

MENDOCINO COUNTY CLIMATE ACTION ADVISORY COMMITTEE



COMMITTEE WORKSHOP AGENDA November 21, 2019 - 3:00 PM

County Administration Center
501 Low Gap Road, Conference Room C, Ukiah

1. OPEN SESSION / ROLL CALL

2. PUBLIC EXPRESSION

Members of the public are welcome to address the Committee on items not listed on the agenda, but within the jurisdiction of the Committee. The Committee is prohibited by law from taking action on matters not on the agenda, but may ask questions to clarify the speaker's comment. The Committee limits testimony on matters not on the agenda to 3 minutes per person and not more than 10 minutes for a particular subject at the discretion of the Chair of the Committee.

To best facilitate these items, please review and complete the public comment/speaker form available at the back of the conference room and present to the Clerk. If you wish to submit written comments, please provide 17 copies to the Clerk. All meetings are recorded, so speakers are reminded to announce their names as they approach to podium to speak

3. COMMITTEE MATTERS

- 3a) Discussion and Possible Action Regarding Selection of Interim Chair**
- 3b) Discussion and Possible Action Regarding Brown Act Regulations and Other Legal Requirements**
- 3c) Introduction of Meeting Facilitators and Purpose Thereof**
- 3d) Introduction of All Members, Interests, Skills and Areas of Expertise**
- 3e) Discussion and Possible Action Regarding Review of Foundation Documents and Relevant Questions to Consider**
- 3f) Discussion and Possible Action Regarding Future Pre-Meeting Preparations and Expectations**

3g) Discussion and Possible Action Regarding Development of Future Meeting Agendas

3h) Discussion and Possible Action Regarding Selection of Future Meeting Dates

ADJOURNMENT

The Committee complies with ADA requirements and upon request, will attempt to reasonably accommodate individuals with disabilities by making meeting materials available in appropriate formats (pursuant to Government Code section 54953.2) Anyone requiring reasonable accommodation to participate in the meeting should contact the Committee clerk by calling (707) 463-4441 at least five days prior to the meeting.

RESOLUTION NO. 19-207

RESOLUTION OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS CREATING THE MENDOCINO COUNTY CLIMATE ACTION ADVISORY COMMITTEE

WHEREAS, on March 19, 2019, the Mendocino County Board of Supervisors heard a proposal entitled "Mendocino County's Commitment and Mission to Fight Climate Change" which called for the creation of a Mendocino County Climate Action Advisory Committee (MCCAAC) to make recommendations to the Board of Supervisors to implement a Mendocino County Sustainability and Climate Action Program, with a focus on developing action and policy proposals towards meeting the goals contained in the Intergovernmental Panel on Climate Change (IPCC) report entitled "Global Warming of 1.5 Degrees Celsius" for greenhouse gas reduction, carbon sequestration and storage, and community climate change preparedness; and

WHEREAS, the Board of Supervisors endorsed in principle the proposal presented and directed staff to schedule a workshop/presentation on the formation and structure of the MCCAAC; and

WHEREAS, said workshop was held on April 16, 2019, where the Board of Supervisors heard a proposal for the MCCAAC which recommended a citizen-driven structure which would recruit and populate topical focus groups to research and develop proposals to the committee; and

WHEREAS, the proposal contemplated that the committee would include a broad range of stakeholders representing diverse interests across Mendocino County's five supervisorial districts; and

WHEREAS, the proposal contemplated that the committee would work with local, regional, and national partners including tribal nations, fire safe councils, water and fire districts, local community groups and organizations, and others; and

WHEREAS, the Board of Supervisors supports the proposal and desires to create such an advisory committee;

NOW, THEREFORE, BE IT RESOLVED that the Mendocino County Board of Supervisors hereby creates the Mendocino County Climate Action Advisory Committee ("MCCAAC") to make recommendations to the Board of Supervisors on implementation of a Mendocino County Sustainability and Climate Action Program aligned with the document entitled "Proposal for a Citizen-Driven Structure for the Mendocino County Climate Action Advisory Committee" attached hereto as exhibit A.

