a) Finance Committee. The Finance Committee shall consist of a minimum of two (2) Board members, with a total minimum of at least ten (10) persons including the Board Treasurer, two (2) senior executives; two (2) hospital directors or managers, two (2) providers with medical staff privileges at Watsonville Community Hospital i.e. physicians or advanced practice providers and two (2) hospital front line staff. The Finance Committee shall oversee all financial matters for PVHCDH including operating and capital budgets, borrowings and capital planning, audits, material contracts and leases, business plan development and implementation, and facilities and equipment.

(b) Strategic Planning and Marketing Committee. The Strategic Planning and Marketing Committee shall consist of a minimum of two (2) Board members, with a total minimum of at least twelve (12) persons including two (2) senior executives; two (2) hospital directors or managers, two (2) providers with medical staff privileges at Watsonville Community Hospital i.e. physicians or advanced practice providers, two (2) hospital front line staff and (2) community members. The Strategic Planning and Marketing Committee shall oversee marketing and strategic planning, integration of PVHCDH operations and facilities,

service changes or adjustments, physician development, facility planning, and strategic alliances and ventures. The Committee shall oversee development and implementation of PVHCDH's community benefit

programs and shall seek input into its work from the Member. The Committee shall also facilitate coordination of its community benefit programs with similar programs undertaken by the Member.

(c) Employee Engagement Committee. The Employee Engagement Committee shall consist of minimum of two (2) Board members, with a total minimum of at least twelve (12) persons including, two (2) senior executives; two (2) hospital directors or managers, two (2) providers with medical staff privileges at Watsonville Community Hospital i.e. physicians or advanced practice providers and two (2) hospital front line staff. The Employee Engagement Committee shall consider human resource issues and policies as warranted and shall review and recommend for Board approval employee compensation, pension and benefits programs (other than executive officer level).

(d) Quality and Patient Safety Committee. The Quality and Patient Safety Committee shall consist of a minimum of two (2) Board members, with a total minimum of at least ten (10) persons, including, two (2) senior executives; two (2) hospital directors or managers, two (2) providers with medical staff privileges at Watsonville Community Hospital i.e. physicians or advanced practice providers and two (2) hospital front line staff. The Committee will be assisted in its work by the Chief Executive Officer, the CNO (Chief Nursing Officer), the Safety Officer, and the Medical Staff as needed and requested by the Committee. The Quality and Patient Safety Committee shall oversee effective functioning of activities related to: provision of quality patient care, patient and staff safety, performance improvement, risk management, regulatory and accreditation standards, and strategic direction for quality expenditures. The Quality and Patient Safety Committee shall forward Quality Reports and recommendations to the Board of Directors. This Committee shall also be responsible for developing and implementing the Board's annual action plan for resolution of safety and quality issues. In addition, the Committee shall:

(1) Analyze data regarding safety and quality of care, treatment and services and establish priorities for performance improvement.

(2) Oversee the Medical Staff's fulfillment of its responsibilities in accordance with the Medical Staff Bylaws, applicable law and regulation, and accreditation standards.

(3) Ensure that recommendations from the Medical Executive Committee and Medical Staff are made in accordance with the standards and requirements of the Medical Staff Bylaws, Rules and Regulations with regard to:

(i) completed applications for initial staff appointment, initial staff category assignment, initial department/divisional affiliation, membership prerogatives and initial clinical privileges;

(ii) completed applications for reappointment of medical staff, staff category, clinical privileges;

(iii) establishment of categories of Allied Health Professionals permitted to practice at Watsonville Community Hospital, the appointment and reappointment of Allied Health Professionals and privileges granted to Allied Health Professionals.

(4) Provide a system for resolving conflicts that could adversely affect safety or quality of care among individuals working within the hospital environment.

(5) Ensure that adequate resources are allocated for maintaining safety and quality care, treatment and services.

(6) Analyze findings and recommendations from the Watsonville Community Hospital's administrative review and evaluation activities, including system or process failures and actions taken to improve safety, both proactively and in response to actual occurrences.

(7) Assess the effectiveness and results of the quality review, utilization review, performance improvement, and risk management programs.

(8) Perform such other duties concerning safety and quality of care matters as may be necessary.

6.6. Ad Hoc Committees. Ad hoc committees may be appointed by the Chair with the approval of the Board of Directors for special limited projects for such specific tasks as circumstances warrant e.g. ad hoc audit committee. Ad hoc committees shall comply with the Brown Act. No ad hoc committee so appointed shall have any power or authority to commit the Board of Directors or Corporation in any manner, but may make recommendations to the Board of Directors.

6.7. Vacancies. Vacancies in any committee shall be filled for the unexpired portion of the term in the same manner as provided in the case of original appointment.

6.8. Expenditures. Except as expressly delegated, any expenditure of corporate funds by a committee or any commitment by a committee to expend corporate funds shall require prior approval of the Board.

ARTICLE VII

CREDENTIALLED PRACTITIONERS

7.1. Medical Staff Appointments and Clinical Privileges

(a) The Board shall appoint a Medical Staff and see that they are organized into a responsible administrative unit and adopt such bylaws and rules and regulations for government of their practice in Watsonville Community Hospital as the Board deems to be to the greatest benefit of patients within Watsonville Community Hospital. In the case of the individual patients, those appointed to the Medical Staff shall have full authority and responsibility for the care of patients subject only to such limitations as the Board may formally impose and to the bylaws and rules and regulations for the Medical Staff as adopted by the Board. The Medical Staff shall adhere to the highest ethical principles of the medical profession.

(b) All applications for appointment to the Medical Staff shall be in writing and addressed to the Medical Staff Office in such form as determined by Watsonville Community Hospital and more specifically described in the Medical Staff Bylaws. The application shall be complete and with required information relating to education, licensure, practice, previous hospital experience, professional liability coverage and any history relative to licensure, malpractice experience and/or hospital privileges.

(c) At its next regular meeting after receipt of a completed application and a recommendation from the Medical Staff concerning an applicant for Medical Staff appointment, the Board shall act in the matter unless further investigation requires that action be postponed to a later meeting, as provided in the following paragraph.

