

# **RANCHO MURIETA COMMUNITY SERVICES DISTRICT**

DISTRICT CODE  
CHAPTER 2

## **BOARD OF DIRECTORS RULES AND PROCEDURES**



Amended June 15, 2016 by  
Ordinance 2016-02

# DISTRICT CODE

## CHAPTER 2 RULES AND PROCEDURES OF THE BOARD OF DIRECTORS OF THE RANCHO MURIETA COMMUNITY SERVICES DISTRICT

### Section 1.00 Authority of the Board of Directors

The Board of Directors is the governing body of the District and determines all questions of District policy. The Board shall act only at regular meetings, regular adjourned meetings, special meetings or emergency meetings.

All District powers shall be exercised and performed by the Board as a body. Individual Board members, except as provided in this chapter or in the Board Guidelines, shall have no independent authority to act on behalf of the District or the Board, or to direct District staff.

### Section 2.00 Board Officers

The officers of the Board shall consist of a President and Vice President. At its regular meeting in December following a general election, the Board shall elect one of its members as President and one of its members as Vice President. The term of office for President and Vice President shall be for two (2) years; provided, however, that the President and the Vice President serve at the pleasure of the Board and may be changed at any time with or without cause. In the event of a vacancy, the office may be filled immediately by election of the Board. The President and Vice President may serve for a total of two (2) consecutive terms or four years.

- 2.01 Duties of the President: The President shall have the following duties:
- (a) To preside over Board meetings and preserve order and decorum.
  - (b) To determine questions of order and enforce rules of the Board, subject to appeal to the entire Board.
  - (c) To call special meetings.
  - (d) To execute all ordinances and resolutions for the District, except as otherwise authorized by the Board.
  - (e) To appoint Board committees.
  - (f) To act as spokesperson for the Board with respect to its actions and policies. This provision, however, shall not preclude any other Board member from making appropriate comments within the scope of his or her position.

- 2.02 Duties of the Vice President: In the absence of the President or vacancy in the office of the President, the Vice President shall perform the duties of the President.

### Section 3.00 Appointments by the Board

- 3.01 The Board shall, as necessary, hire a General Manager and appoint a District Treasurer. The General Manager may also act as District Secretary, but no Director shall be appointed as General Manager, District Treasurer, District Secretary, or any other compensated employee of the District. The General Manager, District Secretary or a third party may also be appointed as the District Treasurer.

3.02 The Board may also appoint and employ, fix the compensation of, and prescribe the duties and authorities of other officers, employees, attorneys, engineers, and other professional consultants as necessary or convenient for the business of the District.

**Section 4.00 Method of Transacting Business**

The Board shall conduct District business in accordance with the Board Guidelines as adopted and amended from time to time by the Board.

**Section 5.00 Records of the Board of Directors**

Public records of the Board shall be open to inspection as provided in the California Public Records Act and District Policy No. 2010-01 (Public Records Information Requests), as such policy may be amended from time to time.

Board agendas, notices, minutes, and recordings of all special and regular Board meetings shall be retained by the District in accordance with District Policy No. 2011-11 (Document Retention), as such policy may be amended from time to time.

**Section 6.00 Board Guidelines**

The Board, by resolution, may adopt and from time to time amend guidelines concerning Board meetings, rules of proceedings, committees, director and officer roles, conflicts and ethics, and other Board-related matters.



# BOARD GUIDELINES

## GUIDELINES FOR CONDUCTING RANCHO MURIETA COMMUNITY SERVICES DISTRICT BUSINESS

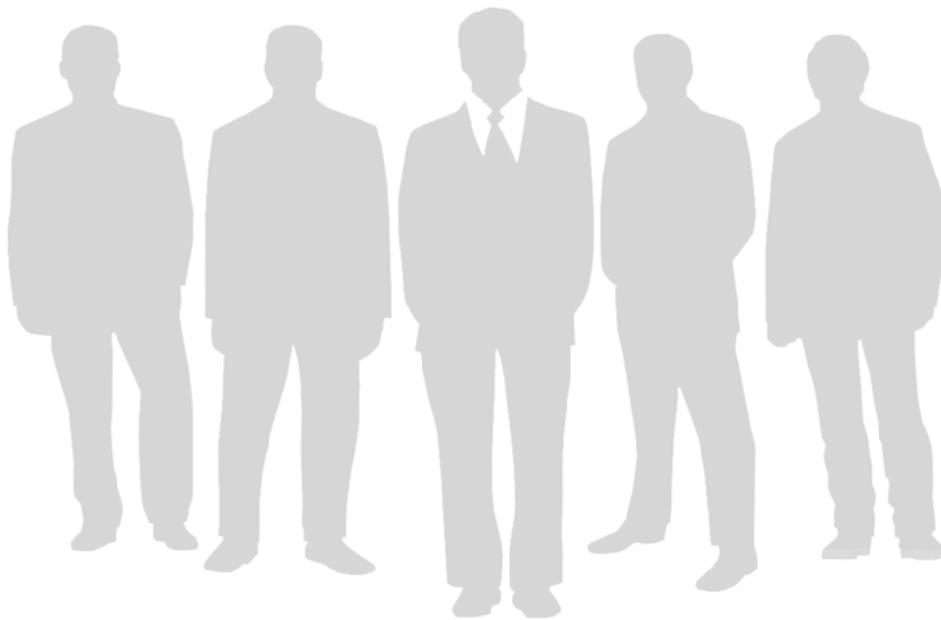
2016 Edition



**Purpose:**

**PROVIDE THE DIRECTORS WITH INFORMATION THAT WILL ASSIST THEM IN CARRYING OUT THEIR DUTIES AND RESPONSIBILITIES AS ELECTED PUBLIC OFFICIALS OF THE RANCHO MURIETA COMMUNITY SERVICES DISTRICT AND ASSIST THE PUBLIC IN UNDERSTANDING HOW THE DISTRICT'S BOARD OF DIRECTORS CONDUCTS ITS BUSINESS.**

**DISCLAIMER:** These guidelines are intended to assist in conducting the business of the District. However, these guidelines are not to be construed to impose upon the District any obligation not otherwise required by law, and nothing herein is intended to impose a mandatory legal duty upon the District, its Board members, staff, employees, agents or representatives. Failure to comply with these guidelines shall not, in itself, invalidate any action of the District or the District Board, nor shall it confer upon any person a cause of action against the District, its Board members, staff, employees, agents, representatives, or any other person or entity.



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# CHAPTER 1

## INTRODUCTION

These Guidelines for Conducting Board Business (“Guidelines”) describe the methods, means, customs and practices that the Board of Directors (“Board”) employs in exercising its authority, complying with various legal requirements, working with the public and Rancho Murieta Community Services District (“District”) staff, and otherwise conducting the District’s business.

The Board is the governing body of the District and determines all questions of District policy. It is ultimately responsible and accountable to the people of the District and exercises its powers pursuant to the Community Services District Law, *California Government Code*, section 61000 et seq., and other applicable laws.

**No individual member of the Board has any individual authority to bind the District, since only the Board as a whole can exercise its authority.**

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

## CHAPTER 2

### PREPARATION FOR BOARD MEETINGS

All Board meetings are open to the public and are subject to the provisions of the Brown Act.

With limited exceptions, all Board meetings must be publicly noticed in advance of the meeting in order to inform the public about the business of the District and to provide an opportunity for public participation.

District staff prepares a detailed agenda packet summarizing the business to be transacted at a Board meeting. Agenda packets are delivered to Directors and are available to the public at that time. Materials for the closed session portion of the agenda are not made public.

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

#### **RECOMMENDED ACTION AND BACKGROUND**

The Recommended Action and Background are a one- or few-page summary of an item. Each item to be considered by the Board (including matters on the Consent Calendar as well as those listed as Board Business) will have Recommended Action and Background. It includes the following information.

##### **Title of Item**

The title is a brief description that reveals the nature of the item. The title is the same on the Recommended Action and Background as on the agenda, and wording must comply with Brown Act requirements to provide a brief general description of the item. The title determines what action the Board is allowed to take or the nature of the information that the Board may receive. For example, if an item is identified on the agenda face sheet as being for Discussion or for Information, the Board may not vote on that item at that meeting. This requirement ensures that the public is properly informed of what action the Board may take so they can decide whether or not to participate.

##### **Presenter Information**

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

##### **Form of Action**

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

##### **Committee Review and Recommendation**

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

##### **General Counsel Review**

When staff has received General Counsel's review or opinion concerning an item, the Recommended Action and Background notes that fact, unless the opinion was provided confidentially.

##### **Costs and Funding Source**

The cost (known or estimated) associated with a recommended action is noted, along with its funding source. The Recommended Action and Background only notes the cost of the item being presented to the Board for

discussion. For example, if approval of a \$250,000 consulting agreement associated with a \$10 million project is being considered, the cost noted is \$250,000. When the Board certifies an Environmental Impact Report (EIR) on a \$5 million project, the cost shown on the Recommendation and Background is \$0 as there is no additional cost to the District associated with the certification.

