

## APPENDIX A Brown Act Compliance

### **Background:**

In 1953 California Assembly Member Ralph M. Brown drafted and secured the enactment of the State's local government open meeting act, now known as the "Brown Act" (Cal. Gov. Code §54950 et seq.). The Brown Act balances public access to meetings and the need for confidential deliberations of the local governing body. The Brown Act requires that all deliberative and decision-making processes by the District's Board of Trustees ("Board") be open to public scrutiny, comment and participation, subject to limited exceptions that allow certain matters to be considered in closed session.

### **Purpose:**

To establish District policy and procedures applying and complying with the Brown Act in order to promote transparency and openness in its operations and governance and to comply with the law.

The District is committed to the public's right to participate meaningfully in meetings, and to review documents used in decision-making; the right to confidentially address certain matters in closed session as provided by law; and the right of the press to fully understand and communicate public agency decision-making.

The District hereby incorporates the Brown Act and all future amendments to the Brown Act into the policies of the District. In the event of any future conflict with any provision of the Brown Act and District policy, the Brown Act shall govern.

## **SECTION 1: MEETINGS**

- A. Right of Access.** It is the District's intent that the District's actions be taken openly and publicly to the greatest extent possible, while preserving the confidentiality of certain information as provided by law. The public shall have the right to attend and observe all deliberations of the Board, except when the Brown Act authorizes a closed session.
- B. All Board decisions must be taken at District Board meetings.** The Board shall not use a series of telephone calls, a conference call, mass e-mailing or any other informal session (e.g. collective briefing, retreat, workshop, etc.) to discuss or decide matters within the jurisdiction of the Board. See Subsection E "Exceptions to Meetings."
- C. Quorum.** No business may be transacted by the Board at a Regular or special meeting unless a quorum of the membership of the Board is present (50% plus one). Currently 13 members of the Board is required for a quorum. When there is no quorum, the President of the Board or other presiding officer may adjourn a meeting.

### **D. Types of Meetings**

1. The Brown Act defines a “meeting” as “Any congregation of a majority of the members of a legislative body at the same time and location... to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.”
2. Regular Board meetings are held at 7:00 pm on the second Wednesday of each month at District Headquarters, 595 Helman Lane, Cotati. It is District policy to make every effort to complete and distribute the agenda and related reports at least a week in advance of the meeting. The Brown Act requires the posting of an agenda at least 72 hours prior to a Regular meeting.
3. Special meetings are called at a non-Regular meeting date and time. They are called by the President or by a majority of the Board with a minimum of 24 hours’ notice, versus 72 hours’ notice for Regular meetings. Notice must be delivered to each member of the Board and to each local newspaper of general circulation and radio or television stations that has requested notice in writing and be posted on the District’s website. The notice shall specify the time and place of the Special meeting and the business to be transacted or discussed. Only business described in the notice may be transacted and the notice requirements apply even if the entire meeting is a closed session.
4. Study sessions are Special meetings that are held for the purpose of providing information to the Board, particularly on issues that are more complex or more time-consuming than matters typically scheduled on a regular meeting. Study sessions may be conducted jointly with another governmental agency. At study sessions Board members may state their individual responses and questions to the information provided and may collectively provide direction to District staff. No formal action is taken at study sessions.
5. Closed sessions can be part of either Special or Regular meetings. Although the Board conducts its business in public to the greatest extent possible, State law recognizes that public discussion of certain items could jeopardize the public interest or compromise the District’s position, and therefore, generally allows the Board to hold Closed session meetings for the consideration of certain personnel matters, labor negotiations, real property negotiations, matters of public security, and the discussion of litigation, among other topics listed in the Brown Act. These rules provide for strict confidentiality of Closed session Board discussions as required by State law. The procedures for the conduct of the Closed sessions shall be the same as those for open session meetings, except that the public, after an opportunity for public comment, are excluded. Following a Closed session, the Board must publicly report on certain actions and votes taken, which varies according to the reason for the Closed session. (See Government Code Section 54957.1.)