(d) At any time in its consideration of such recommendation, the Board may, in its absolute discretion, defer final determination by referring the matter to a committee of its choice for further consideration (any such referral shall state the reasons therefor, shall set a time limit within which a subsequent recommendation to the Board shall be made, and may include a directive that an additional meeting be conducted to clarify issues which are in doubt). At its next regular meeting after receipt of such subsequent recommendation, the Board shall act in the matter.

(e) Appointments to the Medical Staff shall not exceed two (2) years, renewable by the Board before the end of the appointment upon formal application.

(f) The Board shall delegate to the Medical Staff the responsibility and authority to investigate and evaluate all matters relating to Medical Staff and AHP membership status, clinical privileges and corrective action, and shall require that the Medical Staff adopt and forward to it specific written recommendations with appropriate supporting documentation that will allow the Board to take informed action. Such delegation, however, does not relieve the Board of its responsibilities in appointing members of the Medical Staff and overseeing the appointment and delineation of functions, responsibilities and prerogatives of AHPs.

(g) Final action on all Medical Staff matters shall be taken by the Board after considering the Medical Staff recommendation, except that the Board shall act on its own initiative if the Medical Staff fails to adopt and submit recommendations within the time periods required by the Medical Staff Bylaws. Board action without a staff recommendation shall be based on the same kind of documented investigation and evaluation of current ability, judgment and character as is required for Medical Staff recommendations.

(h) The Chief Executive Officer shall make available to each applicant for staff membership a copy of the Medical Staff Bylaws, including the Medical Staff Rules and Regulations and Fair Hearing Plan. The applicant shall sign a statement on the application form declaring that he/she has received and reviewed those documents and that he/she specifically agrees:

(1) to obligate himself/herself, as an appointee to the Medical Staff, to provide continuous care and supervision as needed to all hospital patients for whom he/she has responsibility;

(2) to abide by all such bylaws, policies and directives of Watsonville Community Hospital and its Medical Staff as shall be in force during the time he/she is appointed to the Medical Staff of Watsonville Community Hospital; and

(3) to accept committee assignments and such other duties and responsibilities as shall be assigned to him/her by the Board and the Medical Staff.

No appointment or reappointment shall take effect until such a statement has been signed by the individual concerned.

(i) The terms and conditions of membership status and clinical privileges and the procedure to be followed in acting on same, shall be as specified in the Medical Staff Bylaws or as more specifically defined in the notice of individual appointment.

(j) The Board shall make final decisions on all requests for corrective action, and shall otherwise participate in the corrective action process as described in the Medical Staff Bylaws.

(k) No aspect of membership status nor specific clinical privileges shall be limited or denied to a practitioner on the basis of race, color, sex, national origin or disability, or on the basis of any other criterion unrelated to quality patient care at Watsonville Community Hospital, to professional qualifications, to the hospital's purposes, needs and capabilities, or to community needs. Members of the Medical Staff who also have hospital administrative responsibilities shall be required to meet the same requirements and qualifications for membership on the Medical Staff as do practitioners who do not have an administrative relationship to Watsonville Community Hospital.

(l) All administrative relationships with members of the Medical Staff and others who are not members of the Medical Staff shall be reduced to written agreement between the individual practitioner and Watsonville Community Hospital. These administrative relationships may be terminated by the CEO following the same procedures utilized for other hospital employees unless the written agreement provides another method of termination. Should the written agreement provision for termination conflict with the general procedures utilized for other employees, the written agreement shall control.

7.2. Medical Staff Governance

(a) The Board shall adopt bylaws and rules and regulations establishing the organization and government of the Medical Staff. The bylaws and rules and regulations shall be developed by the Medical Staff, but shall be effective only upon approval by the Board. The power of the Board to adopt or amend Medical Staff Bylaws and Rules and Regulations shall be conditioned upon the Medical Staff's failure to keep current, update or make

necessary modifications to its bylaws in a manner that will allow for the maximum possible achievement of the purposes and objectives of the Medical Staff.

(b) The Board retains the right to rescind any authority or procedures delegated to the Medical Staff, and to recommend amendment or replacement of the Medical Staff Bylaws as necessary for the operation of Watsonville Community Hospital.

(c) The Medical Staff shall review and revise all Medical Staff Rules and Regulations, and, as applicable, departmental policies and procedures, when warranted, provided that such review shall occur at least every two (2) years. The Medical Staff shall recommend changes in such policies and procedures for approval by the Board.

7.3. Categories of Staff Membership

The Medical Staff shall be organized into categories as outlined in the Medical Staff Bylaws. The prerogatives and responsibilities of each staff category shall be outlined in the Medical Staff Bylaws.

7.4. Allied Health Professionals (“AHP”)

(a) The Board may approve specific clinical privileges for individuals who are not part of the Medical Staff, but who may render patient care services within Watsonville Community Hospital setting.

(b) Each member of the AHP shall be assigned and made accountable to the appropriate clinical section of the Medical Staff, although such assignment will not constitute membership on the Medical Staff.

(c) All applications for appointment to AHP status shall be in writing and addressed to the Chief Executive Officer on such forms as determined by Watsonville Community Hospital. The application shall be processed in the same manner as Medical Staff applications.

(d) The terms and conditions of AHP status, and of the exercise of clinical privileges, shall be as specified in the appropriate section of Medical Staff Bylaws or as more specifically defined in the notice of individual appointment. AHPs shall not be entitled to the procedures set forth in the Fair Hearing Plan. They shall, however, be entitled to an appearance before a Medical Staff committee designated within the Medical Staff Bylaws, as well as a written appeal to the Board in the event of an adverse action.

ARTICLE VIII MEDICAL CARE EVALUATION

8.1. Board Responsibility for the Quality of Professional Services

After considering the recommendations of the Medical Staff and the other health care professionals providing patient care services, the Board shall implement specific review and evaluation activities to assess, preserve and improve the overall quality and efficiency of patient care in Watsonville Community Hospital. The Board, through the Chief Executive Officer, shall provide whatever administrative assistance is reasonably necessary to support and facilitate activities contributing to continuous quality assessment and improvement.

8.2. Medical Records

In order to facilitate the Medical Staff's review and appraisal of the quality and efficiency of the medical care rendered in Watsonville Community Hospital, the Board will assure that the Medical Staff will have access to the services of the Medical Records Department and to any other administrative or technical assistance deemed appropriate.