### **Recommendation**

The General Manager's recommendation for action is presented at the top of the Recommended Action and Background. The recommendation is phrased in such a way so that if a Director concurs, he/she may read or make specific reference to the recommendation when making a motion.

### **Background**

The balance of the Recommended Action and Background provides a short general summary of the action being considered by the Board. Additional details are provided in staff reports or other documents.

### **Staff Reports**

One or more staff reports may be include for an item if the Board needs more information than can be provided in the one-page Recommended Action and Background.

### **Action Document**

The recommended action document (resolution or ordinance) typically follows the Recommended Action and Background.

### **Reports**

Reports, or their executive summaries, may be attached if they are needed for the Board to consider and deliberate.

## CHAPTER 3

### PREPARATION FOR COMMITTEE MEETINGS

Traditionally, the Board has established various Committees based on specific subject matter to facilitate the Board's consideration of District business. Committee structure and membership are proposed by the Board President and confirmed by the Board. This is done every year in December. There is no legal requirement for the Board to form committees.

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

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

#### SCHEDULING AND ATTENDANCE

Standing Committee meetings are generally scheduled monthly, quarterly or annually depending on the needs of the District. Monthly Committee meetings occur on a fixed schedule (e.g., the first Tuesday and Thursday of each month). Committee meetings generally occur during the daytime work hours (from 8:00 a.m. to 5:00 p.m.)

It is recognized that some Directors are employed or conduct their own business during those hours and may have expected or unexpected conflicts in schedule between Committee meetings and their own employment or business needs. It is also recognized that rescheduling Committee meetings due to conflicts in Directors' schedules can make it difficult for the public to attend, can create scheduling difficulties for interested parties and consultants who are often present for discussion of an item and can increase the workload for District staff.

In order to minimize these impacts while allowing flexibility in schedules for Directors, the following principles should be kept in mind:

- The public has a right to easy, timely and predictable access to the deliberations of the Board of Directors and its committees.
- The District shall schedule and hold Committee meetings only when needed to conduct District business.
- To the greatest extent practicable, Committee meetings should be scheduled on a regular, predictable basis. Directors and staff should make a deliberate effort to attend Committee meetings as scheduled.
- Often a Director or key staff member knows of an upcoming schedule conflict well in advance. Examples are planned business trips or vacations. ACWA or CSDA conferences or other activities in which the District has a business interest.
- Both Directors and staff have a responsibility to bring such conflicts in schedule to the attention of the others affected so that a Committee meeting can be rescheduled well in advance.

- Directors may, within the requirements of the Brown Act, attend Committee meetings via teleconference when they are unable to attend in person. Directors should make teleconferencing arrangements with staff well in advance and always before agendas are posted so that the requirements of the Brown Act are satisfied.
- If a Director is unable to attend a Committee meeting as scheduled, it is his/her responsibility to consider the following options:
  - If applicable, ask an alternate to attend the meeting.
  - Arrange for attendance at the meeting via teleconference.
  - Do not attend, recognizing that the meeting may only involve one committee member, and the recommendation, if any, may only reflect one committee member's views.
  - Request rescheduling, realizing that this may impact the public, support personnel and consultants, and District staff. The other Committee member must agree to the new schedule.

### **Posting**

For regular Committee meetings, the agendas are generally prepared and posted on the Friday immediately preceding the week during which the Committee meets. This is required for regular meetings held on Monday afternoons and conservatively meets the posting requirement for meetings on any other day of the week. For Monday morning meetings, the agenda is posted on the previous Thursday to meet the 72 hour posting requirement.

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

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

### **Preparation**

The agenda packets for each Committee are delivered to the Committee members on Friday or Saturday of the week preceding the meeting (or as soon as possible). The agenda packets are also made available to the public at the same time. Directors prepare for Committee meetings by studying the agenda packet in detail in advance of the meeting.

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

### **Format**

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

The material presented to a Committee may be in the form of a final or draft Summary and Recommendation, a memorandum from the General Manager or District staff, executive summaries or excerpts from draft or final reports, simple tables, drawings, spreadsheets, PowerPoint presentations, or similar work.

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

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

### **Anticipated Time**

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

### **COMMITTEE RECOMMENDATIONS TO THE BOARD**

A Committee can make any of the following recommendations to the Board:

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

## CHAPTER 4

### BOARD MEETINGS AND COMMITTEE MEETINGS AND ALLOWABLE DISCUSSIONS

#### COMPLIANCE WITH THE BROWN ACT

The District's Board meetings are conducted consistent with the Ralph M. Brown Act ("Brown Act"); Gov't Code sections 54950 et seq.

#### REGULAR MEETING DATES AND TIMES

The regular meetings of the District Board of Directors shall be held on the third Wednesday of each calendar month, with the open session commencing at 5:00 p.m. Closed sessions at these meetings may occur before or after the open session at the time set in the notice of the posted meeting agenda. The open sessions of the regular meetings will be in the District Boardroom at 15160 Jackson Road, Rancho Murieta, CA. If the regular meeting date falls on a legal holiday, the regular meeting shall be held on the next ensuring full business day or to another specified date. The agenda for regular Board meetings shall be posted in a public place and on the District's website at least 72 hours prior to the meeting.

#### ADDITIONAL TYPES OF BOARD MEETINGS

In addition to regular meetings, where most District business is conducted, there are three additional types of Board meetings: special, adjourned, and emergency.

##### Special Board Meetings

Occasionally, special Board meetings are held to discuss a special topic, conduct a workshop or, if necessary or convenient, to hold a meeting at a time or date other than the regular Board meeting. Special Board meetings may be called at any time by the Board President or by a majority of the Board. They may be held at a time and place desired by the Board but generally must be convened within the District's service area. Written notice must be given to Directors and the public 24 hours in advance of a special Board meeting. The agenda for a special Board meeting must specify the time and place of the special meeting and the business to be transacted, and must be posted in a public place and on the District's website at least 24 hours prior to the meeting.

##### Adjourned Board Meetings

After any regular or special Board meeting has been called to order, it may be adjourned by (a) loss of a quorum, or (b) motion made, seconded and approved by a majority of the Board to adjourn the meeting to another date, time and place if the business of that meeting has not been completed or if the Board's deliberations would benefit from continuing the meeting at another time or in another location. Also, if less than a quorum is present, the Board members who are present (or, if none are present, the General Manager) can adjourn the meeting to another date, time and place. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the District Boardroom within 24 hours after the time of adjournment.

##### Emergency Board Meetings

The Board may hold an emergency Board meeting when prompt action is necessary due to the disruption or threatened disruption of public facilities. There are two levels of emergency: emergency and dire emergency. An emergency is a work stoppage, crippling activity or other activity that severely impairs public health, safety or both, as determined by a majority of the Board. A meeting to deal with such a situation may be called on one hour's notice to the newspapers and media outlets that have requested notice of such meetings. A dire emergency is a crippling disaster, mass destruction, terrorist act, or threatened terrorist act that poses peril so



immediate and significant that the only requirement is that notice must be given to newspapers and media outlets that have requested notice of meetings at or near the time Directors are notified of the meeting.

### **Board Meetings Outside District Service Area**

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

## **TYPES OF COMMITTEES AND COMMITTEE COMMUNICATION**

### **General Rules Governing Committees**

The Board President may appoint Board members to serve on the various types of committees described below. No more than two (2) Board members may serve on any one committee. Other Board members may attend committee meetings as observers in accordance with the Brown Act, but shall not participate in committee discussions. Any standing Board committee or committee that has members of the public serving as a committee member shall comply with the open meeting and other applicable requirements in the Brown Act.

Whenever a committee is formed, each committee shall, upon request or whenever necessary to update the Board on its activities, give a report at the Board's regular meetings and bring recommendations to the Board. Committee members shall notify the General Manager of items, if any, to be placed on the Board meeting agenda no later than 2:00 p.m. five business days prior to the meeting date.

### **Standing Committees**

A Standing Committee is one with a particular subject matter jurisdiction. The Board establishes each Committee's charter. A Standing Committee may deliberate and recommend changes in District policy or direction to the entire Board but may not itself take action or otherwise create or change policy. The Committee makes recommendations to the Board upon matters within its scope. Currently, the Board's Standing Committees include the following:

- Improvements Committee: This Committee shall study, advise, and make recommendations to the Board concerning the following matters: (a) plans, specifications, and bids; (b) the initiation, scheduling, contracting, and performance of construction work, capital improvements, and the equipment and materials to be used, replaced, or disposed of by the District; (c) the operation and maintenance of District facilities; (d) construction claims; (e) employment of engineering consultants and related consultants; (f) general matters relating to energy; (g) annexations, reorganizations, and other matters for consideration by the Sacramento County Local Agency Formation Commission (LAFCo); (h) facility expansions necessitated by proposed development; and (i) other matters as directed by the Board.
- Finance Committee: This Committee shall study, advise, and make recommendations to the Board concerning the following matters: (a) preparation of preliminary budgets; (b) disposition and investment of reserve funds; (c) compliance with District's investment policy; (d) changes to or adoption of new fees and rates; (e) insurance matters; (f) audit reports and financial statements; (g) employment of auditors, financial consultants and insurance consultants; (h) audits of monthly expenditures; and (i) other matters as directed by the Board.

