



**L&C Committee**

L. Dick, Chair  
Vacant, Vice Chair  
R. Atwater  
M. Camacho  
A. Fellow  
S. Goldberg  
A. Kassakhian  
J. Murray Jr.  
T. Phan  
R. Record  
S. Smith  
S. Tamaribuchi

**Legal and Claims Committee - Final -  
Revised 1**

Meeting with Board of Directors \*

**July 13, 2021**

**9:00 a.m.**

Live streaming is available for all board and committee meetings on our  
[mwdh2o.com](http://mwdh2o.com) website ([Click to Access Board Meetings Page](#))

Public Comment Via Teleconference Only: Members of the public may present  
their comments to the Board on matters within their jurisdiction as listed on  
the agenda via teleconference only. To participate call (404) 400-0335 and use  
Code: 9601962.

**Tuesday, July 13, 2021  
Meeting Schedule**

09:00 a.m. L&C  
10:00 a.m. RP&AM  
11:30 a.m. Break  
12:00 p.m. Board

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\* The Metropolitan Water District's meeting of this Committee is noticed as a joint committee meeting with the Board of Directors for the purpose of compliance with the Brown Act. Members of the Board who are not assigned to this Committee may participate as members of the Board, whether or not a quorum of the Board is present. In order to preserve the function of the committee as advisory to the Board, members of the Board who are not assigned to this Committee will not vote on matters before this Committee.

**1. Opportunity for members of the public to address the committee on matters within the committee's jurisdiction (As required by Gov. Code Section 54954.3(a))**

**2. MANAGEMENT REPORTS**

- a. General Counsel's report of monthly activities

[21-292](#)

**\*\* CONSENT CALENDAR OTHER ITEMS -- ACTION \*\***

**3. CONSENT CALENDAR OTHER ITEMS - ACTION**

- A. Approval of the Minutes of the Meeting of the Legal and Claims Committee held June 8, 2021

[21-284](#)

**Attachments:** [07132021 LC 3A Draft Minutes](#)

**4. CONSENT CALENDAR ITEMS - ACTION**

- 7-9** Adopt amendment to the Administrative Code establishing Metropolitan-specific parliamentary procedures; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA [21-263](#)

**Attachments:** [07132021 BOD 7-9 B-L.pdf](#)

- 7-10** Authorize increase of \$100,000, to a maximum amount payable of \$300,000, for existing General Counsel contract with Olson Remcho LLP to provide general government law advice related to the Political Reform Act, the Fair Political Practices Commission regulations, conflict of interest law and other legislative and ethics matters; the General Manager has determined the proposed action is exempt or otherwise not subject to CEQA [21-278](#)

**Attachments:** [07132021 BOD 7-10 B-L.pdf](#)

- 7-11** Report on existing litigation OHL USA, Inc. v. The Metropolitan Water District of Southern California, Los Angeles Superior Court Case No. 19STCV27689; and authorize increase of maximum amount payable under contract with Theodora Oringer PC for legal services by \$200,000 to an amount not to exceed \$900,000 (Approp. 154170); the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA [21-261](#)  
[Conference with legal counsel - existing litigation; to be heard in closed session pursuant to Gov. Code Section 54956.9(d)(1)]

- 7-12** Report on Baker Electric, Inc. v. Metropolitan Water District of Southern California, et al., (Los Angeles Superior Court Case No. 21STCV15612) regarding Metropolitan's CRA 6.9 kV Power Cables Replacement Project, Contract No. 1915; authorize filing cross-complaints; and authorize an increase in the maximum amount payable under contract with Musick, Peeler & Garrett LLP, for legal services by \$200,000 to an amount not-to-exceed \$300,000; the General Manager has determined the proposed action is exempt or otherwise not subject to CEQA. [21-262](#)  
[Conference with legal counsel - existing litigation and initiating litigation; to be heard in closed session pursuant to Gov. Code Section 54956.9(d)(1) and 54956.9(d)(4)] [Revised closed session language 7/8/2021]

**\*\* END OF CONSENT CALENDAR ITEMS \*\***

**5. OTHER BOARD ITEMS - ACTION**

None

**6. BOARD INFORMATION ITEMS**

None

## 7. COMMITTEE ITEMS

- a. Report on San Diego County Water Authority v. Metropolitan Water District of Southern California, et al., San Francisco County Superior Court Case Nos. CPF-10-510830, CPF-12-512466, CPF-14-514004, CPF-16-515282, CPF-16-515391, CGC-17-563350, and CPF-18-516389; the appeals of the 2010 and 2012 actions, Court of Appeal for the First Appellate District Case Nos. A146901, A148266, A161144, and A162168, and California Supreme Court Case No. S243500; the petition for extraordinary writ in the 2010 and 2012 actions, Court of Appeal for the First Appellate District Case No. A155310; the petition for extraordinary writ in the second 2016 action, Court of Appeal for the First Appellate District Case No. A154325 and California Supreme Court Case No. S251025; and the Metropolitan Water District of Southern California v. San Diego County Water Authority cross-complaints in the 2014 action and the first 2016 action. [Conference with legal counsel - existing litigation; to be heard in closed session pursuant to Gov. Code Sections 54956.9(d)(1)] [21-264](#)