6. Emergency Meetings are allowed in an emergency situation involving matters upon which prompt action is necessary. An emergency situation means a crippling disaster which severely impairs public health, safety, or both, as determined by the Board President or a majority of the Board. Newspapers of general circulation in the District, radio and television stations which have requested notice of Special meetings shall be notified by at least one hour prior to the Emergency meeting, except in a dire emergency as defined in the Brown Act. In the event that telephone services are not functioning, the notice requirement of one hour is waived, but the Board, or its designee, shall notify such newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, and of any action taken by the Board, as soon after the meeting as possible.
7. The Board may adjourn any meeting to a later time, date and place (an adjourned meeting). A notice of adjournment must be posted on or near the door of the place where the meeting was held within twenty-four (24) hours. If the subsequent meeting is conducted within five (5) days of the original meeting, matters on the agenda for the original meeting may be considered at the adjourned meeting.

**E. Exceptions to Meetings.** The Brown Act provides six exceptions to the definition of a “meeting” as follows:

1. Individual contacts between a Trustee and any other person. Trustees may confer with constituents, advocates, consultants, reporters, staff and other colleagues. However, a series of individual communications shall not be used to discuss or deliberate among a majority of the Board members any item of business within the subject matter jurisdiction of the Board.
2. Conferences. A majority of the Board may attend a conference or similar gathering open to the public that addresses issues of general interest to the public or to public agencies of the type represented by the Board. However, a majority of the Trustees cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the District’s subject matter jurisdiction.
3. Community Meetings. A majority of the Board may attend an open and publicized meeting held by another organization to address a topic of local community concern. A majority of members cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the District’s subject matter jurisdiction.
4. Other Legislative Bodies. A majority of the Board may attend an open and publicized meeting of: (1) another body of the District and (2) a legislative body of another local agency. A majority of the Trustees cannot discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the District’s subject matter jurisdiction.

5. **Standing Committees.** A majority of the Board may attend an open and noticed meeting of a standing committee of the District, provided the Trustees who are not members of the standing committee attend only as observers (meaning that they may not speak or otherwise participate in the meeting).
6. **Social and Ceremonial Events.** A majority of the Board may attend a purely social or ceremonial occasion so long as a majority does not discuss business among themselves of a specific nature that is within the subject matter jurisdiction of the District.

**F. Teleconferencing.** If a member cannot attend a meeting in person, teleconferencing (audio, visual, or both) may be used, provided:

1. At least a quorum of the Board participates from locations within the District's jurisdiction;
2. Each teleconference location must be specifically identified in the notice and agenda of the meeting, including a full address and room number, as may be applicable;
3. Agendas must be posted at the appropriate time at each teleconference location, even if a hotel room or a residence;
4. Each teleconference location must be accessible to the public and have technology, such as a speakerphone, to enable the public to participate;
5. The agenda must provide the opportunity for the public to address the Board directly at each teleconference location; and
6. All votes must be by roll call.

**G. Committees.**

1. The meetings of permanent standing committees that have continuing subject matter jurisdiction or a fixed meeting schedule, even if comprised of less than a quorum, are subject to the notice and open meeting provisions of the Brown Act.
2. A temporary advisory committee (also called an ad hoc committee) composed solely of less than a quorum of the Board that serves a limited or single purpose, that is not perpetual, and that will be dissolved once its specific task is completed is not subject to the notice and open meeting provisions of the Brown Act.

## SECTION 2: MEETING AGENDAS

A. The District Manager shall prepare an agenda for each Regular and Special meeting of the Board in accordance with the Ralph M. Brown Act (California Government Code Section 54950). The Brown Act generally prohibits any action or discussion of items not on the posted agenda.

### B. Posting

1. At least 72 hours prior to the time of all Regular meetings, an agenda, which includes a brief description of all matters on which there may be discussion and/or action by the Board, shall be posted in a place that is freely accessible to members of the public. The agenda shall be posted on the District website at the same time. In accordance with the provisions of Assembly Bill 2257, the District shall post a prominent, direct link to the agenda on the primary page of its website. The agenda will be posted in a format that is retrievable, downloadable, indexable, and electronically searchable by commonly used Internet search applications.