- Personnel Committee: This Committee shall study, advise, and make recommendations to the Board concerning the following matters: (a) the District's organizational structure and flow of authority and responsibility; (b) periodic independent review of the organization, classification, duties, salaries and salary ranges of employees and preparation and submittal of recommendations regarding employee salaries and benefits to the Finance Committee for consideration in preparing the District budgets; (c) employer-employee relations and employment rules and policies; (d) matters concerning equal employment opportunities, affirmative action, and employee health and safety; (e) matters concerning employees who are appointed by the Board; (f) employment of personnel consultants; and (g) other matters as directed by the Board.
- Security Committee: This Committee shall study, advise, and make recommendations to the Board concerning the following matters: (a) operation of and policies relating to gate and patrol functions; (b) public safety and health issues affecting the community; (c) special events affecting public safety; (d) interface with homeowners' association representatives regarding security; and (e) other matters as directed by the Board.
- Parks Committee: This Committee shall study, advise, and make recommendations to the Board concerning the following matters: (a) the District's representation on the Parks Committee as established pursuant to the 1990 and 1991 Park Development Agreements; (b) the District's involvement in public community parks within Rancho Murieta; (c) utilization of District properties for park and recreation purposes; and (d) other matters as directed by the Board.
- Communication and Technology Committee: This Committee is responsible for ensuring that information regarding District affairs is adequately and properly communicated to its constituents and the public at large, and developing ways to use technology to better serve the District and its customers. Toward these ends, the Committee shall study, advise, and make recommendations to the Board concerning the following matters: (a) development of the District's communication plan; (b) the goals, frequency, message, audience and costs of the various communication methods used by the District; (c) the District's web page, District field trips and open house, District brochures and bill stuffers, personal appearances by District officers and staff, and newspaper and media coverage; (d) responses to requests for political or legislative support, including letter writing campaigns or de minimis financial support, from various District membership organizations (i.e., CSDA, ACWA, Regional Water Authority, etc.); (e) technology improvements (software and hardware); (f) policies and procedures relating to the District's use of technology; (g) consultation with various community organizations concerning available technology; and (h) other matters as directed by the Board.
- Regional Water Authority (RWA): The mission of the Regional Water Authority is to serve and represent regional water supply interests and assist RWA members in protecting and enhancing the reliability, availability, affordability and quality of water resources. Activities of this committee include: (a) assisting, where appropriate, the voluntary consolidation of services provided by existing industry/trade associations and water utility support groups within RWA; (b) developing and providing subscription-based (i.e., paid for by participating RWA members) support services, projects and programs of mutual interest to RWA members, or groups of members, or certain other subscribers; (c) facilitating discussion of and action on matters of regional priority and interest; (d) coordinating and implementing regional water master planning, grant-funding acquisition, and related planning efforts; and (e) providing a unified voice for advocating and responding to legislative. Regulatory and policy matters of importance to the region's water supply. The Board shall appoint two representatives to RWA from the Board, or executive staff, or a combination thereof, either of whom may cast a single vote on the District's behalf at RWA meetings.

- **Joint Security Committee:** This Committee shall study, advise, and make recommendations to the Board concerning the following matters: (a) special events within the District or affecting a homeowner's association, Rancho Murieta Country Club, or other community-based associations within the District; (b) public safety events affecting to community; (c) enforcement of homeowner association covenants, conditions and restrictions; (d) incidents of note within the District or affecting various associations within the District; and (e) other matters as directed by the Board.

### **Ad Hoc Committees**

Ad Hoc Committees may be created by the Board to undertake special assignments on its behalf. An Ad Hoc Committee shall exist for a specified term or until its special assignments are completed, whichever comes first, but its existence may be extended by action of the Board.

### **Subcommittees**

Subcommittees may be created by any Standing Committee of the Board to undertake specific assignments on behalf of the Standing Committee. The Standing Committee creating a Subcommittee shall establish the term of such subcommittee, as it deems desirable. Unless otherwise specified, members of a Subcommittee shall be appointed by the Chairman of the Subcommittee's parent Committee.

### **Communications Among and Between Committee Members**

The Brown Act prohibits Directors from conducting District business outside Board or Committee meetings. The normal definition of a meeting is the congregation of a majority of the members of a legislative body at the same time and place, including by teleconference or electronic means, to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the legislative body. However, it is also possible to impermissibly develop a collective consensus among a majority of the Board without three (3) members being physically present at the same time and place, such as by serial communications by Directors.

The Brown Act states that "a majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, direct or through intermediaries, to discuss, deliberate or take action any on item of business that is within the subject matter jurisdiction of the legislative body" (Government Code section 54952.2(b) (1)). The Brown Act does not impose an absolute prohibition on all discussion outside meetings that may involve a majority of Directors; it allows a Board member or District employee to engage in separate conversations or communications outside of a meeting to answer questions or provide information concerning matters within the Board's purview, if such Board member or District employee does not communicate to other Board members the comments or position shared by the Board member. (Government Code section 54952.2(b)(2)).

There are three (3) basic ways to comply with the Brown Act while employing Committees. Each alternative employs a different strategy to guard against improper deliberations or the development of a collective consensus in violation of the Brown Act. This does not diminish the importance of following the procedures regarding communication between committees discussed below.

- The first alternative is to ensure that no two (2) Committees consider the same policy matters. This is the reason for developing a mission statement within the charter of each Committee.
- The second alternative entails creating a new Committee specific to a major topic of importance as a separate Standing Committee and carving out the subject matter of the new committee from the existing Standing committees. This approach avoids the same issue being addressed serially in more than one Standing Committee, so that three (3) Directors would not have deliberated on the same topic except at a Board meeting. While this approach could sidestep many Brown Act issues, there

may be practical difficulties in actually carrying it out, given possible interrelationships of the subject matter of a new Committee with the traditional Committees.

- The third alternative is to have a given subject handled in its entirety by the Board and thereby avoiding any separate Committee deliberations.

Directors should remember that any form of communications between or among Board members has the potential to result in impermissible discussion or consensus-building outside noticed Board meetings. The most reliable way to avoid improper communication is to transmit information between Committees only through the General Manager. Standing Committees must avoid deliberating on the same subjects. It is the responsibility of the General Manager to identify when this is happening or could happen, and to take action.

## **OPEN VERSUS CLOSED SESSION DISCUSSIONS**

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

### **Open Session Discussions**

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

### **Closed Session Discussions**

A closed session may be held on any subject authorized under the Brown Act. Closed sessions must be properly disclosed and described in the agenda as required by the Brown Act. (Government Code section 54954.5.) Neither the Board nor its Committees shall keep minutes of their closed sessions. Prior to holding a closed session on any matter, the Board President or Committee Chair shall refer to the closed session item or items by reference to the appropriate agenda item number(s). In the closed session, the Board or Committee shall consider only those matters covered in the agenda.

The Brown Act authorizes, among other things, closed sessions to give direction to District negotiators for labor contracts with District employees and for the acquisition or disposal of real property; to confer with legal counsel regarding claims or threats of litigation, initiation of litigation, or to discuss existing litigation in which the District is involved; to evaluate the performance of a public employee, when dealing with the hiring, dismissal or discipline of a public employee; or to discuss certain security matters.

Matters discussed in closed session are strictly confidential. Disclosure of information from a closed session may prejudicially impact District interest and can result in (1) the possible censure by the Board of a Director who breaches the confidentiality requirement; (2) the issuance of an injunction against such conduct by a court; or (3) in an appropriate case, criminal penalties. Therefore, a Board member shall not disclose confidential information that has been received for, or during, a closed session meeting of the Board or of a Committee to a person not authorized to receive the information, unless the Board or Committee authorizes such disclosure. This, however, does not prohibit any of the following: (1) making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law; (2) expressing an opinion concerning the propriety or legality of actions taken by the District in closed session, including disclosure of the nature and extent of the allegedly illegal action; or (3) disclosing information acquired by being present in a closed session that is not confidential information. Prior to disclosing confidential information pursuant to (1) or (2), above, however, a Board member shall first bring the matter to the attention of either the President of the Board or the full Board, to provide the Board an opportunity to cure an alleged violation. To protect the confidentiality of information presented in

closed session, staff normally will collect all written material distributed during the session at the end of the session.

After any closed session, the Board or Committee shall reconvene into open session and publicly report any action taken (including the roll call vote, if any) during the closed session to finally approve a real property acquisition; to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a District employee; or to finally approve a labor contract. For the report back obligations relating to pending litigation, the Board shall consult with General Counsel. (Government Code section 54957.1.)