MEMBERSHIP

The MCCAAC shall consist of fifteen (15) members appointed by the Board of Supervisors. All members of the MCCAAC shall be Mendocino County residents, and no more than three (3) MCCAAC members shall be residents of any one supervisorial district at the time of their initial appointment. MCCAAC members shall serve a term of three (3) calendar years, except that in the first year of appointment, one MCCAAC member from each supervisorial district shall be appointed for a term ending December 31, 2020, one MCCAAC member from each supervisorial district shall be appointed for a term ending December 31, 2021, and one MCCAAC member from each supervisorial district shall be appointed for a term ending December 31, 2022.

CHAIR PRO-TEMPORE

The Board of Supervisors shall designate a chair pro-tempore, who shall call the first meeting of the MCCAAC. The first agenda shall include the election of officers and any other provisions required to govern the MCCAAC's activities.

BYLAWS

All meetings of the MCCAAC shall comply with the Ralph M. Brown Act and any other requirement of California law. Once the MCCAAC drafts written bylaws and procedures to address quorum, the election of officers, the schedule of meetings, the creation of focus groups, and such other topics as may be appropriate, the written bylaws and procedures shall be submitted to the Board of Supervisors for approval and adoption.

VACANCY

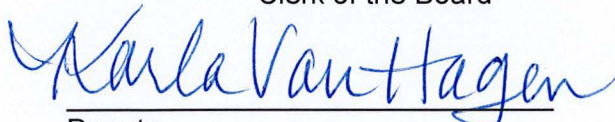
The Clerk of the Board of Supervisors shall be responsible for noticing vacancy of the available seats comprising the MCCAAC. The Clerk of the Board of shall be responsible for receiving and processing nominations to the Board of Supervisors and shall track the expiration of terms and notify appointees thereof of term expiration.


The foregoing Resolution introduced by Supervisor Williams, seconded by Supervisor McCowen, and carried this 9th day of July, 2019, by the following vote:

AYES: Supervisors McCowen, Haschak, Gjerde, and Williams
NOES: Supervisor Brown
ABSENT: None

WHEREUPON, the Chair declared said Resolution adopted and SO ORDERED.


ATTEST: CARMEL J. ANGELO
Clerk of the Board


Deputy


CARRE BROWN Chair
Mendocino County Board of Supervisors

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

APPROVED AS TO FORM:
KATHARINE L. ELLIOTT, County Counsel


Deputy

BY: CARMEL J. ANGELO
Clerk of the Board



Deputy

Exhibit A

Proposal for a Citizen-Driven Structure for the Mendocino County Climate Action Advisory Committee (MCCAAC)