## 8. FOLLOW-UP ITEMS

None

## 9. FUTURE AGENDA ITEMS

## 10. ADJOURNMENT

**NOTE:** This committee reviews items and makes a recommendation for final action to the full Board of Directors. Final action will be taken by the Board of Directors. Agendas for the meeting of the Board of Directors may be obtained from the Board Executive Secretary. This committee will not take any final action that is binding on the Board, even when a quorum of the Board is present.

Writings relating to open session agenda items distributed to Directors less than 72 hours prior to a regular meeting are available for public inspection at Metropolitan's Headquarters Building and on Metropolitan's Web site <http://www.mwdh2o.com>.

Requests for a disability related modification or accommodation, including auxiliary aids or services, in order to attend or participate in a meeting should be made to the Board Executive Secretary in advance of the meeting to ensure availability of the requested service or accommodation.

**THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA**  
**MINUTES**

**LEGAL AND CLAIMS COMMITTEE**

**June 8, 2021**

Chair Dick called the teleconference meeting to order at 9:01 a.m.

Members present: Chair Dick, Directors Atwater, Camacho (entered after the roll call), Fellow, Goldberg, Murray, Phan, Record, Smith, and Tamaribuchi.

Members absent: Director Kassakhian.

Other Directors present: Board Chairwoman Gray, Directors Abdo, Ackerman, Blois, Butkiewicz Cordero, De Jesus, Dennstedt, Erdman, Hogan, Jung, Kurtz, Lefevre, Morris, Ortega, Peterson, and Ramos.

Committee Staff present: Kightlinger, Miyashiro, Scully, and Upadhyay.

**1. OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO ADDRESS THE COMMITTEE ON MATTERS WITHIN THE COMMITTEE'S JURISDICTION**

None

**2. MANAGEMENT REPORT**

- a. Subject: General Counsel's report of monthly activities

General Counsel stated she had nothing to add to her written report.

**CONSENT CALENDAR ITEMS – ACTION**

Director Camacho entered the meeting.

**3. CONSENT CALENDAR OTHER ITEMS – ACTION**

- A. Approval of the Minutes of the Legal and Claims Committee meeting held May 11, 2021.

**4. CONSENT CALENDAR ITEMS – ACTION**

- 7-10** Subject Adopt amendment to the Administrative Code establishing Metropolitan-specific parliamentary procedures; the General

Manager has determined that the proposed action is exempt or not subject to CEQA

Presented by: None

Motion: Postpone consideration of Item 7-10 to July.

Director Goldberg made a motion, seconded by Director Murray, to postpone consideration of Item 7-10 to the July Legal and Claims meeting. Chair Dick pulled the item from the consent calendar and called for a vote.

The vote was:

Ayes: Directors Atwater, Camacho, Dick, Fellow, Goldberg, Murray, Phan, Record, Smith, and Tamaribuchi

Noes: None

Abstain: None

Absent: Kassakhian

The motion for Item 7-10 passed by a vote of 10 ayes, 0 noes, 0 abstain, and 1 absent.

**7-11**      Subject      Update on CDWR Water Operations Cases, Sacramento County Super. Ct. Case No. JCCP 5117 and request for authorization to increase maximum amount payable in contract with Andrade Gonzalez LLP by \$150,000 to an amount not to exceed \$250,000; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA  
**[Conference with legal counsel – existing litigation; to be heard in closed session pursuant to Gov. Code Section 54956.9(d)(1)]**

Presented by: Chief Deputy General Counsel Robert Horton

Motion: Authorize the General Counsel to amend the existing agreement with Andrade Gonzalez LLP to increase the maximum amount payable by Metropolitan by \$150,000 to an amount not to exceed \$250,000

Chief Deputy General Counsel Robert Horton gave a report on this item in closed session.

Action was taken in open session.

Director Phan stated that Agenda Item 7-11 involves the California Department of Fish & Wildlife and the National Fisheries, both of whom are clients of her employer, Rutan & Tucker, therefore she recused herself from Agenda Item 7-11.