8.3. Professional Accountability to the Board

The Medical Staff and the other health care professional staff providing patient care services shall conduct, and be accountable to the Board for conducting, activities that contribute to the preservation and improvement of the quality and efficiency of patient care provided in Watsonville Community Hospital. These activities shall include these functions:

(a) Providing effective mechanisms to monitor and evaluate the quality of patient care and the clinical performance of individuals with delineated clinical privileges within Watsonville Community Hospital;

(b) Ongoing review, evaluation and monitoring of patient care practices through a systematic process of overall quality assessment and improvement;

(c) Delineation of clinical privileges for Medical Staff members, commensurate with individual credentials and demonstrated ability and judgment, and assignment of patient care responsibilities to other health care professionals consistent with individual qualification and demonstrated ability;

(d) Establishing a process designed to assure that all individuals responsible for the assessment, treatment, or care of patients are competent in the following, as appropriate to the ages of the patients served:

(1) the ability to obtain information and interpret information in terms of patient needs;

(2) a knowledge of cognitive, physical and emotional growth and development in the particular age group treated; and

(3) an understanding of the range of treatment needed by the patients.

- (e) Providing continuing professional education, shaped primarily by the needs identified through the review and evaluation activities;
- (f) Reviewing utilization of the hospital's resources to provide for their allocation to patients in need of them;
- (g) Reviewing the competency of care providers who are not subject to the Medical Staff privilege delineation process; and reporting to the governing body of findings with regard to such care providers;
- (h) Establishing a process to support the efficient flow of patients, such as a plan concerning the care of admitted patients who are in temporary bed locations; and
- (i) Such other measures as the Board may, after receiving and considering the advice of the Medical Staff, the other professional services, and the CEO, deem necessary for the preservation and improvement of the quality and efficiency of patient care.

8.4. Documentation

The Board shall consider and act upon the findings and recommendations from the required review, evaluation, and monitoring activities. All findings and recommendations shall be in writing, signed by the persons responsible for conducting the review activities, and supported and accompanied by documentation upon which the Board can take informed action.

ARTICLE IX THE VOLUNTEER SERVICES

9.1. Organization. Auxiliary and other hospital service organizations may be formed in Watsonville Community Hospital. The formation, constitution, bylaws, and operating procedure of such organizations shall be subject to approval and control by the Board of Directors. Each such organization shall cooperate with the Board and Chief Executive Officer in the best interests of Watsonville Community Hospital and its patients. Periodic and annual reports shall be made to the Board covering its activities by each organization.

9.2. Funds and Fund Raising. No volunteer service organization may undertake any fund raising or other project in the name of or for the benefit of Watsonville Community Hospital which might impose a liability on Watsonville Community Hospital or any affiliated entity without prior approval of the Board, nor undertake any activity on Watsonville Community Hospital premises without the approval of the Chief Executive Officer.

Funds collected or otherwise acquired on behalf of Watsonville Community Hospital or by any activities purporting to assist Watsonville Community Hospital or its patients, shall be reported to and be subject to control by the Board. No funds, other than operating funds, shall be disbursed without prior approval of the Board.

ARTICLE X
RESERVED HOSPITAL BOARD AUTHORITY

No approvals granted and no assignment, referral, or delegation of authority by the Board of Directors to hospital management, the Medical Staff, volunteer service organizations, or anyone else shall preclude the Board from exercising the authority required to meet its responsibility for the conduct of Watsonville Community Hospital. The Board retains the right to rescind any such approval or delegation.

ARTICLE XI
ACTIONS REQUIRING MEMBER APPROVAL

11.1. Approval or Action Requirement. Notwithstanding anything in these Bylaws to the contrary, neither the Board nor any officer or employee of PVHCDH may take any of the following actions, or approve a subsidiary or an affiliate taking any of the following actions, without the prior approval of the Member:

(a) Any merger, consolidation, reorganization, or dissolution of PVHCDH that would change the Member's status as sole member or owner of the assets operated by PVHCDH.

(b) Any transfer by sale, lease, debt or encumbrance, or other disposition, of any of the assets of PVHCDH, real or personal, outside the ordinary course of Watsonville Community Hospital business.

(c) Any transaction that, on a proforma basis, would cause PVHCDH to be in violation of any financial loan or bond covenant, as they exist at the time of the transaction, or that would cause PVHCDH's Debt to Capitalization Ratio to exceed 50%.

(d) Any Watsonville Community Hospital campus development plan that restricts future land use options or requires regulatory changes to land use permits/designations.

(e) Any transaction that causes or is anticipated to cause a downgrade in Member or PVHCDH'S bond rating by a standard rating agency.

(f) Amendment or restatement of the Articles of Incorporation.

(g) Amendment or restatement of these Bylaws.

(h) Any changes to the Mission Statement of the Watsonville Community Hospital.

(i) Appointment of independent auditors.

11.2. Record of Approval or Disapproval. The Member's approval or disapproval of matters described in Section 11.1 of these Bylaws shall be recorded in or filed with the minutes of this Corporation.

ARTICLE XII GENERAL PROVISIONS

12.1. Compensation of Board Members. The members of the Board shall receive no compensation as such, except that they may be reimbursed from time to time for all expenses incurred on behalf of PVHCDH.

12.2. Indemnification. PVHCDH shall indemnify any Director, officer, employee or agent of PVHCDH for liability incurred by such person in the exercise of his or her duties with respect to PVHCDH to the extent permitted by Section 5238 of the California Corporations Code or any successor statute.

12.3. Fiscal Year. The fiscal year of PVHCDH shall end on December 31 of each year.

12.4. Construction and Definitions. Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the California Nonprofit Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of the preceding sentence, the masculine gender includes the feminine and neuter, the singular number includes the plural, the plural number includes the singular and the term “person” includes both a legal entity and a natural person.

ARTICLE XIII AMENDMENTS

These Bylaws may only be amended or restated by the Member.

Rosenberg's Rules of Order Summary

The Three Basic Motions

Simple majority to pass / open to debate

Basic Motion: "I move that we..."

Motion to Amend: suggests changes to the basic motion.

Motion to Substitute: replaces the basic motion entirely.

Special Motions

Simple majority to pass / no debate, goes directly to vote

Motion to Adjourn: ends the meeting.

Motion to Fix a Time to Adjourn: ends the meeting at a set time.