MCCAAC Suggested Structure and Protocol

1. The MCCAAC will be a 15 member committee with representation of 3 per supervisorial district
2. The MCCAAC will recruit and populate topical Focus Groups to research and develop proposals to the MCCAAC
3. Every member of the MCCAAC will serve on at least one Focus Group
4. MCCAAC and Focus Group meetings are open to public
5. Focus Groups make regular written progress reports to MCCAAC and may include proposals for action to be undertaken by the Board of Supervisors (BOS)
6. MCCAAC develops action proposals from Focus Groups to make recommendations to the BOS for action items needed to implement Mendocino County's Sustainability and Climate Action Program
7. MCCAAC Focus Groups work with local partners such as Municipal Advisory Councils, Water and Fire Districts, Fire Safe Councils, Environmental and Sustainability citizen groups, and other local community groups and organizations
8. MCCAAC makes annual report to BOS on accomplishments, recommended actions and policy proposals
9. MCCAAC works in an appropriate fashion with Tribal Nations, state agencies, and other local, regional, and national partners
(Recommended Tribal relations protocol explained in Proposed Process, page 2)
10. MCCAAC district representatives shall hold periodic public meetings to share information, discuss issues and receive public input
11. MCCAAC's scope of work will concentrate on developing action items and policy proposals towards meeting the Intergovernmental Panel on Climate Change (IPCC) report entitled "Global Warming of 1.5 Degrees Celsius" goals of:
 - a. Green House Gas (GHG) reduction
 - b. Carbon sequestration and storage
 - c. And the State and County's goals for community climate change preparedness in coordination with Mendocino County Office of Emergency Services (MCOES) and the Mendocino County Fire Safe Council as appropriate
12. Topics for Focus Groups include the following:
 - a. GHG Reduction in the areas of:
 - i. Energy
 - ii. Solid Waste
 - iii. Land use and development (green and energy-efficient building, decarbonization of electricity and other fuels)
 - iv. Transportation
 - b. Carbon storage
 - i. Forests/Forestry
 - ii. Agriculture
 - c. Community Preparedness
13. Other suggested committee functions include:
 - a. Outreach and Accommodation (identify and address structural obstacles to broad participation in the MCCAAC)
 - b. Education

Proposed Process

- 1) Mendocino County Board of Supervisors appoints the members of the MCCAAC, which shall make recommendation to the BOS on implementation of Mendocino County's Sustainability and Climate Action Program.
- 2) MCCAAC is comprised of representation across the 5 districts and list of stakeholder communities. It is suggested that there be diverse representation including a representative seat on the MCCAAC for each of the following:
 - a) Tribal Government
 - b) Environmental Protection
 - c) Forestry
 - d) Unions
 - e) Business/Economic Development
 - f) Community and Social Justice groups
- 3) Each Supervisorial District has 3 representatives
- 4) MCCAAC recruits and populates the Focus Groups in the following topic areas (as a starting point):

GHG

Energy

Transportation

Solid Waste

Land Use/Zoning & Planning: Green Building/Development/Retrofitting

Carbon

Forests/Forestry

Agriculture

Community Preparedness

- 5) MCCAAC will facilitate work on topics that are relevant to multiple Focus Groups such as:
 - Oceans and Near Shore Ecosystems
 - Wetlands and Riparian
 - Rangeland
- 6) Other suggested MCCAAC functions include:
 - Education
 - Outreach & Accommodation (to identify structural obstacles to broader participation, such as childcare)

- 7) Guidelines for Recruitment and Function of Focus Groups:
 - a) Invite across the entire stakeholder population
 - b) Focus Groups will have 3 members minimum for voting membership
 - c) Will hold public meetings for input, encouraged to outreach to the whole community, especially populations most directly impacted by the areas for proposals
 - d) Focus Groups must establish their own process protocols for decision making and keep written records of decisions
 - e) Each Focus Group shall include at least one MCCAAC member to provide connectivity between the Focus Groups and the MCCAAC

- 8) Focus Groups hold meetings, develop action and policy proposals to present to the MCCAAC. Focus Groups work with local community resources on the district level and region-wide as appropriate to topic.
 - a) Focus Groups make proposal recommendations to MCCAAC and will cc to 10 tribes of Mendocino County and the Intertribal Sinkyone Wilderness Committee for review and input.

- 9) MCCAAC hears and receives written reports from Focus Groups and considers associated proposals.

- 10) MCCAAC reviews and develops proposals for the BOS to consider for action.
 - a) Actions the MCCAAC may take re: Focus Groups proposals:
 - i) Adopt
 - ii) Refer for further development
 - iii) Table
 - iv) All decisions of the MCCAAC re: adoption of proposals must be based on meeting or reasonably moving towards the goals articulated in the enabling document (IPCC)
 - b) There are three paths to accomplishing the desired outcomes:
 - i) Requirements (ordinances, rules)
 - ii) Incentives (tax or fee breaks for green actions)
 - iii) Encouragement and Education

- 11) Once the MCCAAC determines proposals are consistent with or needed to implement the County's Sustainability and Climate Action Program they will recommend the BOS agendize the proposals for action and cc the 10 tribes and Intertribal Sinkyone Wilderness Council for review and input.