Director Tamaribuchi made a motion, seconded by Director Atwater, to approve the consent calendar consisting of items 3A and 7-11:

The vote was:

Ayes:	Directors Atwater, Camacho, Dick, Fellow, Goldberg, Murray, Phan (Item 3A), Record, Smith, and Tamaribuchi
Noes:	None
Recusal:	Phan (Item 7-11)
Abstain:	None
Absent:	Kassakhian

The motion for Item 3A passed by a vote of 10 ayes, 0 noes, 0 abstain, and 1 absent.

The motion for Item 7-11 passed by a vote of 9 ayes, 0 noes, 1 recusal, 0 abstain, and 1 absent.

### END OF CONSENT CALENDAR ITEMS

## 5. OTHER BOARD ITEMS – ACTION

None

## 6. BOARD INFORMATION ITEMS

None

## 7. COMMITTEE ITEMS

- a.           Subject           Report on *Imperial Irrigation District v. The Metropolitan Water District of Southern California, et al.*, Los Angeles Superior Court Case No. 19STCP01376 and pending appeal to California Court of Appeal, Second District; and *Imperial Irrigation District v. The Metropolitan Water District of Southern California*, Los Angeles Superior Court Case No. 0STCV46404  
[Conference with legal counsel – existing litigation; to be heard in closed session pursuant to Gov. Code Section 54956.9(d)(1)]

Presented by:       Senior Deputy General Counsel Michael Hughes

Senior Deputy General Counsel Michael Hughes gave a report on this item in closed session.

No action was taken.

- b.           Subject           Report on San Diego County Water Authority v. Metropolitan Water District of Southern California, et al., San Francisco County Superior Court Case Nos. CPF-10-510830, CPF-12-512466, CPF-14-514004, CPF-16-515282, CPF-16-515391, CGC-17-563350, and CPF-18-516389; the appeals of the 2010 and 2012 actions, Court of Appeal for the First Appellate District Case Nos. A146901, A148266, A161144, and A162168, and California Supreme Court Case No. S243500; the petition for extraordinary writ in the 2010 and 2012 actions, Court of Appeal for the First Appellate District Case No. A155310; the petition for extraordinary writ in the second 2016 action, Court of Appeal for the First Appellate District Case No. A154325 and California Supreme Court Case No. S251025; and the Metropolitan Water District of Southern California v. San Diego County Water Authority cross-complaints in the 2014 action and the first 2016 action.  
**[Conference with legal counsel – existing litigation; to be heard in closed session pursuant to Gov. Code Sections 54956.9(d)(1)]**

Presented by:     Assistant General Counsel Heather Beatty

Assistant General Counsel Heather Beatty gave a report on this item in closed session.

No action was taken.

## 8. FOLLOW-UP ITEMS

None

## 9. FUTURE AGENDA ITEMS

None

Next meeting will be held on July 13, 2021.

Meeting adjourned at 9:50 a.m.

Larry Dick  
Chair



• **Board of Directors**  
***Legal and Claims Committee***

7/13/2021 Board Meeting

7-9

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**Subject**

Adopt amendment to the Administrative Code establishing Metropolitan-specific parliamentary procedures; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

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**Executive Summary**

The Metropolitan Board has requested options to modify the current procedures for the conduct of committee and board meetings. This letter provides multiple options, including the addition of a new section to the Administrative Code establishing Metropolitan-specific parliamentary rules.

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**Details**

**Background**

The Metropolitan Board has requested information regarding options for consideration to the current parliamentary rules. At its March 9, 2021 meeting, the Legal and Claims Committee discussed current board procedures, including Administrative Code procedural rules, the current system of parliamentary rules, and parliamentary rules of other agencies.

The Administrative Code procedural rules cover time and place of meetings, agendas, meeting procedures, board officers, selection and duties, board committees' functions, and directors' responsibilities. The Administrative Code does not include rules of parliamentary procedure.

Under the current system of procedural rules, the Board or committee Chair presides over the applicable meetings. The Chair calls the meeting to order and adjourns the meeting, reviews closed session procedures, may reorder the agenda, and ensures timely completion of meetings. The Chair presides over debate using Robert's Rules of Order as a guide (or consulting the General Counsel) and makes parliamentary rulings which may be overruled by a majority of the Board. This system is based on long-standing practice and is not a formally adopted system of parliamentary procedure.

The parliamentary rules of 60 other agencies were reviewed. Approximately half of the agencies have agency-adopted rules and half of those use Robert's Rules of Order as a general guide. Less than half surveyed have formally adopted Robert's Rules of Order. One agency adopted Rosenberg's Rules of Order, although it was pointed out that many counties and cities that were not surveyed use Rosenberg's Rules, which is shorter, less complex, and more modern than Robert's Rules. Under all systems of parliamentary procedure that were reviewed, meetings are presided over by the Chair and, under nearly all, the Chair makes parliamentary rulings subject to the objection of a majority of the legislative body.