## Chapter 5

### THE BOARD MEETING AGENDA

The Board meeting agenda is an informational, decision-making and management tool. It presents the issues under consideration by the Board and provides a brief general description of business to be discussed and actions the Board will consider taking. The agenda is accompanied by a packet of supporting materials designed to aid in decision-making by presenting in sufficient factual detail the issues and options associated with each item of business.

The General Manager, in consultation with the Board President, shall set the agenda. Committee recommendations on topics to be included on the agenda shall be given to the General Manager. Individual Directors may request items to be placed on the agenda by notifying the General Manager of their request no later than 2:00 p.m. five business days prior to the meeting date.

The District Secretary is responsible for preparing the regular meeting agenda and special meeting notice/agenda for Board meetings, and for posting and mailing the agenda at least 72 hours before each regular meeting and at least 24 hours before each special meeting. The agenda must specify the time and location of the meeting and contain a brief general description (generally no more than 20 words) of each item of business to be transacted or discussed at the meeting.

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

#### **Call to Order**

The President of the Board shall strike the gavel and begin the Board meeting. In the absence of the President, the Vice President shall call the meeting to order. In the absence of both the President and Vice President, the District Secretary shall call the meeting to order.

#### **Roll Call, Determining and Maintaining a Quorum**

The District Secretary calls the roll of the Directors and records the names of those present and those absent in the minutes of the meeting. If a Director enters the meeting late or departs early, those times are also recorded in the minutes. If a quorum of the Board (three (3) Directors) is not present, no further proceedings or discussion may occur and the General Manager announces that the meeting is adjourned for lack of a quorum.

The Board must maintain a quorum throughout the meeting in order to conduct business. However, the meeting may be adjourned with less than a quorum by those Directors who are present; if no Director is present, the General Manager can adjourn the meeting.

#### **Adopt Agenda**

At this point in the meeting, a Director or the General Manager has an opportunity to propose re-arranging the order of the items on the agenda. The Board President will re-arrange agenda items if the need should arise. For example, a closed session may be moved to an earlier time in a meeting, or a Board Business item may be moved ahead of another item due to some unusual circumstances or if audience members are present for a particular agenda item. Timed items, such as hearings, cannot be heard earlier than the time published.

### **Special Announcements and Activities**

During this section of the meeting, the General Manager, or staff members designated by the General Manager, addresses the Board with matters such as introducing new District employees, acknowledging employee promotions and certifications, acknowledging or giving a special award or recognizing an event, local students or dignitaries.

If neither the President nor Vice President is present, the General Manager would at this point ask for a motion to name a President Pro-tem for that meeting. If the motion is made, seconded, and passed (requires a 3-0 vote) the Director so named presides over the meeting. If there is no such motion or second, or if the motion does not pass, the General Manager presides over the meeting but cannot make motions or seconds, vote on any item, or enter into policy level deliberations and discussions.

### **Closed Session**

Closed Sessions are usually held at the beginning of the meeting, but may be held at the end of a meeting at the time set forth in the notice of the posted meeting agenda.

### **Reports from Closed Session**

Upon returning to open session, the Board President or General Counsel will announce any reportable action taken in closed session. Such reports are required by law.

### **Public Comment**

At every Board meeting, members of the public are allowed to address the Board on any item of interest within the subject matter jurisdiction of the Board that is not already included on the posted agenda. The Board President asks anyone desiring to make public comments to state his/her name and address so that the minutes accurately reflect the speakers identity and affiliation and so that the District can contact the speak if necessary. The President calls speakers to the lectern and asks them to identify themselves, announce their item and address the Board.

Public comments are limited to three minutes per speaker, unless extended by the President. Board members may briefly respond, request staff to report back on the matter, or ask clarifying questions, but cannot take any action on, discuss or debate the matters not on the agenda that are presented during the public comment period unless the Board makes one of the determinations required under Government Code section 54954.2. Members of the public may also make requests to have items placed on a future agenda during the public comment portion of the meeting. After considering such a request, the Board may provide direction to the General Manager regarding including that item on future Board or Committee agendas.

### **Consent Calendar**

Matters listed under the consent calendar are considered routine and generally are acted upon by a motion and a second of the Board and passed by a roll call vote indicating a majority vote. Directors normally do not discuss consent calendar matters. These items include the approval of previous Board meeting minutes, receiving and filing of reference correspondence, receiving and filing of various staff reports, the approval of the list of District bills paid, and other routine informational items.

Items may be removed from the Consent Calendar in three (3) ways.

- If a Director has an unanswered question or concern about any of the items listed on the Consent Calendar, he/she may request that the matter be removed prior to a motion being made and approved. Any such request by a Director is automatically granted. When a Director wishes to pull an item from the consent calendar for discussion, it is helpful if he/she contact the General

Manager before the Board meeting to explain his/her concern. This enables staff to provide information that might be needed to further the Board's discussion.

- On occasion, the General Manager may request that the President remove an item from the Consent Calendar. Typically, this occurs so staff can clarify for the record any matters in the written material provided to the Board, to present new information that came to staff's attention subsequent to the preparation of the agenda, or for other similar administrative reasons.
- A member of the audience may also request that the Board remove an item from the Consent Calendar so that it may be discussed. Any such request must be made prior to the time the Board votes on the matter as part of the Consent Calendar. Any such request from a member of the public will only be granted if a Director agrees that the item should be removed from the Consent Calendar and makes a Director request. Nevertheless, any member of the public has a right to comment on any item on the Consent Calendar. The member of the public should identify what items he/she is commenting upon and proceed to make his/her comments. Such commenting does not automatically require that the Board remove the item from the Consent Calendar unless a Director so requests for discussion or a separate vote.

Once any item is removed from the Consent Calendar, the remaining items are considered and decided by a single motion. The removed items are then discussed and considered individually.

### **Staff Reports**

The General Manager and District staff report on upcoming events, recent occurrences, pending projects and matters, and other informational matters that are of significance to the District.

### **Board Correspondence**

The agenda will list all correspondence received by the District that is addressed or copied to the Board. This agenda listing informs the public what has been received and documents that all material sent to the Board have been transmitted to the Board. Generally, staff makes the listing but if Directors have received correspondence that has not been sent to staff, the Director should make an announcement. The announcement should identify the sender, the subject, the form of communication (letter, e-mail, etc.) and the date on the correspondence.

All Board correspondence reported under this item (as well as material first made available on any agenda item at the Board meeting) is maintained by the District in accordance with the Brown Act (Government Code section 54957.5). This information is available for inspection by the public upon request.

### **Board Business**

Board business is the section of the agenda where the Board considers and decides matters that require substantive discussion or conducts formal public hearings when required to do so by an applicable law or regulation. Some items involve an action by the Board, others are informational. In some cases, the Board will discuss a matter without making a decision and refer the matter back to staff or a Standing Committee for further development. *See Chapter 4 – Transacting Board Business for Appropriate Protocol.*

### **Review and Select Conference/Education Opportunities**

This is the section of the meeting where Directors request Board approval to attend various conference or education opportunities. Also at this time, Directors must provide brief reports on meetings that they have attended at the District's expense as required by Government Code section 53232.3(d). (AB 1234)



**Meeting Dates/Times**

During this section of the meeting, the Board acknowledges the dates and times for the next month's Board and Standing Committee meetings.

**Comment/Suggestions – Board Members and Staff**

During this section of the meeting, Directors and staff are invited to comment on their District-related activities or to suggest new ideas and concepts.

**Adjournment**

The Board meeting will adjourn by the making of a motion, a second and a call for a vote. The meeting may be adjourned if there is less than a quorum present by action of those Directors who remain in attendance; if no Director is present, the General Manager may adjourn the meeting. Occasionally, meetings are adjourned in memory of a loved one or close friend of the District or in honor of a significant event.

## CHAPTER 6

### PLACING AN ITEM ON THE BOARD OR COMMITTEE AGENDA

#### SOURCES OF ITEMS

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

#### Items Originating from the General Manager

Many items on the agenda originate with the General Manager and District staff. The following types of items are typical:

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

#### Items Originating from a Board Committee

A Director may bring up a new item at a Committee meeting. However, in such cases, the advance notice requirements of the Brown Act only allows the Committee to decide to place such a matter on a future agenda; the matter cannot be discussed at the meeting at which it was first verbally mentioned. Committee recommendations may be referred to the Board and may include items that are routine business, new ideas developed by Committee or unusual matters.

#### Items Originating from or of Interest to a Director

Any Director may request that an item be placed on a future Committee or Board agenda during the Director Comment section of a Board meeting. If time allows, a Committee may review the matter prior to discussion by the Board. The Director who originated the item contacts the General Manager to more fully explain the issue so that staff can prepare a Recommended Action and Background (which allows the Board to discuss the matter). The Director who placed the item on the agenda is cited as the reference and is expected to lead the discussion.