- 12) Report from the MCCAAC will be regularly agendized at the BOS meetings.

Mendocino County's Commitment and Mission to Fight Climate Change

WHEREAS:

- The United Nations Intergovernmental Panel on Climate Change (IPCC) has stated in their 8 October 2018 report that “Limiting global warming to 1.5°C above pre-industrial levels would require rapid, far-reaching and unprecedented changes in all aspects of society”. “We are already seeing the consequence of 1° C of global warming through more extreme weather, rising sea levels, and diminishing Arctic sea ice, among other changes”. “Global net human-caused emissions of carbon dioxide (CO₂) would need to fall by about 45 percent from 2010 levels by 2030, reaching ‘net zero’ around 2050”.
- It is widely recognized and understood that climate change has a disproportionate negative impact on the world's poor and marginalized citizens yet requires the most significant change in behavior from wealthier citizens.
- Among the catastrophic natural disasters facing Mendocino County due to climate change are, and will continue to be, severe drought, devastating wildfires, flooding, severe impacts on coastal near shore ecosystems, and coastal sea level rise. In the past few years Mendocino County has been impacted by the drought of 2015, wildfires of 2017 & 18, and the floods of 2019.
- The cost of reacting to climate change disasters will continue to rise in terms of the loss of tax revenue, increase of staff time managing states of emergency and the need for human services, repairing environmental damage, and removing toxic debris.
- Mendocino County can take proactive steps to reduce the risks associated with climate change and contribute to both California's climate change initiatives and the global need for the reduction of Greenhouse Gas (GHG) emissions and increase of carbon storage capacity. Mendocino County's citizens and businesses have proven through ballot initiatives, voluntary sustainability initiatives and corporate sustainability commitments that they are ready and willing to meet the challenges to combat climate change. Mendocino County citizens have voted to reduce the use of herbicides and to eliminate the growing of GMOs. Mendocino County has been on the leading edge of organic and biodynamic farming and natural grass and organically fed food animal production, solar power use, stream and habitat restoration and voluntary forestry certification. Additionally, corporate retailers doing business in Mendocino County have stated commitments to environmental sustainability and social responsibility.

THEREFORE BE IT RESOLVED that the Mendocino County Board of Supervisors establish a Climate Action Advisory Committee whose mission is to set in motion County-wide goals, policies and actions that will reduce GHG emissions; that will increase carbon storage throughout the County, and that will prepare Mendocino County residents to reduce or prevent, and to recover from or to better cope with climate-caused disasters, and; to serve as a

model, partner, and source of inspiration to other jurisdictions to take on the challenge of confronting the demands of climate change.

IMPLEMENTATION OF THE MISSION:

1. The Mendocino County Board of Supervisors shall establish a Climate Action Advisory Committee. The Committee will:

- Convene public meetings throughout Mendocino County;
- Gather information, and explore and recommend solution-based actions;
- Address comprehensive climate caused disaster-preparedness in coordination with Mendocino County Office of Emergency Service (OES) and Mendocino Fire Safe Council;
- Undertake specific tasks to accomplish these goals, including:
 - Establish a current GHG emissions and carbon storage assessment “baseline” for Mendocino County;
 - Establish priority projects to lower GHG emissions and increase carbon storage based on the assessment;
 - Set short-term and long-term targets for GHG emissions reduction and carbon storage;
 - Develop and implement monitoring protocols;
 - Assist OES in the development of a climate caused disaster preparedness plan;
 - Estimate costs and talent needed to assess and implement the above tasks;
 - Invite businesses, schools, agencies, Tribes, non-profits, communities, neighborhoods, and individuals to participate in the assessments, monitoring and review of project proposals and actions.
- Be comprised of public members who acknowledge that it is a scientific fact that human behavior has accelerated global warming contributing to the Earth’s changing climate, including:
 - Members with Tribal, social, environmental, climate, business and financial background including those with technical expertise in focus areas articulated below, and;
 - Representation from geographically diverse communities and across the social spectrum.
- Focus on the following areas:
 - GHG emissions reduction
 - Energy
 - Transportation
 - Land use
 - Existing and new Development
 - Solid waste
 - Carbon Storage
 - Agricultural land
 - Forests
 - Rangelands
 - Ocean, coastal and near shore ecosystems