**Proposed Procedures**

The committee asked Legal to return with draft language for the adoption of Metropolitan-specific rules and other options for board and committee meetings. The following options are for review and consideration by the committee and the Board:

- (1) Amend the Administrative Code by adding Section 2124 to provide Metropolitan-specific parliamentary procedures based on Rosenberg's Rules of Order, Revised 2011, as the meeting procedures for the Board and committees. The proposed amendment is attached as **Attachment 1**.



- (2) Retain Metropolitan's current procedural rules with amendments to Administrative Code Sections 2205 and 2401 to expressly provide that a parliamentary ruling by the Chair of a committee or the Board may be overruled by a simple majority of the applicable committee or full Board. Pursuant to this option, the Chair would continue to, in his or her discretion, consult Robert's Rules of Order as a general guide, or seek assistance from the General Counsel. The amendments to the Administrative Code for this option are attached as **Attachment 2**.
- (3) Amend the Administrative Code by adding Section 2124 to the Administrative Code to provide that Rosenberg's Rules of Order, Revised 2011, and as revised in the future, are the parliamentary procedures for Metropolitan's Board and committees, without any Metropolitan-specific modification. The proposed amendment is attached as **Attachment 3**.

Any of these options, if selected, would become effective as of July 12, 2021.

## **Policy**

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Metropolitan Administrative Code Section 2110: Regular Meetings.

Metropolitan Administrative Code Section 2205: Duties of the Chair.

Metropolitan Administrative Code Section 2401: Officers and Members of Standing Committees.

Metropolitan Administrative Code Section 11104: Delegation of Responsibilities.

## **California Environmental Quality Act (CEQA)**

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### **CEQA determination for Option #1 – Option #3:**

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action may have a significant impact on the environment, the action is not subject to CEQA pursuant to Section 15061(b)(3) of the State CEQA Guidelines.

### **CEQA determination for Option #4:**

None required

## **Board Options**

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### **Option #1**

Amend the Administrative Code by adding Section 2124 to provide Metropolitan-specific parliamentary procedures based on Rosenberg's Rules of Order, Revised 2011, as the meeting procedures for the Board and committees. (**Attachment 1**)

**Fiscal Impact:** None

**Business Analysis:** Metropolitan would formally adopt a system of parliamentary procedures for board and committee meetings with Metropolitan-specific rules.

### **Option #2**

Retain Metropolitan's current procedural rules with amendments to Administrative Code Sections 2205 and 2401 to provide that a parliamentary ruling by the Chair of a committee or the Board may be overruled by a simple majority of the applicable committee or full Board. (**Attachment 2**)

**Fiscal Impact:** None

**Business Analysis:** Metropolitan would amend its current procedural rules for board and committee meetings.

**Option #3**

Amend the Administrative Code by adding Section 2124 to the Administrative Code to provide that Rosenberg's Rules of Order, Revised 2011, and as revised in the future, are the parliamentary procedures for Metropolitan's Board and committees. (**Attachment 3**)

**Fiscal Impact:** None

**Business Analysis:** Metropolitan would formally adopt a system of parliamentary procedures for board and committee meetings with a general set of parliamentary procedures.

**Option #4**

Do not amend the Administrative Code


**Fiscal Impact:** None

**Business Analysis:** Metropolitan would retain its current procedural rules.

**Staff Recommendation**

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None

  
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Marcia Scully  
General Counsel

6/14/2021  
\_\_\_\_\_  
Date

**Attachment 1 – Proposed Administrative Code amendment for Metropolitan-specific parliamentary procedures based on Rosenberg's Rules of Order, Revised 2011**

**Attachment 2 – Proposed Administrative Code amendments for current procedures**

**Attachment 3 – Proposed Administrative Code amendment to follow Rosenberg's Rules of Order, Revised 2011, and as revised in the future**

Ref# 12679629

**Division II****PROCEDURES PERTAINING TO BOARD, COMMITTEES  
AND DIRECTORS****Chapter 1****BOARD OF DIRECTORS****STRIKE OUT/UNDERLINE VERSION:****§ 2124. Parliamentary Meeting Procedures.**

(a) General. These parliamentary meeting procedures shall apply to meetings of the Board and its committees. These meeting procedures shall apply unless waived or except as otherwise provided by state law, this Administrative Code, or Metropolitan emergency procedures.

(b) Role of the Chair. The Chair of the Board or of a committee is the presiding officer and is charged with applying these meeting procedures for Board meetings and committees, respectively. The Chair makes the final ruling on all meeting procedures. All rulings by the Chair of the Board with respect to Board meetings are final unless overruled by a simple majority of the full Board. All rulings by the Chair of a committee with respect to a committee meeting are final unless overruled by a simple majority of the committee. These meeting procedures are intended to apply flexibly, however, such that the Chair may refer to Robert's Rules of Order or may consult the General Counsel before making a parliamentary ruling.