All information made available to the Board that relates to an agenda item for an open session of a Regular meeting (except confidential information allowed by State law) shall be available for public review. If the materials are received after the agenda packet deadline, they shall be available for public review at the time the materials are distributed to a majority of the Board, or at the meeting, whichever occurs first. For materials prepared by members of the public and distributed to the Board at the meeting, such materials shall be made available for inspection after the meeting.

2. The agenda for a Special meeting shall be posted at least 24 hours before the meeting in the same locations as for Regular meeting agendas.
3. Any person may submit a written request to the District Manager to receive a mailed copy of each agenda (or the entire agenda packet). These copies shall be mailed at the same time the agenda is posted. A request for notice is valid for one calendar year and renewal requests must be filed January 1 of each year. The District charges a fee to recover the actual cost of providing this service, which should be submitted with the written request.
4. Public Comment. Members of the public wishing to comment on any item not appearing on the agenda may address the Board at the designated time. State law prevents the Board from taking action on any matter not on the agenda. Comments may be referred to staff for follow up. An individual's speaking time may be limited as long as the same amount of time is provided to all speakers. The presiding officer has the discretion to reduce the speaking time in situations where there are a large number of persons who wish to speak. Note that public comments at Special meetings may be limited to only those items listed on the agenda.
5. Consent Calendar. All matters listed under the Consent Calendar, including minutes, are considered by the Board to be routine and will be enacted by one

motion without discussion. If discussion is desired, that item may be removed and considered separately.

### **SECTION 3. VOTING**

- A. A motion, second, and a (minimum) majority vote of the Board shall be required for any formal action of Board. Votes and abstentions are taken by roll call and recorded in the meeting minutes.
- B. Unless state law requires otherwise, a majority vote is needed for the motion to pass. In the event of a tie vote, the motion does not pass.
- C. Continued Matters. If a Trustee who was not present a prior meeting has reviewed the relevant documents and minutes from the missed meeting and, if possible, reviewed the recording from the meeting, then he or she shall disclose those actions on the record at the beginning of the discussion of the item and may vote on the continued matter.
- D. Conflicts of Interest. A Trustee shall not vote upon any matter on which s/he has a conflict of interest. A member who is disqualified by a conflict of interest shall openly state the reason for his/her conflict of interest, shall recuse him/herself and shall leave the meeting room unless the item is on the Consent Calendar.

### **SECTION 4. TRUSTEE CONTACT WITH OTHERS AND PROHIBITED SERIAL MEETINGS**

- A. A Serial meeting is a series of meetings or communications between members of the Board in which ideas are exchanged between a majority (quorum) of the Board through either one or more persons acting as an intermediary or through the use of an electronic device such as a telephone answering machine, voicemail or email. Serial meetings are prohibited by the Brown Act. Examples of how a serial meeting may occur include situations where a staff member or some other person individually contacts a majority of the Board and shares ideas among the majority (“I’ve spoken with Trustees X, Y, Z, G, F and K..... and they are all in favor of the project, are you?”), or Trustee A speaks with Trustee B, who then speaks with Trustee C, and so on, until a majority knows how the rest of the majority is likely to vote on an idea that will come before the Board for a decision.
- B. The prohibition on Serial meetings, however, does not prevent a staff member from providing individual briefings on items that will come before the Board as long as the communication is limited to a one-way flow of information. The staff member may not share with any Trustee the thoughts or reaction of the other Trustees.
- C. A constituent or lobbyist may inadvertently become an intermediary among a majority of the Board and create an illegal serial meeting in violation of the Brown Act. In order to avoid having this occur, the Trustee meeting with a constituent, lobbyist or other person should inform or remind the individual that if they have met

- with other Trustees, they are not to disclose the views of the other Trustees during the conversation.
- D. In meeting with others, Trustees should keep in mind that they should avoid statements that indicate the Trustee has already made up his or her mind about a particular item or issue.
  - E. Discussions between less than a majority of the Trustees may occur, but care should be exercised not to share views on items that will come before the Board with a majority of the Trustees.