For any matter referred to or being discussed by a Committee, the Committee shall report its findings back to the Board and capture its deliberations in the notes prepared by the Committee. If, after reviewing the notes prepared by the Committee, a Director wishes to have a matter discussed by the full Board, the Director may state

this request at a Board meeting or notify the General Manager. The General Manager shall then notify the Committee of the Director's request and schedule the matter for discussion at the next reasonably available Committee meeting. This process allows the Committee to complete its work and respond to concerns raised. Following that Committee meeting, the General Manager shall place the matter on the Board agenda for discussion at the next reasonably available Board meeting.

### **Items Originating from the Public**

Members of the public may request to have an item placed on a future Board or Committee agenda during the Public Comment portion of a Board or Committee meeting. The General Manager in consultation with the President considers and decides such requests of the public to have an item placed on a future agenda. The Board generally may not discuss the matter brought up by the public at the same meeting at which it is first verbally mentioned.

### **PLACING AN ITEM ON A COMMITTEE AGENDA**

Committee agenda items originate from the General Manager or his/her staff, the Board, or a Director.

All matters typically go to Committee prior to being placed on the Board agenda. The General Manager decides which Committee reviews an item based on the nature of the item and the charter of each Committee.

The Board may refer an item to a Committee for consideration or further discussion. This typically occurs when new matters are brought to the attention of the Board by a Director or by the public.

### **ITEMS THAT DO NOT REQUIRE COMMITTEE REVIEW**

The Board's system of Standing Committees that review matters within their subject matter jurisdiction is one way the Board uses to efficiently conduct its business. It also creates opportunities for public involvement in Board deliberations in a less formal manner than at a Board meeting. However, there are several matters that do not require Committee review, either because they are routine or because it is proper or legally require that only the full Board consider them. The following items may be placed directly on a Board agenda without Committee review.

#### **Administrative Matters**

- Proclamations
- Notifications (training, conferences, etc.)
- Board Organizational Matters (appointment of Board President or Vice President)
- Appointment of Committees

#### **Board Oversight**

- Performance Evaluation (General Manager or General Counsel)
- Mandated Reports
- Consideration of Conference Attendance

#### **Procedural Streamlining**

- Second reading of an Ordinance.
  
- Acceptance of projects.

- Acceptance of developer improvements.
- Intention to levy assessments in existing assessment Districts (mandated notification step in anticipation of formal action later).
- Follow-up of items for action previously presented in workshops for discussion.
- Any item with a critical timing need when a Committee meeting cannot be effectively scheduled.
- Any other item as determined by the Board.

#### **District-Wide Matters**

- Items with over-arching policy implications (e.g., budgeting, strategic planning).
- General informational items that keep the Board current on a matter or allow them to discuss the implications of continuing with a previously agreed upon course of action.
- Presentations requested by the Board.
- Actions required by law (e.g., consolidation of District elections, amending conflict of interest codes).

#### **Matters that Should be Considered Only by the Full Board to Protect the District's Interest**

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

## CHAPTER 7

### TRANSACTING BOARD BUSINESS

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

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

#### RULES OF ORDER FOR BOARD AND COMMITTEE MEETINGS

Action items shall be brought before and considered by the Board by motion in accordance with the following rules of order.

- **Obtaining the Floor:** Any Director desiring to speak should address the Board President and upon recognition by the President may address the subject under discussion.
- **Motions:** Any Board member, including the President, may make or second a motion. A motion shall be brought and considered as follows: (1) A Director makes a motion; (2) another Director seconds the motion; and (3) the President states the motion. Once the President states the motion, it is open to discussion and debate. Before voting on any motion, the President should ask for any comments from the public audience. After the matter has been fully debated (subject to a motion to close debate and vote immediately, discussed below), the President will call for the vote.
- **Secondary Motions:** Ordinarily, only one motion may be considered at a time, and a pending motion must be voted on before the Board considers any other motion or business. However, there are a few exceptions to this general rule where a secondary motion concerning the main motion may be made and considered before voting on the main motion. The secondary motion exceptions are the following:
  - Motion to Amend: A main motion may be amended before it is voted on, either by the consent of the Board members who moved and seconded, or by a motion to amend, which is then seconded and approved by the Board. After approving an amendment by consent or by motion to amend, the Board then proceeds to consider the main motion as amended.
  - Motion to Table: A main motion may be indefinitely tabled before it is voted on by a motion to table, which is then seconded and approved by the Board. After approving a motion to table, the main motion is not further considered at that meeting and remains tabled until placed on a subsequent meeting agenda.
  - Motion to Postpone: A main motion may be postponed to a specified date and time by a motion to postpone, which is then seconded and approved by the Board. After approving a motion to postpone, the main motion is not further considered at that

meeting and is then reconsidered at the date and time specified in the motion to postpone.

- Motion to Refer to Committee: A main motion may be referred to a Board committee for further study, recommendation, and report back to the Board by a motion to refer to a specified committee, which is then seconded and approved by the Board.
- Motion to Close Debate and Vote Immediately: Debate on a main motion may be closed by a motion to close debate and vote immediately, which is then seconded and approved by the Board.
- Motion to Adjourn: A meeting may be adjourned before voting on a main motion by a motion to adjourn, which is then seconded and approved by the Board. After approving a motion to adjourn, the meeting then immediately adjourns without further consideration of the main motion.

These rules of order are intended to be informal and applied flexibly. The Board prefers a flexible form of meeting and therefore does not conduct its meetings under formalized rules (e.g., Robert's Rules of Order). If a Director believes order is not being maintained or procedures are not adequate, then he or she may raise a point of order to the President. A point of order does not require a second. If the ruling of the President on the point of order is not satisfactory, then it may be appealed by motion (which does require a second) to the full Board. A majority vote of the Board will govern and determine the point of order.

### **MAJORITY VOTE REQUIRED**

A majority of the entire Board shall constitute a quorum for the transaction of business. A majority vote is required for any action to be taken by the Board (i.e., there must be a minimum of three affirmative votes) unless a different voting requirement to approve a particular action is specified under state law (e.g., to adopt a resolution if necessary to condemn real property or to add an emergency item to an agenda (which require a super-majority vote)). In those cases, General Counsel will provide guidance. Unless a Board member expressly abstains from voting, a director's silence will be recorded as an affirmative vote. An express abstention will not be counted as an affirmative vote.

### **ACTIONS TAKEN BY THE BOARD**

The Board shall act only by ordinance, resolution or motion.

#### **Ordinance**

An ordinance is the most formal of actions that can be taken by the Board. Ordinances are used to establish the local laws that are within the District's power to enact and are applicable throughout the District. Ordinances may apply only to matters not preempted or superseded by federal or state law. An ordinance is the authorizing instrument to change the District Code, which is a compilation of the rules and regulations of the District. Ordinances also may be used to set the District's rates and charges after consultation with General Counsel. State law requires that District ordinances be published or posted. In some cases, a public hearing is required prior to consideration. An ordinance generally becomes effective 30 days after adoption unless it expressly provides otherwise. Ordinances remain in full force and effect until repealed, modified or superseded by the Board in another ordinance or by action of the voters through initiative or referendum. Everyone at the District, including the Board, is bound by the requirement of an ordinance (and the Code it may establish or amend). Ordinances are the law of the District and are enforced by staff. Only the Board itself may waive, modify or suspend an ordinance by the enactment of a subsequent ordinance. The only way to change an ordinance is to pass an ordinance that revises the original ordinance.

Additional District guidelines for considering and adopting ordinances:

- The form of enacting clause of all ordinances passed by the Board shall be: “The Board of Directors of the Rancho Murieta Community Services District ordains as follows.”
- With the exception of urgency ordinances, no ordinance may be passed within five (5) days of its introduction. Two readings of the ordinance are required: One to introduce the ordinance, and a second to adopt the ordinance. Reading of the ordinance in full may be waived by a motion approved by a majority vote of the Board.
- Ordinances (other than urgency ordinances) may be adopted only at regular meetings of the Board.
- If an ordinance is altered substantively after its introduction, the ordinance must be reintroduced and may be passed only at a regular meeting held five days after its reintroduction.
- For ordinances that propose rate increases for water, sewer or solid waste service, the Board must conduct a public hearing on the proposed rate increase at least 45 days after mailed notice of such proposal to record property owners. The Board must consider all written protests against the proposed rate increase and, if written protests are presented by a majority of affected property owners in the District, the District may not proceed with the rate increase.
- All ordinances shall be signed by the President and attested by the District Secretary.

After an ordinance has been adopted and signed by the Board President and District Secretary, the ordinance must be published in full one time, within 15 days of the date of adoption, in a newspaper of general circulation in the District. The publication must include the names of the Board members voting for and against the ordinance.

### **Resolution**

A resolution constitutes a more formal written expression of the will of the Board as the District’s legislative body. Resolutions represent an official Board action or position taken on a particular issue that may be more temporary in nature than an ordinance but for which a separate permanent record is needed or desired. Resolutions preserve the history of the action taken in a separate official instrument in addition to documentation in the Board’s minutes. A resolution becomes effective immediately and remains in effect until rescinded, cancelled or superseded by Board action by means of a new resolution. Resolutions typically are used to adopt policies, approve agreements (e.g. master agreements, construction agreements, public facilities planning agreements, and transfer agreements), award contracts for materials or services, approve memoranda of understanding with bargaining groups, award pay for performance, and establish or amend job classifications. Resolutions, if properly written, can be used to change the rates and charges that the District imposes for the privilege of receiving service. Given the nuances of the law in this area, General Counsel should always be consulted to determine the proper instrument for approving rates and charges.