(c) Main Motions. The Chair initiates a motion by inviting Directors to make a motion or by suggesting a motion to the Directors. The Chair may also make motions. Main motions generally require a motion maker and a person who seconds the motion; however, the Chair may proceed without a second. The most common motions are as follows:

(1) The Main Motion. This motion puts forth a decision for the Board or committee to consider.

(2) The Motion to Amend. This motion seeks to modify or change the main motion in some way without changing its basic nature.

(3) The Substitute Motion. This motion seeks to discard the main motion and put forth a new and different motion.

(4) Friendly Amendment. When, after some discussion, it appears the motion will win support with an amendment, and if the maker of the motion and the person who seconded accepts the amendment, then this friendly amendment becomes the pending motion before the Board or committee. This motion saves time by reducing the number of formal motions needed to bring a vote.

(d) Multiple Motions Before the Board or Committee. There can be up to three motions on the floor simultaneously. The Chair may reject a fourth motion until he or she has addressed the three that are already pending. When there are two or three motions under consideration, the votes should proceed on the last motion first and then work themselves backward to the second and first motions.

(e) Motions Requiring Immediate Vote; Not Subject to Debate. In general, motions are subject to full discussion and debate by the Board or committee. Discussion may continue until the Chair decides it has been fully debated or it is time to conclude. The following motions are exceptions to this general rule and require an immediate vote when made. Except where indicated otherwise, these motions require a second, are not debatable, and require a simple majority.

(1) Motion to Adjourn. This motion requires the Board or committee to adjourn to the next regularly scheduled meeting. A variation on this motion requires the Board or committee to adjourn at a fixed time, usually if a meeting is running particularly long.

(2) Motion to Recess. This motion allows for a short recess. A Director may request a specific duration but usually the Chair decides the length of time.

(3) Motion to Postpone. This motion requires tabling the discussion and postponing it, usually to a time certain. However, if the time is uncertain, a motion to resume consideration will be required to bring it back to the Board or committee.

(4) Motion to Close, Limit, or Extend Debate. This motion is to end debate or place a time limit on it, or remove a previous time limit, and bring the matter to a vote. It requires a two-thirds vote. The Chair should first inquire if there is any interest in continuing the discussion. If there is, the Chair should treat the request as a formal motion and call for a vote, but if not, the Chair may call for a vote on the main motion.

(5) Motion to Object to Consideration. This motion prevents consideration of an agenda item by the Board or committee. It requires two-thirds vote. A vote to sustain the objection can be reconsidered but a vote to affirm consideration cannot be reconsidered.

(f) Motions Requiring Debate.

(1) Motion to Reconsider. This motion is to reopen a previously finalized motion. It must be made at the meeting where the main motion was voted upon and must be made only by a Director who voted in the majority. It requires a second, is debatable, and requires a two-thirds vote. If the motion passes, then the Board or committee must discuss and debate and then vote on the main motion as if it had not been previously voted upon.

(2) Motion to Suspend the Rules. This motion allows the Board or committee to temporarily amend or waive these rules for a particular purpose. It requires a second, is debatable, and requires a two-thirds vote.

(g) **Maintaining Courtesy and Decorum.** The Chair and Directors shall maintain professionalism, respect and civility. Generally, only one person at a time has the floor. The Chair should ensure the discussion and debate is free and open yet focused enough to effectively conduct business. The Chair has the right to limit the time allotted to Directors, and to terminate discussion devoid of common courtesy and decorum. In general, a Director may not interrupt the Chair or another Director except in the following situations:

(1) **Point of Privilege.** A point of privilege relates to something that interferes with the normal comfort and functioning of the meeting such as temperature, lighting or technical malfunctions. The point is made to the Chair who then makes a ruling.

(2) **Point of Order.** A point of order relates to a meeting procedure not being maintained. The point is made to the Chair who then makes a ruling. The Director who raises the point may appeal the ruling to the Board or committee.

(3) **Motion to Appeal.** This motion reverses the ruling of the Chair when the Board or committee disagrees with it, usually a point of order. It requires a second, is debatable, and requires a simple majority.

(4) **Withdraw a Motion.** This motion allows the maker of the motion to withdraw their motion at any time during the discussion of it. The motion is immediately deemed withdrawn.

### **CLEAN VERSION:**

#### **§ 2124. Parliamentary Meeting Procedures.**

(a) **General.** These parliamentary meeting procedures shall apply to meetings of the Board and its committees. These meeting procedures shall apply unless waived or except as otherwise provided by state law, this Administrative Code, or Metropolitan emergency procedures.