- Water courses, riparian and wetlands
- Land uses
- Community climate change preparedness
 - Focus on climate hazard reduction, and disaster recovery preparation solutions;
 - Coordinate with relevant agencies to develop climate hazard preparedness.

2. The Mendocino County Board of Supervisors shall provide staff support and expertise and shall allocate funds to support the activities of the Climate Action Advisory Committee when needed.

3. The Mendocino County Board of Supervisors shall implement climate action policies that govern activities within the County's authority and initiate a County General Plan Update that will incorporate the recommendations of the Climate Action Advisory Committee into the goals and policies of the County General Plan, including adding one or more additional General Plan Elements, if necessary, to capture the social, economic, environmental and safety demands of a rapidly changing climate.

4. The Mendocino County Board of Supervisors shall establish an Office of Sustainability and Climate Action that will oversee and carry forward the recommendations of the Committee, once the Committee's recommendations have been adopted by the Board of Supervisors.

5. The Mendocino County Board of Supervisors shall provide County-wide leadership, inspiration and on-going encouragement to achieve the goals, policies and actions established through this process.

6. The Mendocino County Board of Supervisors shall prioritize this bold climate strategy to cap and reduce GHG emissions in an immediate timeframe to protect the lives and livelihoods of Mendocino County residents and future generations.

The Ralph M. Brown Act

The Ralph M. Brown Act

1. Purpose
2. To whom it applies
3. What constitutes a meeting
4. Where meetings can be held
5. Notice and agenda requirements

Purpose

Balance of governmental interest in confidential candor with free and public debate.

Exceptions are narrowly construed

Discourage the concept that “sensitive” information may be kept private or that the public only needs to know the result.

Legislative Policy [sec. 54950]

“The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”

To Whom Does the Act Apply?

“Legislative bodies” of local agencies

“All meetings of the legislative body of a local agency shall be open and public”.

Section 54953

“Legislative Body”

Governing body of a local agency or any other local body created by state or federal statute.

Subsidiary bodies

- Any board, commission, committee or other body of a local agency created by charter, ordinance, resolution or formal action of a legislative body is itself a legislative body (sec. 54952(b).) Regardless of whether body is permanent or temporary, advisory or decision making.

“Legislative body (cont.)”

- Exception for an ad hoc advisory committee comprised solely of less than a quorum of the members of the legislative body which created it. But exception does not apply if it is a standing committee. Must be single subject, short duration – e.g., Less than a quorum committee to study purchase of new voting equipment.

What is a “Meeting ?”

Definition:

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

Section 54952.2(a)

Meetings Covered

Face to face – a majority of the members gathering at the same time and place discussing topics within body's jurisdiction.

Serial meetings

Retreats

Video teleconferencing

“Face to Face” Meetings

The board does not have to be formally convened.

The board’s deliberations, including the consideration, analysis or debate of an issue, and any vote which may ultimately be taken are covered.

The body doesn’t have to “act” to be covered.

“Serial” Meetings

A Series of Communications...

Can be “chain” (A to B to C) or
“Hub” (A to B and A to C...)

Each of which involves less than a quorum of the
legislative body...

But which taken as a whole involves a majority of the
body’s members.

Series of contacts to reach agreement on an action

Includes use of technological devices

Board Retreats

Retreats are covered by the act when elements of “meetings” exist.