Motion to Recess: break in the meeting. Chair sets length of the break.

Motion to Table: defers the motion under discussion to a future date.

Motions that Permanently Close Discussion

2/3 majority to pass / no debate, goes directly to vote

Motion to Limit Debate: stops debate. "I move the question."

Motion to Close Nominations: stops new nominations for a position.

Motion to Object to the Consideration of a Question: rare, stronger form of tabling. Used before debate has begun.

Motion to Suspend the Rules: temporarily changes meeting rules. Cannot be used to suspend non-parliamentary bylaws. Can be debated.

Meeting Interruptions

May be used at any time. Chair responds by asking you to state your point.

Point of Privilege: points out uncomfortable surroundings, like a cold room or being unable to hear a speaker.

Point of Order: points out failure to follow correct meeting procedures.

Call for Orders of the Day: points out that the discussion has strayed from the agenda.

Appeal: reverses a Chair's ruling when passed by simple majority. Requires a second and can be debated.

Withdraw a Motion: used by the person making the motion. Others may immediately reintroduce the motion if they wish.

Motion to Reconsider

Simple majority to pass / open to debate

May only be made by a member who previously voted in the majority for the item. Must be made during the same meeting (or at the very next meeting, assuming it's been added to the agenda).

Voting:

Public Comment must be heard before votes are cast. See "Life of a Motion" for process relating to motions, public comment and votes.

Life of a Motion

1. Chair announces item subject and number
2. Sponsor introduces item
3. Board asks technical questions for clarification purposes
4. Public comment on the item
5. Chair asks for motion
6. Chair asks for second
7. Board debates motion
8. Board votes
9. Chair or Clerk announces result

Notes:

- All motions require a second before they can be voted upon.
- You must be recognized by the Chair before speaking.
- Chair may set limits on debate time or number of speakers.
- Abstentions don't count in vote tally.
- A tie vote fails to pass.
- To recuse, publicly state reason for recusal and leave room during debate and vote.



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.

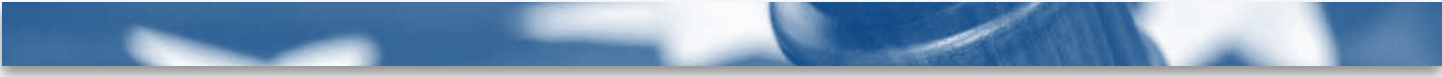


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INTRODUCTION

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.

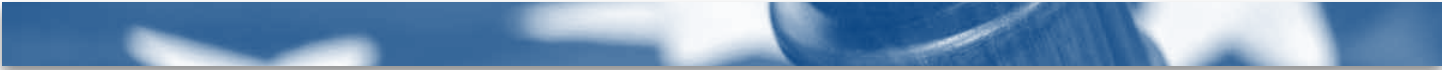
The Role of the Chair

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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Summary of the Major Provisions and Requirements of the Ralph M. Brown Act

The Ralph M. Brown Act is California's "sunshine" law for local government. It is found in the California Government Code beginning at Section 54950. In a nutshell, it requires local government business to be conducted at open and public meetings, except in certain limited situations. The Brown Act is based upon state policy that the people must be informed so they can keep control over their government.

A. Application of the Brown Act to "Legislative Bodies"

The requirements of the Brown Act apply to "legislative bodies" of local governmental agencies. The term "legislative body" is defined to include the governing body of a local agency (e.g., the city council) and any commission, committee, board or other body of the local agency, whether permanent or temporary, decision-making or advisory, that is created by formal action of a legislative body (Section 54952).

Standing committees of a legislative body, which consist solely of less than a quorum of the body, are subject to the requirements of the Act. Some common examples include the finance, personnel, or similar policy subcommittees of the city council or other city legislative body that have either some "continuing subject matter jurisdiction" or a meeting schedule fixed by formal action of the legislative body. Standing committees exist to make routine and regular recommendations on a specific subject matter, they survive resolution of any one issue or matter, and are a regular part of the governmental structure.

The Brown Act does not apply to *ad hoc* committees consisting solely of less than a quorum of the legislative body, provided they are composed solely of members of the legislative body and provided that these *ad hoc* committees do not have some "continuing subject matter jurisdiction," and do not have a meeting schedule fixed by formal action of a legislative body. Thus, *ad hoc* committees would generally serve only a limited or single purpose, they are not perpetual and they are dissolved when their specific task is completed.

Standing committees may, but are not required to, have regular meeting schedules. Even if such a committee does not have a regular meeting schedule, its agendas should be posted at least 72 hours in advance of the meeting (Section 54954.2). If this is done, the meeting is considered to be a regular meeting for all purposes. If not, the meeting must be treated as a special meeting, and all of the limitations and requirements for special meetings apply.

The governing boards of private entities are subject to the Brown Act if either of the following applies: (i) the private entity is created by an elected legislative body to exercise lawfully delegated authority of the public agency, or (ii) the private entity receives funds from the local agency and the private entity's governing body includes a member of the legislative body who was appointed by the legislative body (Section 54952).

The Brown Act also applies to persons who are elected to serve as members of a legislative body of a local agency who have not yet assumed the duties of office (Section 54952.1). Under this provision, the Brown Act is applicable to newly elected, but not-yet-sworn-in councilmembers.

B. Meetings

The central provision of the Brown Act requires that all "meetings" of a legislative body be open and public. The Brown Act definition of the term "meeting" (Section 54952.2) is a very broad definition that encompasses almost every gathering of a majority of Council members and includes:

"Any congregation of a majority of members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains."

In plain English, this means that a meeting is any gathering of a majority of members to hear or discuss any item of city business or potential city business.



There are six specific types of gatherings that are not subject to the Brown Act. We refer to the exceptions as: (1) the individual contact exception; (2) the seminar and conference exception; (3) the community meeting exception; (4) the other legislative body exception; (5) the social or ceremonial occasion exception; and (6) the standing committee exception. Unless a gathering of a majority of members falls within one of the exceptions discussed below, if a majority of members are in the same room and *merely listen* to a discussion of city business, then they will be participating in a Brown Act meeting that requires notice, an agenda, and a period for public comment.