### **Motion**

The Board uses a motion to submit a matter for action. A motion can be a parliamentary tool used by a member of the Board (plus another member who seconds the motion) to place a matter before the entire Board for its consideration. A motion also can be a legislative action used to authorize or approve action on simple matters that are routine in nature, such as approving direction to staff, communicating a District position, approving a task order, increasing a purchase order amount, or approving a proclamation. The minutes of the Board meeting document the Board’s determination on the matters. A motion is always used to place a proposal before the Board to approve a resolution or adopt an ordinance.

## **TRANSACTIONING BUSINESS ON AN ITEM**

### **Introducing an Item**

The Board President announces each agenda item, referencing the item number and the nature of the matter.

### **Staff Presentation**

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

### **Staff Recommendation**

The General Manager usually makes a recommendation on each action item. The recommendation is identified in the Recommended Action section of the staff report. The General Manager often delegates this responsibility to Department Managers.

### **Clarifying Questions**

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

### **Committee Recommendation**

If a Standing Committee has reviewed the matter, the outcome of its discussion will be noted in the Summary and Recommendation included in the Board agenda packet. Should any of the Directors on the Committee so desire, this is the time to state the Committee's recommendation and the reasons for it.

### **Public Comment**

The Board President then opens up the agenda item to the public for comment. The public must have an opportunity to comment on every agenda item. Sometimes this is done through a public hearing when such a hearing is required by law. Other times, the President simply asks the audience if there are any comments. The President will ask speakers to state their name and address for the record and for the benefit of others in the audience. If it is obvious that no potential speakers are present, there is no need to formally call for public comment. A member of the public should be permitted to speak only once, and public comments are limited to three minutes per speaker, unless otherwise allowed or extended by the President. In the event the District receives written correspondence from the public on the matter after publication of the agenda, that written correspondence will be presented to the Board at this time.

- Any person who desires to address the Board at length on a matter which is not on the agenda must make a request to do so to the District Secretary at least five business days before the meeting. The General Manager in consultation with the President will decide whether to include the requested item on the agenda. Failure to request to appear, however, shall not prevent any person from addressing the Board at the general public comment time designated on the agenda.
- Manner of Addressing the Board by an Individual: A member of the public addressing the Board may give his or her name. All remarks shall be addressed to the Board as a body, not to any individual Director or staff person. No person, other than a Director, the General Manager or the District General Counsel, and the person having the floor, shall be permitted to enter into any general discussion without the President's permission.
- Manner of Addressing the Board by a Group of Persons: Whenever members of the public wish to address the Board on the same subject matter, it shall be proper for the President to request that a



spokesperson be chosen by the group to address the Board and, in case additional matters are to be presented at the time by any other member of that group, to limit the number of persons so addressing the Board, so as to avoid repetition. The President may set a time limit for each side of an issue.

- Government Code section 54957.9 permits the Board to clear the room if the meeting is willfully interrupted so as to render further conduct of the meeting infeasible.
- All written or electronic correspondence addressed to the Board shall be sent to the District office. Copies of such correspondence and written responses in reply thereto, if any, shall be distributed to each Board member and included on the agenda for the next regular Board meeting, depending on the date of receipt or the response required by such correspondence.

### **Motion and Second**

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

### **Discussion**

After a motion is properly made and seconded, the Board discusses the merits of the item in an attempt to reach a decision. During this time, the Board may ask staff or the public additional questions or seek the advice of the General Manager or General Counsel. As discussion by the Board ensues, the motion may be amended or withdrawn or a substitute motion offered. These actions must follow the procedures adopted by the Board.

### **Decision**

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

### **MINUTES**

The District Secretary shall prepare and maintain written minutes of each Board meeting. The Board minutes shall include at least the following information: names of the Directors and staff present at the meeting; brief summary of the discussion of the Board on each agenda item considered; names of the Directors who make and second ordinances, resolutions and motions; and, the ayes and noes taken upon all action items. Any Director may request that a brief abstract of his or her statement either in support or opposition of any matter be entered in the minutes.

### **DEVIATIONS FROM PROCEDURES**

No deviation from or failure to follow the procedures set forth in these Guidelines shall invalidate any action or decision of the Board.

## CHAPTER 8

### EFFECTIVE PARTICIPATION IN BOARD MEETINGS

The following ground rules apply to all Directors.

- Come to meetings prepared. Contact the General Manager ahead of any meeting if you have clarifying questions or need additional background. Many times your questions can be answered without taking up meeting time. Also, it helps staff to understand your concerns ahead of the meeting so they can be prepared with the information you need.
- During the meeting, express your thoughts and support them whenever possible with facts, figures and references. Specifically identify your sources of information so as to establish their credibility with your colleagues. More specific statements are more persuasive to your colleagues on the Board than generalized statements. Examples: (a) "I spoke with \_\_\_\_\_, who is the President of the homeowners association and he/she would like the District to \_\_\_\_\_" is better than "The public thinks that we should do \_\_\_\_\_;" (b) "(specific name) told me \_\_\_\_\_" is better than "I was told that \_\_\_\_\_;" (c) "(specific organization) has a concern with \_\_\_\_\_" is better than "Everyone thinks that \_\_\_\_\_."
- Be creative. Innovative ideas supported by sound reasoning are welcome on complicated matters when the Board is attempting to arrive at a consensus.
- Take a positive approach. Keep an open mind. When a Director proposes an idea, look for the value in that idea.
- Be enthusiastic.
- Stay on the subject. Do not introduce other agendas. Keep your comments brief but long enough to establish your point.
- When you do not understand what someone is saying, ask for clarification. Make criticism positive and constructive. Direct critical comments to the issues being discussed, not toward the person expressing the idea.
- Protect the rights of others to have their opinions and feelings heard. Encourage silent members to participate.
- Help the Board President when others take up outside issues. Interrupt gently and say, "We're getting a little off the subject here, maybe we should get back to our topic."
- Share your thoughts. Holding back when you have an idea robs the Board and staff of your knowledge and opinion and prevents further development of your idea. Have confidence in yourself and speak up.
- Protect ideas. Help the Board President set an atmosphere where people will feel comfortable expressing ideas even if they are not perfect. When someone begins attacking another's idea, say, "That idea probably has faults, most ideas do. Let's just let ideas come out for now and evaluate them later."

- Attend and participate. Be on time and stay for the entire meeting. Advise the General Manager or District Secretary if you are unable to attend or know you will be arriving late or leaving early.
- Be an active listener. Be open-minded: listen and consider all points of view.
- At all times, ask yourself, “What, right now, would help the Board move ahead and get this problem solved? What can I do to help the Board function more effectively? How can I help?”
- Always remember that civil discourse is one of the keys to effective communication.

## CHAPTER 9

### DIRECTOR ROLES AND DUTIES

#### THE BOARD OF DIRECTORS

The Board of Directors is the legislative body that holds governing authority for the District. The Board of Directors' roles and responsibilities are as follows:

- ❖ Establish policies, procedures and regulations for District operations;
- ❖ Establish and oversee the District's finances and its budgets, program, and performance;
- ❖ Provide the resources needed by management and staff to carry out District policy;
- ❖ Determine the mission of the District;
- ❖ Approve and ensure the implementation of the District's Strategic Plan and vision; and
- ❖ Appoint and evaluate the General Manager and General Counsel.

#### Directors

Apart from his/her normal functions as part of the Board of Directors, each individual Director's roles and responsibilities are as follows:

- ❖ Function only as one member of the Board
- ❖ Have no individual authority (other than responsibilities of the President and Vice President of the Board as described elsewhere);
- ❖ May not commit, nor represent that they commit, the District to any policy, act, or expenditure; and
- ❖ Support decisions made by the Board (even when the Board decision conflicts with his/her individual position).

#### CODE OF CONDUCT

In order to ensure cooperation and a good working relationship among Board members, the following rules should be observed:

- The dignity, style, values and opinions of each Board member shall be respected.
- Responsiveness and attentive listening in communication is encouraged.
- The needs of the District's constituents should be the priority of the Board members.
- The primary responsibility of the Board members is the formulation and evaluation of policy. Routine matters concerning the operational aspects of the District are to be delegated to District staff.
- Board members should commit themselves to focusing on issues and not personalities. The presentation of the opinions of others should be encouraged. Cliques and voting blocks based on personalities rather than issues are to be avoided.
- Differing viewpoints are healthy in the decision making process. Individuals have the right to disagree with ideas and opinions, but without being disagreeable. Once the Board takes action,

Board members should commit to supporting the action and not to create barriers to the implementation of the action.