(b) **Role of the Chair.** The Chair of the Board or of a committee is the presiding officer and is charged with applying these meeting procedures for Board meetings and committees, respectively. The Chair makes the final ruling on all meeting procedures. All rulings by the Chair of the Board with respect to Board meetings are final unless overruled by a simple majority of the full Board. All rulings by the Chair of a committee with respect to a committee meeting are final unless overruled by a simple majority of the committee. These meeting procedures are intended to apply flexibly, however, such that the Chair may refer to Robert's Rules of Order or may consult the General Counsel before making a parliamentary ruling.

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(d) Multiple Motions Before the Board or Committee. There can be up to three motions on the floor simultaneously. The Chair may reject a fourth motion until he or she has addressed the three that are already pending. When there are two or three motions under consideration, the votes should proceed on the last motion first and then work themselves backward to the second and first motions.

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(4) Motion to Close, Limit, or Extend Debate. This motion is to end debate or place a time limit on it, or remove a previous time limit, and bring the matter to a vote. It requires a two-thirds vote. The Chair should first inquire if there is any interest in continuing the discussion. If there is, the Chair should treat the request as a formal motion and call for a vote, but if not, the Chair may call for a vote on the main motion.

(5) Motion to Object to Consideration. This motion prevents consideration of an agenda item by the Board or committee. It requires two-thirds vote. A vote to sustain the objection can be reconsidered but a vote to affirm consideration cannot be reconsidered.

(f) Motions Requiring Debate.

(1) Motion to Reconsider. This motion is to reopen a previously finalized motion. It must be made at the meeting where the main motion was voted upon and must be made only by a Director who voted in the majority. It requires a second, is debatable, and requires a two-thirds vote. If the motion passes, then the Board or committee must discuss and debate and then vote on the main motion as if it had not been previously voted upon.

(2) Motion to Suspend the Rules. This motion allows the Board or committee to temporarily amend or waive these rules for a particular purpose. It requires a second, is debatable, and requires a two-thirds vote.

(g) Maintaining Courtesy and Decorum. The Chair and Directors shall maintain professionalism, respect and civility. Generally, only one person at a time has the floor. The Chair should ensure the discussion and debate is free and open yet focused enough to effectively conduct business. The Chair has the right to limit the time allotted to Directors, and to terminate discussion devoid of common courtesy and decorum. In general, a Director may not interrupt the Chair or another Director except in the following situations:

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(2) Point of Order. A point of order relates to a meeting procedure not being maintained. The point is made to the Chair who then makes a ruling. The Director who raises the point may appeal the ruling to the Board or committee.

(3) Motion to Appeal. This motion reverses the ruling of the Chair when the Board or committee disagrees with it, usually a point of order. It requires a second, is debatable, and requires a simple majority.

(4) Withdraw a Motion. This motion allows the maker of the motion to withdraw their motion at any time during the discussion of it. The motion is immediately deemed withdrawn.

**Division II****PROCEDURES PERTAINING TO BOARD, COMMITTEES  
AND DIRECTORS****Chapter 2****BOARD OFFICERS****STRIKEOUT/UNDERLINE VERSION:****§ 2205. Duties of the Chair.**

As prescribed by the Board, the Chair's duties include:

- (a) Presiding over meetings of the Board, with the exception that the Board may by a simple majority overrule procedural rulings of the Chair;
- (b) Ex officio membership on standing or special committees as designated in this Code;
- (c) Making committee appointments as set forth in this Code; and,
- (d) Other Board duties not specifically delegated to another Board officer or director.

**Chapter 4****STANDING COMMITTEES****§ 2401. Officers and Members of Standing Committees.**

(a) Members, Chair, and Vice Chair of standing committees with the exception of the Executive Committee shall be appointed subject to the approval of the Executive Committee and the Board on the basis that each director, with the exception of the Chair of the Board, serve on at least one standing committees, in addition to the Executive Committee. Such appointment shall be made by the Chair of the Board unless a new Chair-elect has been selected by the Board to take office on the next January 1, in which event appointment of Chair and Vice-Chair of standing committees shall be made by the Chair-elect.

(b) Chair and Vice Chair of standing committees with the exception of the Executive Committee are to be appointed in even-numbered years at the December meeting of the Board for a two-year term commencing on January 1 of odd-numbered years. No director shall be appointed to the same committee office for more than two consecutive full terms.

(c) The Chair of the Board or the Vice Chair to whom the Chair has assigned the Chair's membership pursuant to Section 2204 is a member ex-officio, with right to vote, of all standing



and special committees of the Board. However, the Chair or the Vice Chair to whom the Chair's membership has been assigned shall not be considered a member of any committee of which the officer is a member ex-officio for the purpose of determining whether a quorum of the committee is present unless the Chair or Vice Chair is actually present at the meeting of the committee.