1. The individual contact exception

Conversations, whether in person, by telephone or other means, between a member of a legislative body and any other person do not constitute a meeting (Section 54952.2(c)(1)). However, such contacts may constitute a “serial meeting” in violation of the Brown Act if the individual also makes a series of individual contacts with other members of the legislative body serving as an intermediary among them. An explanation of what constitutes a “serial meeting” follows below.

2. The seminar and conference exception

The attendance by a majority of members at a seminar or conference or similar educational gathering is also generally exempt from Brown Act requirements (Section 54952.2 (c)(2)). This exception, for example, would apply to attendance at a California League of Cities seminar. However, in order to qualify under this exception, the seminar or conference must be open to the public and be limited to issues of general interest to the public or to cities. Finally, this exception will not apply to a conference or seminar if a majority of members discuss among themselves items of specific business relating to their own city, except as part of the program.

3. The community meeting exception

The community meeting exception allows members to attend neighborhood meetings, town hall forums, chamber of commerce lunches or other community meetings sponsored by an organization other than the city at which issues of local interest are discussed (Section 54952.2(c)(3)). However, members must observe several rules that limit this exception. First, in order to fall within this exception, the community meeting must be “open and publicized.” Therefore, for example, attendance by a majority of a body at a homeowners association meeting that is limited to the residents of a particular development and only publicized among members of that development would not qualify for this exemption. Also, as with the other exceptions, a majority of members cannot discuss among themselves items of city business, except as part of the program.

4. The other legislative body exception

This exception allows a majority of members of any legislative body to attend meetings of other legislative bodies of the city or of another jurisdiction (such as the county or another city) without treating such attendance as a meeting of the body (Section 54952.2(c)(4)). Of course, as with other meeting exceptions, the members are prohibited from discussing city business among themselves except as part of the scheduled meeting.

5. The social or ceremonial occasion exception

As has always been the case, Brown Act requirements do not apply to attendance by a majority of members at a purely social or ceremonial occasion provided that a majority of members do not discuss among themselves matters of public business (Section 54942.2(c)(5)).

6. The standing committee exception

This exception allows members of a legislative body, who are not members of a standing committee of that body, to attend an open and noticed meeting of the standing committee without making the gathering a meeting of the full legislative body itself. The exception is only applicable if the attendance of the members of the legislative body who are not standing committee members would create a gathering of a majority of the legislative body; if not, then there is no “meeting.” If their attendance does establish a quorum of the parent legislative body, the members of the legislative body who are not members of the standing committee may only attend as “observers” (Section 54952.2(c)(6)). This means that members of the legislative body who are not members of the standing committee should not speak at the meeting, sit in their usual seat on the dias or otherwise participate in the standing committee’s meeting.



With a very few exceptions, all meetings of a legislative body must occur within the boundaries of the local governmental agency (Section 54954). Exceptions to this rule which allow the City Council to meet outside the City include meeting outside the jurisdiction to comply with a court order or attend a judicial proceeding, to inspect real or personal property, to attend a meeting with another legislative body in that other body's jurisdiction, to meet with a state or federal representative to discuss issues affecting the local agency over which the other officials have jurisdiction, to meet in a facility outside of, but owned by, the local agency, or to visit the office of the local agency's legal counsel for an authorized closed session. These are meetings and in all other respects must comply with agenda and notice requirements.

“Teleconferencing” may be used as a method for conducting meetings whereby members of the body may be counted towards a quorum and participate fully in the meeting from remote locations (Section 54953(b)). The following requirements apply: the remote locations may be connected to the main meeting location by telephone, video or both; the notice and agenda of the meeting must identify the remote locations; the remote locations must be posted and accessible to the public; all votes must be by roll call; and the meeting must in all respects comply with the Act, including participation by members of the public present in remote locations. A quorum of the legislative body must participate from locations within the jurisdiction, but other members may participate from outside the jurisdiction. No person can compel the legislative body to allow remote participation. The teleconferencing rules only apply to members of the legislative body; they do not apply to staff members, attorneys or consultants who can participate remotely without following the posting and public access requirements.

All actions taken by the legislative body in open session and the vote of each member thereon must be disclosed to the public at the time the action is taken. (Section 54953(c)(2)).

C. Serial Meetings

In addition to regulating all gatherings of a majority of members of a legislative body, the Brown Act also addresses some contacts between individual members of legislative bodies. On the one hand, the Brown Act specifically states that nothing in the Act is intended to impose Brown Act requirements on individual contacts or conversations between a member of a legislative body and any other person (Section 54952.2(c)(1)). However, the Brown Act also prohibits a series of such individual contacts if they result in a “serial meeting” (Section 54952.2(b)).

Section 54952.2(b)(1) prohibits a majority of members of a legislative body outside of a lawful meeting from directly or indirectly using a series of meetings to discuss, deliberate or take action on any item of business within the subject matter jurisdiction of the body. Paragraph (b)(2) expressly provides that substantive briefings of members of a legislative body by staff are permissible, as long as staff does not communicate the comments or positions of members to any other members.

A serial meeting is a series of meetings or communications between individuals in which ideas are exchanged among a majority of a legislative body (i.e., three council members) through either one or more persons acting as intermediaries or through use of a technological device (such as a telephone answering machine, or e-mail or voice mail), even though a majority of members never gather in a room at the same time. Serial meetings commonly occur in one of two ways; either a staff member, a member of the body, or some other person individually contacts a majority of members of a body and shares ideas among the majority (“I’ve talked to Councilmembers A and B and they will vote ‘yes.’ Will you?”) or, without the involvement of a third person, member A calls member B, who then calls member C, and so on, until a majority of the body has reached a collective concurrence on a matter.

We recommend the following guidelines be followed to avoid inadvertent violation of the serial meeting rule. These rules of conduct apply **only** when a majority of a legislative body is involved in a series of contacts or communications. The types of contacts considered include contacts with local agency staff members, constituents, developers, lobbyists and other members of the legislative body.



1. Contacts with staff

Staff can inadvertently become a conduit among a majority of a legislative body in the course of providing briefings on items of local agency business. To avoid an illegal serial meeting through a staff briefing:

a. Individual briefings of a majority of members of a legislative body should be “unidirectional,” in that information should flow from staff to the member and the member’s participation should be limited to asking questions and acquiring information. Otherwise, multiple members could separately give staff direction thereby causing staff to shape or modify its ultimate recommendations in order to reconcile the views of the various members, resulting in an action outside a meeting.

b. Members should not ask staff to describe the views of other members of the body, and staff should not volunteer those views if known.

c. Staff may present its viewpoint to the member, but should not ask for the member’s views and the member should avoid providing his or her views unless it is absolutely clear that the staff member is not discussing the matter with a quorum of the legislative body.