- Board members should practice the following procedures:
  - In seeking clarification on informational items, Board members may directly approach District staff to obtain information needed to supplement, upgrade, or enhance their knowledge to improve legislative decision making.
  - In handling complaints from District residents and property owners, the complaints should be referred directly to the General Manager.
  - In handling items related to safety, concerns for safety or hazards should be reported to the General Manager as soon as possible. Emergency situations should be dealt with immediately by seeking appropriate assistance.
  - In seeking clarification for policy-related concerns, especially those involving personnel, legal action, land acquisition and development, finances, and programming, the concerns should be referred directly to the General Manager.
- When approached by District personnel concerning specific District policy, Board members should direct inquiries to the appropriate staff supervisor. The chain of command should be followed.
- The work of the District is a team effort. All individuals should work together in the collaborative process, assisting each other in conducting the affairs of the District.
- When responding to constituent requests and concerns, Board members should be courteous, responding to individuals in a positive manner and routing their questions through the General Manager or responsible management personnel.
- Board members should function as a part of the whole. Issues should be brought to the attention of the Board as a whole, rather than to individual members selectively.
- Board members are responsible for monitoring the District's progress in attaining its goals and objectives, while pursuing its mission.

## **CHAPTER 10**

### **ETHICS AND CONFLICTS OF INTEREST**

#### **RESPONSIBILITIES OF PUBLIC OFFICE**

Board members are obligated to uphold the Constitution of the United States and the Constitution of the State of California. Board members shall comply with all applicable laws regulating their conduct, including but not limited to conflict of interest and financial disclosure laws. Board members shall work in cooperation with other public officials unless prohibited from so doing by law or officially recognized confidentiality of their work. Board members shall maintain the highest standard of personal honesty and fairness in carrying out their duties.

All Board members are required to take at least two hours of ethics training every two years and receive a certificate of completion as required by Government Code sections 53234-53235.2. New Board members need to complete the training within one year of taking office. The District must keep records indicating when each Board member has completed the training and who provided the training for five years.

#### **FAIR AND EQUAL TREATMENT**

Board members shall not, in the performance of their official functions, discriminate against any person on the basis of race, religion, color, creed, age, marital status, national origin, ancestry, sex, sexual orientation, medical condition, physical or mental disability, genetic information, gender, gender identity, gender expression, or military and veteran status of any person. A Board member will not grant any special consideration, treatment or advantage to any person or group beyond that which is available to every other person or group on similar circumstances. (See, e.g., California Constitution, article 1, section 31; Age Discrimination in Employment Act of 1967; Americans with Disabilities Act of 1990; Fair Employment and Housing Act; Rehabilitation Act of 1973; Title VII of the Civil Rights Act of 1964; Labor Code, section 1102.1.)

#### **PROPER USE AND SAFEGUARDING OF DISTRICT PROPERTY AND RESOURCES**

Except as specifically authorized, a Board member shall not use or permit the use of District owned vehicles, equipment, telephones, materials or property for personal use, convenience or profit. A Board member shall not ask or require a District employee to perform services for his or her personal convenience, benefit or profit or the convenience, benefit or profit of another Board member or District employee. Each Board member must protect and properly use any District asset within his or her control, including information recorded on paper or in electronic form. Board members shall safeguard District property, equipment, moneys and assets against unauthorized use or removal, as well as from loss due to criminal act or breach of trust. Board members are responsible for maintaining written records, including expense accounts, in sufficient detail to reflect accurately and completely all transactions and expenditures made on the District's behalf, in accordance with the District's policy for reimbursement of expenses of Board members (District's Travel/Reimbursement Policy, Policy No. 2009-07).

#### **USE OF CONFIDENTIAL INFORMATION**

A Board member is not authorized, without approval of the Board, to disclose information that qualifies as confidential information under applicable provisions of law to a person not authorized to receive it, that (1) has been received for, or during, a closed session meeting of the Board, (2) is protected from disclosure under the attorney/client or other evidentiary privilege, or (3) is not required to be disclosed under the California Public Records Act. A Board member who willfully and knowingly discloses, for financial gain, confidential information received by him or her in the course of his or her official duties may be guilty of a misdemeanor under Government Code section 1098 (Government Code section 54963).

## **CONFLICTS OF INTEREST**

A Board member shall not have a financial interest in a contract with the District, or be a purchaser at a sale by the District or a vendor at a purchase made by the District, unless the Board member's participation was authorized under Government Code section 1090. A Board member shall not participate in the discussion, deliberation or vote on a matter before the Board, or in any way attempt to use his or her official position to influence a decision of the Board, if he or she has a prohibited interest with respect to the matter, as defined in the Political Reform Act, Government Code Section 81000, and following, relating to conflicts of interest, and as further defined in the Fair Political Practices Commission's ("FPPC") regulations.

If a member of the Board believes that he or she may be disqualified from participation in the discussion, deliberations or vote on a particular matter due to conflict of interest, the following procedure will be followed: (a) if the Board member becomes aware of the potential conflict of interest before the Board meeting at which the matter will be discussed or acted on, the Board member shall notify the District's General Manager of the potential conflict of interest, so that a determination can be made as whether it is a disqualifying conflict of interest; (b) if it is not possible for the Board member to discuss the potential conflict with the General Manager before the meeting, or if the Board member does not become aware of the potential conflict until during the meeting, the Board member shall immediately disclose the potential conflict during the Board meeting, so that there can be a determination whether it is a disqualifying conflict of interest; and (c) upon a determination that there is a disqualifying conflict of interest, the Board member shall not participate in the discussion, deliberation or vote on the matter for which a conflict of interest exists, which will be so noted in the Board minutes.

A Board member shall not recommend the employment of a relative by the District. In addition, a Board member shall not recommend the employment of a relative to any person known by the Board member to be bidding for or negotiating a contract with the District.

A Board member who knowingly asks for, accepts or agrees to receive any gift, reward or promise thereof for doing an official act, except as may be authorized by law, may be guilty of a misdemeanor under Penal Code section 70 (Government Code section 1090 et seq. and 81000 et seq.).

Board members shall at all times comply with the District's Conflict of Interest Code as set forth in District Code Chapter 3.

## **SOLICITING POLITICAL CONTRIBUTIONS**

Board members are prohibited from soliciting political funds or contributions at District facilities. A Board member shall not accept, solicit or direct a political contribution from any person or entity who has a financial interest in a contract or other matter while that contract or other matter is pending before the District. A Board member shall not use the District's seal or stationary in any solicitation for political contributions contrary to state or federal law

## **"REVOLVING DOOR" POLICY**

For a period of one year after leaving office, Board members shall not represent for compensation non-governmental entities before the District in violation of Government Code section 87406.3.

Nothing in this section is intended or will be applied to prevent a former Board member from participating in meetings of the Board in the same manner as other members of the public.

## **REPORTING OF IMPROPER ACTIVITIES: PROTECTION OF WHISTLEBLOWERS**

The General Manager has primary responsibility for (1) ensuring compliance with the District's Personnel Manual, and ensuring that District employees do not engage in improper activities; (2) investigating allegations of

improper activities; and (3) taking appropriate corrective and disciplinary actions. The Board has a duty to ensure that the General Manager is operating the District according to law and the policies approved by the Board. Board members are encouraged to fulfill their obligations to the public and the District by disclosing to the General Manager, to the extent not expressly prohibited by law, improper activities within their knowledge. Board members shall not interfere with the General Manager's responsibilities in identifying, investigating and correcting improper activities, unless the Board determines that the General Manager is not properly carrying out these responsibilities. Nothing in this section affects the responsibility of the Board to oversee the performance of the General Manager.

A Board member shall not directly or indirectly use or attempt to use the authority or influence of his or her position for the purpose of intimidating, threatening, coercing, commanding or influencing any other person for the purpose of preventing such person from acting in good faith to report or otherwise bring to the attention of the General Manager or the Board any information that, if true, would constitute: a work-related violation by a Board member or District employee of any law or regulation; waste of District funds; abuse of authority; a specified and substantial danger to public health or safety due to an act or omission of a District official or employee; use of a District office or position or of District resources for personal gain; or a conflict of interest of a Board member or District employee.

A Board member shall not use or threaten to use his or her official authority or influence to effect any action as a reprisal against another Board member or District employee who reports or otherwise brings to the attention of the General Manager any information regarding the subjects described in this section.

Any person who believes that he or she has been subjected to any action prohibited by this section may file a confidential complaint with (1) the General Manager, or (2) a Board member, if the complaint involves the conduct of the General Manager, who will thereupon refer the matter to the full Board to investigate the complaint. Upon the conclusion of the investigation, the General Manager (or the Board in case of a complaint against the General Manager) will take appropriate action consistent with the District's Personnel Manual and applicable law.



## CHAPTER 11

### GENERAL MANAGER'S ROLE

#### Legal Requirements

The Community Services District Law, the enabling statute under which the District was organized and now operates, defines the General Manager as the highest level management appointee who is directly responsible to the Board for the implementation of the policies established by the Board (see Government Code section 61002(f), 61040 and 61050 et seq.). The General Manager serves as the District's Chief Executive Officer and is responsible for the day to day operations and functions of the District.