Agenda requirements apply

Video Teleconferencing

Video teleconferencing (sec. 54953(b))

– permitted for any type of meeting within the subject matter jurisdiction of the board.

Agendas are to be posted at teleconference locations.

Each location must be accessible to the public.

Exemptions

The act DOES NOT APPLY to:

Social meetings – attendance by majority of the board not deemed a “meeting” as long as members do not discuss business within the Jurisdiction of the body.

Private meetings – not deemed a “meeting” as long as it concerns issues of local interest, is open to the public, and is well publicized in advance.

Where Can Meetings Be Held ?

Meetings of a legislative body must be held within the boundaries of the territory over which the local agency exercises jurisdiction.

Certain exceptions apply (e.g., Site visit, joint powers authority meetings, etc.)

Notice & Agenda Requirements

For REGULAR MEETINGS:

Must occur at a time and location set by ordinance, resolution or by-laws.

Agenda must be posted at least 72 hours prior to the meeting.

Agenda must contain a brief description of each item to be discussed, including items in closed session.

Notice & Agenda (cont.)

When can the board act on or discuss items that are not on the agenda?

Previously posted for a prior meeting – if the present meeting is held within 5 days of the prior meeting.

Emergency item – a work stoppage or crippling disaster which severely impairs public health and safety.

2/3 vote for those present determine that there is a need for immediate action which has come to the attention of the body after the agenda already posted.

Brown Act Amendment Effective July 1, 2008

May 12, 2008 - the Brown Act was amended by SB 343 to require that any non-confidential writing relating to an agenda item for an open session of a regular meeting that is distributed within 72 hours of the meeting be made available for public inspection “without delay”, and no later than the time it is distributed to the members of the body. The documents can be made available at an office or location that has been designated by the agency and listed on the meeting agenda, or posted on the local agency’s internet web in a position and manner that makes it clear that it relates to an upcoming meeting’s agenda.

Brown Act Amendment Effective July 1, 2008 (Cont.)

The bill also requires that non-confidential documents distributed during a public meeting be made available for public inspection at the meeting if prepared by the local agency or a member of the legislative body. If the document is prepared by another person, it must be made available after the meeting.

The new language can be found in Government Code section 54957.5.

Emergency Meetings

May be called upon 1 hour telephonic notice

“Emergency” applies to a crippling disaster, work stoppage or other activity which severely impairs public health, safety or both.

Emergency meetings may not be held in closed session.

Special Sessions

Notice must be received at least 24 hours prior to the meeting by all members of the body and media.

No other business shall be considered.

Notice needed even if the meeting is conducted in closed session and even if no action is taken.

Notice must describe the public's right to comment on any item described in the agenda before or during consideration of that item.

Closed Sessions

Outline

General principles

Exceptions to the open meeting rule

- Personnel matters
- Pending litigation
- Labor negotiations
- Real estate negotiations
- Other exceptions (permitted closed sessions)

Checklist

General Principles

Closed sessions are exceptions to the general rule

- Permitted only where specifically available by statute
- Standard is NOT whether the subject is sensitive, embarrassing or controversial

Who can participate?

- Members of the body
- Required support staff

Specific agenda rules for each closed session type

Announcements prior to closed session

Votes reported in open session

- Who voted and how voted
- May be reported orally or in writing

*Personnel Exception [Sec. 54957]
(Not to Be Confused With Labor Relations)*

When can closed session be used for personnel matters?

- Appointment/hiring of a “public employee”
- Performance evaluations
- Discipline
- Hear/consider complaints brought by another person or employee
- What is the purpose of this exception?
- Avoid undue publicity and embarrassment of affected employee

Complaints/charges against a specific employee:

- Employee to get advanced written notice of:
(1) session; And (2) right to have matter heard in open session

Personnel Exception (cont.)

What is an “employee: in this context?