2. Contacts with constituents, developers and lobbyists

As with staff, a constituent or lobbyist can also inadvertently become an intermediary who causes an illegal serial meeting. Constituents’ unfamiliarity with the requirements of the Act aggravate this potential problem because they may expect a member of a legislative body to be willing to commit to a position in a private conversation in advance of a meeting. To avoid serial meetings via constituent conversations:

a. First, state the ground rules “up front.” Ask if the constituent has or intends to talk with other members of the body about the same subject; if so, make it clear that the constituent should not disclose the views of other members during the conversation.

b. Explain to the constituent that you will not make a final decision on a matter prior to the meeting. For example: “State law prevents me from giving you a commitment outside a meeting. I will listen to what you have to say and give it consideration as I make up my mind.”

c. Do more listening and asking questions than expressing opinions.

d. If you disclose your thoughts about a matter, counsel the constituent not to share them with other members of the legislative body.

3. Contacts with fellow members of the same legislative body

Direct contacts concerning local agency business with fellow members of the same legislative body, whether through face-to-face or telephonic conversations, notes or letters, electronic mail or staff members, are the most obvious means by which an illegal serial meeting can occur. This is not to say that a member of a legislative body is precluded from discussing items of agency business with another member of the body outside of a meeting; as long as the communication does not involve a quorum of the body, no “meeting” has occurred. There is, however, always the risk that one participant in the communication will disclose the views of the other participant to a third or fourth member, creating an illegal serial meeting. Therefore, we recommend you avoid discussing local agency business with a quorum of the body or communicating the views of other members outside a meeting.

These suggested rules of conduct may seem unduly restrictive and impractical, and may make acquisition of important information more difficult or time-consuming. Nevertheless, following them will help assure that your conduct comports with the Brown Act’s goal of achieving open government. If you have questions about compliance with the Act in any given situation, please ask for advice.



D. Notice and Agenda Requirements

Two key provisions of the Brown Act that ensure that the public's business is conducted openly are the requirements that legislative bodies post agendas prior to their meetings (Sections 54954.2, 54955 and 54956) and that no action or discussion may occur on items or subjects not listed on the posted agenda (Section 54954.2(a)(2)). Limited exceptions to the rule against discussing or taking action on an item not on a posted agenda are discussed below.

Legislative bodies, except advisory committees and standing committees, are required to establish a time and place for holding regular meetings (Section 54954(a)). Meeting agendas must contain a brief general description of each item of business to be transacted or discussed at the meeting (Section 54954.2(a)). The description need not exceed 20 words. Each agenda must be posted in a place that is freely accessible to the public and must be posted on the agency's website, if it has one. After January 1, 2019, additional online posting requirements apply. Agenda posting requirements differ depending on the type of meeting to be conducted.

If the meeting is a "regular meeting" of the legislative body (i.e., occurs on the body's regular meeting day, without a special meeting call), the agenda must be posted 72 hours in advance of the meeting (Section 54954.2(a)). For "special meetings," the "call" of the meeting and the agenda (which are typically one and the same) must be posted at least 24 hours prior to the meeting (Section 54956). Each member of the legislative body must personally receive written notice of the special meeting either by personal delivery or by "any other means" (such as fax, electronic mail or U.S. mail) at least 24 hours before the time of the special meeting, unless they have previously waived receipt of written notice. Members of the press (including radio and television stations) and other members of the public can also request written notice of special meetings and if they have, that notice must be given at the same time notice is provided to members of the legislative body. A special meeting may not be held to discuss salaries, salary schedules or compensation paid in the form of fringe benefits of a local agency "executive" as defined in Government Code section 3511(d). However, the budget may be discussed in a special meeting. Section 54956(b).

Both regular and special meetings may be adjourned to another time. Notices of adjourned meetings must be posted on the door of the meeting chambers where the meeting occurred within 24 hours after the meeting is adjourned (Section 54955). If the adjourned meeting occurs more than five days after the prior meeting, a new agenda for that adjourned meeting must be posted 72 hours in advance of the adjourned meeting (Section 54954.2(b)(3)).

The Brown Act requires the local agency to mail the agenda or the full agenda packet to any person making a written request no later than the time the agenda is posted or is delivered to the members of the body, whichever is earlier. The agency may charge a fee to recover its costs of copying and mailing. Any person may make a standing request to receive these materials, in which event the request must be renewed annually. Failure by any requestor to receive the agenda does not constitute grounds to invalidate any action taken at a meeting (Section 54954.1).

If materials pertaining to a meeting are distributed less than 72 hours before the meeting, they must be made available to the public as soon as they are distributed to the members of the legislative body. Further, the agenda for every meeting of a legislative body must state where a person may obtain copies of materials pertaining to an agenda item delivered to the legislative body within 72 hours of the meeting. (Section 54957.5).

A legislative body that has convened a meeting and whose membership is a quorum of another legislative body (for example, a city council that also serves as the governing board of a housing authority) may convene a meeting of that other legislative body, concurrently or in serial order, only after an oral announcement of the amount of compensation or stipend, if any, that each member will receive as a result of convening the second body. No announcement need be made if the compensation is set by statute or if no additional compensation is paid to the members. (Section 54952.3(a)).



E. Public Participation

1. Regular Meetings

The Brown Act mandates that agendas for regular meetings allow for two types of public comment periods. The first is a general audience comment period, which is the part of the meeting where the public can comment on any item of interest that is within the subject matter jurisdiction of the local agency. This general audience comment period may come at any time during a meeting (Section 54954.3).

The second type of public comment period is the specific comment period pertaining to items on the agenda. The Brown Act requires the legislative body to allow these specific comment periods on agenda items to occur prior to or during the City Council's consideration of that item (Section 54954.3).