(d) The committee Chair's duties include presiding over meetings of the committee, with the exception that the committee may by a simple majority overrule procedural rulings of the Chair.

**CLEAN VERSION:**

**§ 2205. Duties of the Chair.**

As prescribed by the Board, the Chair's duties include:

- (a) Presiding over meetings of the Board, with the exception that the Board may by a simple majority overrule procedural rulings of the Chair;
- (b) Ex officio membership on standing or special committees as designated in this Code;
- (c) Making committee appointments as set forth in this Code; and,
- (d) Other Board duties not specifically delegated to another Board officer or director.

**Chapter 4**

**STANDING COMMITTEES**

**§ 2401. Officers and Members of Standing Committees.**

(a) Members, Chair, and Vice Chair of standing committees with the exception of the Executive Committee shall be appointed subject to the approval of the Executive Committee and the Board on the basis that each director, with the exception of the Chair of the Board, serve on at least one standing committees, in addition to the Executive Committee. Such appointment shall be made by the Chair of the Board unless a new Chair-elect has been selected by the Board to take office on the next January 1, in which event appointment of Chair and Vice-Chair of standing committees shall be made by the Chair-elect.

(b) Chair and Vice Chair of standing committees with the exception of the Executive Committee are to be appointed in even-numbered years at the December meeting of the Board for a two-year term commencing on January 1 of odd-numbered years. No director shall be appointed to the same committee office for more than two consecutive full terms.

(c) The Chair of the Board or the Vice Chair to whom the Chair has assigned the Chair's membership pursuant to Section 2204 is a member ex-officio, with right to vote, of all standing

and special committees of the Board. However, the Chair or the Vice Chair to whom the Chair's membership has been assigned shall not be considered a member of any committee of which the officer is a member ex-officio for the purpose of determining whether a quorum of the committee is present unless the Chair or Vice Chair is actually present at the meeting of the committee.

(d) The committee Chair's duties include presiding over meetings of the committee, with the exception that the committee may by a simple majority overrule procedural rulings of the Chair.

**Division II****PROCEDURES PERTAINING TO BOARD, COMMITTEES  
AND DIRECTORS****Chapter 1****BOARD OF DIRECTORS****STRIKEOUT/UNDERLINE VERSION:****§ 2124. Parliamentary Meeting Procedures.**

The Rosenberg's Rules of Order, Revised 2011, and as revised in the future, shall apply to meetings of the Board and its committees as parliamentary meeting procedures. These meeting procedures shall apply unless waived or except as otherwise provided by state law, this Administrative Code, or Metropolitan emergency procedures.

**CLEAN VERSION:****§ 2124. Parliamentary Meeting Procedures.**

The Rosenberg's Rules of Order, Revised 2011, and as revised in the future, shall apply to meetings of the Board and its committees as parliamentary meeting procedures. These meeting procedures shall apply unless waived or except as otherwise provided by state law, this Administrative Code, or Metropolitan emergency procedures.



# Rosenberg's Rules of Order

REVISED 2011

*Simple Rules of Parliamentary Procedure for the 21st Century*

*By Judge Dave Rosenberg*



## MISSION AND CORE BELIEFS

To expand and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.

## VISION

To be recognized and respected as the leading advocate for the common interests of California's cities.

### About the League of California Cities

Established in 1898, the League of California Cities is a member organization that represents California's incorporated cities. The League strives to protect the local authority and autonomy of city government and help California's cities effectively serve their residents. In addition to advocating on cities' behalf at the state capitol, the League provides its members with professional development programs and information resources, conducts education conferences and research, and publishes Western City magazine.

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### ABOUT THE AUTHOR

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

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## INTRODUCTION

The rules of procedure at meetings should be simple enough for most people to understand. Unfortunately, that has not always been the case. Virtually all clubs, associations, boards, councils and bodies follow a set of rules — *Robert's Rules of Order* — which are embodied in a small, but complex, book. Virtually no one I know has actually read this book cover to cover. Worse yet, the book was written for another time and for another purpose. If one is chairing or running a parliament, then *Robert's Rules of Order* is a dandy and quite useful handbook for procedure in that complex setting. On the other hand, if one is running a meeting of say, a five-member body with a few members of the public in attendance, a simplified version of the rules of parliamentary procedure is in order.

Hence, the birth of *Rosenberg's Rules of Order*.