- Defined in the statute
- Civil Service employee
- Department Heads & Officers
- Independent contractor who functions as an officer or employee

Closed session cannot be held to:

- Select independent contractors for project work
- Discuss/make appointments to boards & commissions
- Discuss complaints against elected officials

Personnel Exception (Cont.)

Agenda requirements:

- Appointment/hiring
 - Description of position

Performance evaluation

- Job position
- Name of affected employee

Discipline

- No details required

Complaints/charges

- No details required

Report to open session:

- Action taken
- Title/position of affected employee
- Vote result

Pending Litigation Exception (Sec. 54956.9)

Rule: A legislative body, based on advice of legal counsel, may meet in closed session with counsel regarding “pending litigation” when discussion in open session would prejudice the agency’s litigation position.

What is “litigation” in this context ?

- Any adjudicatory proceeding before a court, arbitrator, hearing officer

When is litigation “pending” ?

- When agency is a party to litigation already begun; or
- When body is meeting to decide if it will start litigation; or
- When in the opinion of the agency, based on counsel’s advice, there exist facts that create “significant exposure” to litigation; or
- When body is only meeting to decide if such facts exist.

Pending Litigation Exception (cont.)

What type of facts/circumstances create “significant exposure?”

Those that might result in litigation and agency believes they are not yet known to potential plaintiff(s), or

Those that are known to potential plaintiff(s) and which are publicly stated on the agenda, or

A written threat of litigation has been received, or

An oral threat of litigation is made in an open, public meeting which involves a subject within the legislative body’s responsibility, or

A threat of litigation is made outside of an open, public meeting and the agency official who learns of it makes a record of the threat.

Pending Litigation Exception (Cont.)

Attorney-Client Privilege

This statute is the exclusive expression of the attorney-client privilege as it relates to closed sessions held under the pending litigation exception

- Documents that are privileged should not be shared in closed session unless the body publicly announces its intent to consider it in closed session

This does not affect the privilege with respect to other communications with the client during the course of litigation.

Pending Litigation Exception (cont.)

Agenda Requirements:

Specific statute permitting closed session

Title of litigation (unless settlement or service of process compromised)

Report in Open Session:

Substance of litigation

Next step (if any), i.e.,

file/defend/settle/appeal/amicus brief

Vote count

Real Estate Negotiations Exception [Sec. 54956.8]

Rule: legislative body may meet in closed session with its negotiator to grant authority regarding the price and terms of payment for the purchase, sale, exchange or lease of real property

A “prior announcement” of the closed session at an open meeting - the body must be made, identifying the property and the identity of the other party.

Negotiator can be a member of the legislative body

If the real estate involves eminent domain: closed session permitted per “pending litigation” statute

Real Estate Negotiations Exception (cont.)

Agenda requirements:

Property address or parcel number

Negotiating parties (not agents)

Substance of discussion w/negotiator (i.e., price, terms of payment).

Report in open session:

If agreement is finalized in closed session, then report its terms in the corresponding open session

If agreement is finalized by the other party, report its terms in open session as soon as possible.

Vote count

Labor Negotiations Exception [Sec. 54957.6]

Rule: can meet in closed session with its designated reps, both prior to and during labor negotiations process, to:

Review agency's position regarding labor issues;

Provide instructions to the negotiator;

Approve an agreement with a union;

But...

May not take final action in closed session on salary of unrepresented employees.

Labor Negotiations Exception [Sec. 54957.6]

What labor issues can be discussed in closed session?

Salary, salary structure, fringe benefits

If negotiating with represented employees, other issues w/in statutorily-provided scope of representation

Can discuss availability of funds, funding priorities if related to instructions being given to negotiator

Okay to meet in closed session with intervening state conciliator

Labor Negotiations Exception (Cont.)