Some public entities accomplish both requirements by placing a general audience comment period at the beginning of the agenda where the public can comment on agenda and non-agenda items. Other public entities provide public comment periods as each item or group of items comes up on the agenda, and then leave the general public comment period to the end of the agenda. Either method is permissible, though public comment on *public hearing* items must be taken during the hearing. Caution should also be taken with consent calendars. The body should have a public comment period for consent calendar items before the body acts on the consent calendar, unless it permits members of the audience to “pull” items from the calendar.

The Brown Act allows a body to preclude public comments on an agenda item in one situation, where the item was considered by a committee of the body which held a meeting where public comments on that item were allowed. So, if the body has standing committees (which are required to have agendaized and open meetings with an opportunity for the public to comment on items on that committee's agenda) and the committee has previously considered an item, then at the time the item comes before the full body, the body may choose not to take additional public comments on that item. However, if the version presented to the body is different from the version presented to, and considered by, the committee, the public must be given another opportunity to speak on that item at the meeting of the full body (Section 54954.3).

2. Public Comments at Special Meetings

The Brown Act requires that agendas for special meetings provide an opportunity for members of the public to address the body concerning any item listed on the agenda prior to the body's consideration of that item (Section 54954.3). Unlike regular meetings, in a special meeting the body does not have to allow public comment on any non-agenda matter.

3. Limitations on the Length and Content of the Public's Comments

A legislative body may adopt reasonable regulations limiting the total amount of time allocated to each person for public testimony. For example, typical time limits restrict speakers to three or five minutes. A legislative body may also adopt reasonable regulations limiting the total amount of time allocated for public testimony on legislative matters, such as a zoning ordinance or other regulatory ordinance (Section 54954.3(b)). However, we do not recommend setting total time limits per item for any quasi-judicial matter such as a land use application or business license or permit application hearing. Application of a total time limit to a quasi-judicial matter could result in a violation of the due process rights of those who were not able to speak to the body during the time allotted.

The Act precludes the body from prohibiting public criticism of the policies, procedures, programs, or services of the agency or the acts or omissions of the city council (Section 54954.3 (c)). This does not mean that a member of the public may say anything. If the topic of the public's comments is not within the subject matter jurisdiction of the agency, the member of the public can be cut off.

The body also may adopt reasonable rules of decorum for its meetings which preclude a speaker from disrupting, disturbing or otherwise impeding the orderly conduct of public meetings. Also, the right to publicly criticize a public official does not include the right to slander that official, though the line between criticism and slander is often difficult to determine in the heat of the moment. Care must be given to avoid violating the speech rights of speakers by suppressing opinions relevant to the business of the body.



The use of profanity may be a basis for stopping a speaker. However, it will depend upon what profane words or comments are made and the context of those comments in determining whether it rises to the level of impeding the orderly conduct of a meeting. While terms such as “damn” and “hell” may have been disrupting words thirty years ago, today’s standards seem to accept a stronger range of foul language. Therefore, if the chair is going to rule someone out of order for profanity, the chair should make sure the language is truly objectionable *and* that it causes a disturbance or disruption in the proceeding before the chair cuts off the speaker.

4. Discussion of Non-Agenda Items

A body may not *take action or discuss* any item that does not appear on the posted agenda (Section 54954.2).

There are two exceptions to this rule. The first is if the body determines by majority vote that an emergency situation exists. The term “emergency” is limited to work stoppages or crippling disasters (Section 54956.5). The second exception is if the body finds by a two-thirds vote of those present, or if less than two-thirds of the body is present, by unanimous vote, that there is a need to take immediate action on an item and the need for action came to the attention of the local agency subsequent to the posting of the agenda (Section 54954.2 (b)). This means that if four members of a five-member body are present, three votes are required to add the item; if only three are present, a unanimous vote is required.

In addition to these exceptions, there are several *limited* exceptions to the no discussion on non-agenda items rule. Those exceptions are:

- Members of the legislative body or staff may briefly respond to statements made or questions posed by persons during public comment periods;
- Members or staff may ask questions for clarification and provide a reference to staff or other resources for factual information;
- Members or staff may make a brief announcement, ask a question or make a brief report on his or her own activities;
- Members may, subject to the procedural rules of the legislative body, request staff to report back to the legislative body at a subsequent meeting concerning any matter; and
- The legislative body may itself as a body, subject to the rules of procedures of the legislative body, take action to direct staff to place a matter of business on a future agenda.

The body may not discuss non-agenda items to any significant degree under these exceptions. The comments *must* be brief. These exceptions do not allow long or wide-ranging question and answer sessions between the public and city council or between legislative body and staff.

When the body is considering whether to direct staff to add an item to a subsequent agenda, these exceptions do not allow the body to discuss the merits of the matter or to engage in a debate about the underlying issue.

To protect the body from problems in this area, legislative bodies may wish to adopt a rule that any one member may request an item to be placed on a subsequent agenda, so that discussion of the merits of the issue can be easily avoided. If the legislative body does not wish to adopt this rule, then the body’s consideration and vote on the matter must take place with virtually no discussion.

It is important to follow these exceptions carefully and interpret them narrowly because the city would not want to have an important and complex action tainted by a non-agendized discussion of the item.

5. The public’s right to photograph, videotape, tape-record and broadcast open meetings

The public has the right to videotape or broadcast a public meeting or to make a motion picture or still camera record of such meeting (Section 54953.5). However, a body may prohibit or limit recording of a meeting if the body finds that the recording cannot continue without noise, illumination, or obstruction of a view that constitutes, or would constitute, a disruption of the proceedings (Section 54953.5). These grounds would appear to preclude a finding based on nonphysical grounds such as breach of decorum or mental disturbance.



Any audio or video tape record of an open and public meeting that is made, for whatever purpose, by or at the direction of the city is a public record and is subject to inspection by the public consistent with the requirements of the Public Records Act. The city must not destroy the tape or film record of the open and public meeting for at least 30 days following the date of the taping or recording. Inspection of the audiotape or videotape must be made available to the public for free on equipment provided by the city (Section 54953.5).

If a member of the public requests a duplicate of the audio or videotape, the city must provide such copy. If the city has an audiotape or videotape duplication machine, the city must provide the copy on its own machine. If the city does not have such a machine, the city must send it out to a business that can make a copy. The city may charge a fee to cover the cost of duplication.