The primary powers and duties of the General Manager specified by the law are as follows (Government Code section numbers are shown in parentheses):

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

The General Manager may not be a member of the Board (61040(e)) but may serve as the District Treasurer (61050(c)). Traditionally, the Board has appointed another individual to serve as the District Treasurer. A member of the Board also may not serve as the District Treasurer. (61040(e)). The Community Services District Law specifies that the General Manager serves at the pleasure of the Board and that the Board sets the compensation of the General Manager (61050(d) and (e)).

#### Practice Based on Good Governance

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

The Board's primary connection to the operational aspects of the District is through the General Manager. Decisions or instructions of individual Directors or Committees are not binding on the General Manager, who can only take direction from the Board. The Board can only give direction to the General Manager and not to other District managers or staff. The General Manager is available to all Directors to discuss District issues and strategies. The General Manager is the clearinghouse for all informational requests originating from Directors.

The Board establishes the General Manager's annual performance plan and typically evaluates the performance of the General Manager on an annual basis, but can do so more frequently if the situation warrants.

## CHAPTER 12

### WORKING WITH DISTRICT STAFF

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

- Always start with the General Manager, as he/she can obtain an answer or get the right person involved in the discussion, as needed.
- If the General Manager is unreachable, contact the Director of Administration.
- If neither the General Manager nor Director of Administration is available, contact one of the senior managers.
- The District Secretary can help you at any time with administrative matters (e.g. scheduling, expense reports, requirements such as Fair Political Practices Commission forms, travel arrangements, etc.).
- The District's Human Resources staff can help a Director at any time with issues dealing with a Director's personnel benefits or issues of a similar personal nature.

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

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

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

- Let the General Manager know if disappointed by a response. Since the Board judges the General Manager on the performance of the whole staff, inform the General Manager when improvement is needed.

## CHAPTER 13

### THE ROLE OF GENERAL COUNSEL AND SPECIAL COUNSEL

#### THE ROLE OF LEGAL COUNSEL

The primary obligations of both General Counsel and Special Counsel are to ensure that the District complies with applicable law, provide legal advice and opinions when requested, advice on available legal options, including advantages and disadvantages of each option related to a specific matter, and advice of legal risks and liabilities. (When the term Legal Counsel is used throughout this document, it shall mean both General Counsel as well as Special Counsel). The public official receiving that advice has the right to make policy decisions, based on the legal options provided and legal risk associated with each option.

#### General Counsel

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

#### Special Counsel

The District may, at the District's sole discretion and with or without approval or consultation with General Counsel, hire outside Special Counsel. However, the District may, but is not required, to seek General Counsel's assistance in determining whether to utilize outside Special Counsel and in the selection process. The retention of Special Counsel may be necessary based on any number of factors, including the need for highly specialized knowledge, the provision of a defense by an insurer or should a conflict of interest arise with the General Counsel on a particular matter. Unless prevented by a conflict of interest, General Counsel should facilitate and cooperate in the retention of Special Counsel services to ensure the District receives accurate and cost-effective legal advice and services.

#### The District as a Client

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

During the course of representation, the Legal Counsel may become aware of information that indicates that the interests of a District official or employee may not be aligned with the interests of the District. Should such situations arise, Legal Counsel's duty of loyalty and confidentiality is owed to the District and not the individual.

### **Hiring and Termination**

General Counsel and Special Counsel are hired by and may only be terminated by the Board unless those actions have been delegated to the General Manager by duly taken action of the Board.

### **Regular Performance Evaluations**

The Board, with the assistance of the General Manager, may establish the General Counsel's annual performance plan and may evaluate performance on an annual basis, or when the Board deems it appropriate.

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

Protecting both the Attorney-Client Privilege and the Attorney-Work Product Doctrine and maintaining confidentiality of communications between the District and Legal Counsel are vital to ensuring the District's ability to confide freely in its attorneys.

### **Attorney-Client Privilege**

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

### **Attorney-Work Product Doctrine**

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

Whenever a Director receives a work product from an attorney, that work product must not be transmitted to a third party. The Director shall also take great care in managing that document, keeping it only as long as needed and destroying or returning copies to the District or Legal Counsel.

### **Confidentiality of Communications**

The duty of confidentiality is broader than the Attorney-Client Evidentiary Privilege and the Attorney-Work Product Doctrine. Legal Counsel's duty of confidentiality runs to the District itself, including the Board of Directors as a whole, rather than to an individual Board member, District official or employee (see, generally, Business & Professions Code section 6068). When an individual Board member receives advice from Legal Counsel, that advice is provided to the Director in his or her official capacity and the advice is subject to disclosure to the entire Board.

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

## CHAPTER 14

### EFFECTIVE COMMUNICATIONS

#### GENERAL DIRECTOR GUIDELINES

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

#### Communicating with the Public

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

#### Communication with Other Agencies

- It is acceptable to attend meetings of other public agencies and it is good to introduce yourself so everyone knows you are present.
- If you are speaking for the District at another agency's public meeting, always clearly state that what you are saying has been approved by the Board and do not deviate from the message or position.
- Be clear when the Board has no position on an issue.
- Take opportunities to develop relationships but always in a way that supports Board policy and avoids accusations of deal-making.
- Be positive and cooperative in comments and attitudes about people and other agencies (particularly in public).



- Communicate in a way that builds positive relationships.

### **Speaking as a Private Individual**

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

### **Communicating with the Media**

If you choose to talk with the media, the following practices can help you present your thoughts effectively.

- Do not use the phrase, “No comment,” as this phrase has been stigmatized and may be interpreted negatively.
- Feel free to refer media inquiries to the General Manager or confer with the General Manager prior to speaking with the media to ensure that you are fully briefed on the facts associated with the topic at hand.
- Feel free to use and ask staff to prepare talking points so as to convey a consistent message about District actions.
- Clarify when your view is dissenting, but support adopted Board policy even when you are in the minority. Don’t stimulate or inflame controversy.
- If you communicate with the media before you vote on a matter, you can inadvertently become a party to a serial meeting in conflict with the Brown Act if the media were to poll other Directors and share with them your predisposition on a matter.

### **Communicating with Liaison Committees**

- At meetings of a Joint Powers Authority (JPA), your role is different from that of your role at a liaison meeting because you also serve as a Director of the JPA, which is an independent government agency.
- When serving on a JPA Board, the California Attorney General has opined and the Joint Powers Act suggests that a Director has independent discretion apart from the agency to which Board he or she was elected. In other words, a JPA Director owes his or her primary duty to the JPA when acting in that capacity. However, since a District Director usually serves on a JPA Board at the pleasure of the District Board, the District Board can terminate the Director’s appointment to the JPA at its sole discretion and without showing cause for the termination of that appointment.

- Subject to the points above it, if the District Board has discussed a matter and arrived at a decision, the JPA representative should advocate and vote as decided by the District Board.
- Problems can arise when there is a conflict around a specific issue, either between the best interest of the JPA versus the best interest of the District or between the majority District position and the representative's individual view. In such situations, prior consultation with the General Manager or General Counsel is advised.
- The Board President considers the individual views of the Director when making or suggesting appointments to JPA positions so as to avoid potentially awkward situations.
- If the representative knows there is a serious personal conflict, he or she can ask to be replaced by the alternate for those meetings dealing with the issues of concern.
- Matters discussed in a closed session of the JPA are subject to the same confidentiality obligations as a District closed session. However, there are certain exceptions and exemptions to this general rule. Specific concerns over what may be discussed with the District Board and under what circumstances should be addressed with the General Counsel.

### **Building Goodwill with Other Agencies**

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

### **Communicating in Writing**

Refer to District policy and consult with the General Manager on all correspondence and other written communications. Follow District policy regarding Board correspondence.

### **Communicating Electronically**

- All communications to and from a Director related to District business, including email, mobile to mobile texting, mobile instant messaging, computer based instant messaging, chat logs, and similar modes of electronic communication, are very likely to be considered a public record (even those originating from your personal e-mail) and are subject to disclosure under the Public Records Act to the same extent as traditional written materials.

- Electronic communications are potentially discoverable if legal proceedings are involved.
- Keep in mind that these forms of electronic communication are often retained by and can be retrieved from electronic devices, software programs, and the companies that provide such services even if you delete from your display.
- When you receive an e-mail related to District business, consider:
  - Copying the e-mail (and any response you make) to the General Manager;
  - Using the e-mail response as an opportunity to open a subsequent verbal communication with the constituent; and
  - Referring the matter to the General Manager for assistance in preparing a response (with suggestions for what might be included in the response).
- When writing back, refer to and rely on Board policy to address the concerns raised.
- Be careful about using Reply to All and using features that automatically fill in e-mail addresses when emailing or posting on discussion boards, social media messages and social networking sites. This can lead to inadvertent serial meetings that are prohibited by the Brown Act.