Agenda requirements:

Name of negotiator;

If negotiating with a union, the name of the union;

If negotiating with unrepresented employee the position title

Report in open session:

Action to approve agreement (if any)

The identity of the other parties

Vote count

Other Authorized Closed Sessions

Threat to public services or facilities [sec. 54957]

Closed session with law enforcement

Insurance joint powers authority liability
[sec. 54956.95]

Discussion of claims filed against JPA or a member
agency

Act to approve/deny/settle claim

Other Authorized Closed Sessions

License/permit applications [sec. 54956.7]

Consideration of application of one who has criminal record

Trade secrets/medical quality hearing

Other laws authorize closed sessions for public hospital's discussions of these issues

Consult legal counsel

Checklist



When handling a Closed Session matter, ask:

Is it a proper subject for closed session?

~ Consult statute and legal counsel if unsure

Is it clear what can & cannot be done in closed session?

What are the agenda and reporting requirements?

What prior announcements need be made (if any)?

What documents must be made available to the public?

Public's Rights Under the Brown Act

1. General Rights of Public

To have meetings open and public with few exceptions. (54950, 54953)

To have no conditions, such as registration, or other information, attached to their right to attend meetings. (54953.3)

To be able to audio and video record and take photos of the proceedings, unless to do so causes a disturbance.

To be able to inspect any such recordings made by the agency.
(54953.5)

To be able to broadcast the proceedings, unless it would disrupt the meeting. (54953.6)

To request and have mailed a copy of all agendas and the agenda packet at the time each agenda is posted, or upon distribution of the agendas to the board. (54954.1)

Note: failure to receive an agenda or packet does not invalidate any action taken at the meeting.

To have the meeting held at a facility that does not discriminate and which is accessible to disabled persons. (54961)

2. Public's Access to Documents

Access, without delay, to:

All agendas of public meetings.

All documents distributed to the board members.

- Exception: document exempt PRA disclosure.

3. Public Input & Testimony

A. Public's Rights

Any member of the public has a right to address the board at any regular or special meeting on any item on the board's agenda.

This input may be either before or during the board's consideration of the item.

This right to address the board shall be noted in the agenda. (54954.3(a))

Any member of the public may address the board at regular meetings on matters not appearing on the agenda, as long as the matter is within the board's subject matter jurisdiction.

This right must also be noted on the agenda and is usually described as the "public input" portion of the agenda.

No action may be taken on any item not appearing on the agenda, unless one of the exceptions in 54954.2(b) [emergency or need arose after agenda was posted] applies. (54954.3(a))

B. Board's Rights to Regulate Public Input

The board may adopt reasonable regulations governing the rights of public input.

These regulations can include, but are not limited to, limitations on the total amount of time allocated to agenda issues and limitations on the amount of time for each individual speaker.

The input can be restricted to “matters within the board’s subject matter jurisdiction.”

A board cannot prohibit public criticism of the “policies, procedures, programs, or services” of the public agency, or of its “acts or omissions.” (54954.36(c))

However, it probably can prohibit public criticism of individual employees of the agency, referring such matters to the appropriate department head and/or hearing the complaint in closed session.

A board can also prohibit discussion of specific juvenile court cases in public session as being outside of the board’s jurisdiction and as being a violation of the child’s privacy rights under the juvenile court law.

A board may stop a speaker who becomes overly repetitious or whose subject is irrelevant to the board's subject matter jurisdiction. Kindt v. Santa Monica Rent Control Board (9th Cir., 1995)

A board may have a speaker removed from the room if he/she loses all sense of decorum and becomes overly disruptive. (Kindt)

4. Sanctions for Violations of the Brown Act

A board member may be held criminally liable (misdemeanor) for intentional violations of the act. (54959)

A member of the public may sue to enjoin an agency or board for violations and threatened violations of the Brown Act.

A court can order an agency to tape record its closed sessions so the court can review these actions to determine if the agency is violating the act. (54960)

A court can award attorney fees and costs to petitioners. (54960, 54960.1, 54960.5)

QUESTIONS?