The Brown Act requires written material distributed to a majority of the body by *any person* to be provided to the public without delay. If the material is distributed during the meeting and prepared by the local agency, it must be available for public inspection at the meeting. If it is distributed during the meeting by a member of the public, it must be made available for public inspection after the meeting (Section 54957.5).

One problem in applying this rule arises when written materials are distributed directly to a majority of the body without knowledge of City staff, or even without the members knowing that a majority has received it. The law still requires these materials to be treated as public records. Thus, it is a good idea for at least one member of the body to ensure that staff gets a copy of the document so that copies can be made for the city's records and for members of the public who request a copy.

F. Closed Sessions

The Brown Act allows a legislative body during a meeting to convene a closed session in order to meet privately with its advisors on specifically enumerated topics. Sometimes people refer to closed sessions as “executive sessions,” a holdover term from the Brown Act's early days. Examples of business which may be conducted in closed session include personnel evaluations or labor negotiations, pending litigation, and real estate negotiations (See Sections 54956.7 through 54957 and Sections 54957.6 and 54957.8). Political sensitivity of an item is not a lawful reason for a closed session discussion.

The Brown Act requires that closed session business be described on the public agenda. And, there is a “bonus” of sorts for using prescribed language to describe litigation closed sessions in that legal challenges to the adequacy of the description are precluded (Section 54954.5). This so-called “safe harbor” encourages cities to use a very similar agenda format. The legislative body must identify the City's negotiator in open session before going into closed session to discuss either real estate negotiations or labor negotiations.

The legislative body must reconvene the public meeting after a closed session and publicly report specified closed session actions and the vote taken on those actions (Section 54957.1). There are limited exceptions for certain kinds of litigation decisions, and to protect the victims of sexual misconduct or child abuse.

Contracts, settlement agreements or other documents that are finally approved or adopted in closed session must be provided at the time the closed session ends to any person who has made a standing request for all documentation in connection with a request for notice of meetings (typically members of the media) and to any person who makes a request within 24 hours of the posting of the agenda, if the requestor is present when the closed session ends (Section 54957.1).

The Brown Act also includes detailed requirements describing when litigation is considered “pending” for the purposes of a closed session (Section 54956.9). These requirements involve detailed factual determinations that will probably be made in the first instance by the City Attorney.

Roberts v. City of Palmdale, 5 Cal.4th 363 (1993), a California Supreme case, affirms the confidentiality of attorney-client memoranda. See also Section 54956.9(b)(3)(F) with respect to privileged communications regarding pending litigation.

Closed sessions may be started in a location different from the usual meeting place as long as the location is noted on the agenda and the public can be present when the meeting first begins. Moreover, public comment on closed session items must be allowed before convening the closed session.



One perennial area of confusion is whether a body may discuss salary and benefits of an individual employee (such as a city manager) as part of an evaluation session under Section 54957. It may not. However, the body may designate a negotiator to negotiate with that employee and meet with its negotiator in closed session under Section 54957.6 to provide directions. The employee in question may not be present in such a closed session.

G. Enforcement

There are both civil remedies and criminal misdemeanor penalties for Brown Act violations. The civil remedies include injunctions against further violations, orders nullifying any unlawful action, and orders determining the validity of any rule to penalize or discourage the expression of a member of the legislative body (Section 54960.1). The provision relating to efforts to penalize expression may come up in the context of measures by the legislative body to censure or penalize one of its members for breaching confidentiality or other violations. This area of law is charged with difficult free speech and attorney-client privilege issues. The tape recording of closed sessions is not required unless the court orders such taping after finding a closed session violation (Section 54960).

Prior to filing suit to invalidate an action taken in violation of the Brown Act, the complaining party must make a written demand on the legislative body to cure or correct the alleged violation. The written demand must be made within 90 days after the challenged action was taken in open session unless the violation involves the agenda requirements under Section 54954.2, in which case the written demand must be made within 30 days. The legislative body is required to cure or correct the challenged action and inform the party who filed the demand of its correcting actions, or its decision not to cure or correct, within 30 days. A suit must be filed by the complaining party within 15 days after receipt of the written notice from the legislative body, or if there is no written response, within 15 days after the 30-day cure period expires.

Any person may also seek declaratory and injunctive relief to find a past practice of a legislative body to constitute a violation of the Brown Act (Section 54960). In order to do so, the person must first send a “cease and desist” letter to the local agency, requesting that the practice cease. If the agency replies within a designated time, and disavows the practice, no lawsuit may be initiated. However, if the agency fails to reply or declares its intent to continue the practice, the lawsuit seeking to declare the practice a violation of the Brown Act may be filed, and attorney fees will be granted in the event the practice is found to violate the Act.

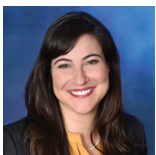
A member of a legislative body will not be criminally liable for a violation of the Brown Act unless the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under the Brown Act (Section 54959). This standard became effective in 1994 and is a different standard from most criminal standards. Until it is applied and interpreted by a court, it is not clear what type of evidence will be necessary to prosecute a Brown Act violation.

Under Section 54963, it is a violation of the Brown Act for any person to disclose confidential information acquired in a closed session. This section enumerates several nonexclusive remedies available to punish persons making such disclosures and to prevent future disclosures.

H. Conclusion

The Brown Act contains many rules and some ambiguities; it can be confusing and compliance can be difficult. In the event that you have any questions regarding any provision of the law, you should contact your City Attorney.

Please contact either of today's presenters if you would like more details on these issues and how your agency can address them:



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Employee Engagement Committee Report

Meeting Date: August 23, 2023

Report Type: Discussion

Title: Employee Engagement Committee Scope and Workplan

Recommendation: Continue discussion regarding: 1) identification of items that will routinely come before the Employee Engagement Committee; 2) a timeline to develop a Charter and workplan for the Employee Engagement Committee.

Contact: Allyson Hauck, Chief of Human Resources, Allyson_Hauck@watsonvillehospital.com

Executive Summary

On January 25, 2023, the Pajaro Valley Hospital District approved the Amended and Restated Pajaro Valley Health Care District Hospital Corporation Bylaws clarifying the composition of the Board Committees. As the March 8, 2023, the Employee Engagement Committee reviewed the applicable bylaws and identified the scope of the Committee and agreed to discuss a timeline for developing an appropriate Charter and workplan at a future meeting.

Financial Impact

None