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

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

1. **Rules should establish order.** The first purpose of rules of parliamentary procedure is to establish a framework for the orderly conduct of meetings.
2. **Rules should be clear.** Simple rules lead to wider understanding and participation. Complex rules create two classes: those who understand and participate; and those who do not fully understand and do not fully participate.
3. **Rules should be user friendly.** That is, the rules must be simple enough that the public is invited into the body and feels that it has participated in the process.
4. **Rules should enforce the will of the majority while protecting the rights of the minority.** The ultimate purpose of rules of procedure is to encourage discussion and to facilitate decision making by the body. In a democracy, majority rules. The rules must enable the majority to express itself and fashion a result, while permitting the minority to also express itself, but not dominate, while fully participating in the process.

### Establishing a Quorum

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

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

### The Role of the Chair

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

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

### The Basic Format for an Agenda Item Discussion

Formal meetings normally have a written, often published agenda. Informal meetings may have only an oral or understood agenda. In either case, the meeting is governed by the agenda and the agenda constitutes the body's agreed-upon roadmap for the meeting. Each agenda item can be handled by the chair in the following basic format:



**First**, the chair should clearly announce the agenda item number and should clearly state what the agenda item subject is. The chair should then announce the format (which follows) that will be followed in considering the agenda item.

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

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

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

**Fifth**, the chair should invite a motion. The chair should announce the name of the member of the body who makes the motion.

**Sixth**, the chair should determine if any member of the body wishes to second the motion. The chair should announce the name of the member of the body who seconds the motion. It is normally good practice for a motion to require a second before proceeding to ensure that it is not just one member of the body who is interested in a particular approach. However, a second is not an absolute requirement, and the chair can proceed with consideration and vote on a motion even when there is no second. This is a matter left to the discretion of the chair.

**Seventh**, if the motion is made and seconded, the chair should make sure everyone understands the motion.

This is done in one of three ways:

1. The chair can ask the maker of the motion to repeat it;
2. The chair can repeat the motion; or
3. The chair can ask the secretary or the clerk of the body to repeat the motion.

**Eighth**, the chair should now invite discussion of the motion by the body. If there is no desired discussion, or after the discussion has ended, the chair should announce that the body will vote on the motion. If there has been no discussion or very brief discussion, then the vote on the motion should proceed immediately and there is no need to repeat the motion. If there has been substantial discussion, then it is normally best to make sure everyone understands the motion by repeating it.

**Ninth**, the chair takes a vote. Simply asking for the “ayes” and then asking for the “nays” normally does this. If members of the body do not vote, then they “abstain.” Unless the rules of the body provide otherwise (or unless a super majority is required as delineated later in these rules), then a simple majority (as defined in law or the rules of the body as delineated later in these rules) determines whether the motion passes or is defeated.

**Tenth**, the chair should announce the result of the vote and what action (if any) the body has taken. In announcing the result, the chair should indicate the names of the members of the body, if any, who voted in the minority on the motion. This announcement might take the following form: “The motion passes by a vote of 3-2, with Smith and Jones dissenting. We have passed the motion requiring a 10-day notice for all future meetings of this body.”

## Motions in General

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

Motions are made in a simple two-step process. First, the chair should recognize the member of the body. Second, the member of the body makes a motion by preceding the member’s desired approach with the words “I move ...”

A typical motion might be: “I move that we give a 10-day notice in the future for all our meetings.”

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

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

## The Three Basic Motions

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

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



**The motion to amend.** If a member wants to change a basic motion that is before the body, they would move to amend it. A motion to amend might be: “I move that we amend the motion to have a 10-member committee.” A motion to amend takes the basic motion that is before the body and seeks to change it in some way.

**The substitute motion.** If a member wants to completely do away with the basic motion that is before the body, and put a new motion before the body, they would move a substitute motion. A substitute motion might be: “I move a substitute motion that we cancel the annual fundraiser this year.”

“Motions to amend” and “substitute motions” are often confused, but they are quite different, and their effect (if passed) is quite different. A motion to amend seeks to retain the basic motion on the floor, but modify it in some way. A substitute motion seeks to throw out the basic motion on the floor, and substitute a new and different motion for it. The decision as to whether a motion is really a “motion to amend” or a “substitute motion” is left to the chair. So if a member makes what that member calls a “motion to amend,” but the chair determines that it is really a “substitute motion,” then the chair’s designation governs.

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

### Multiple Motions Before the Body

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

When there are two or three motions on the floor (after motions and seconds) at the same time, the vote should proceed *first* on the *last* motion that is made. For example, assume the first motion is a basic “motion to have a five-member committee to plan and put on our annual fundraiser.” During the discussion of this motion, a member might make a second motion to “amend the main motion to have a 10-member committee, not a five-member committee to plan and put on our annual fundraiser.” And perhaps, during that discussion, a member makes yet a third motion as a “substitute motion that we not have an annual fundraiser this year.” The proper procedure would be as follows:

**First**, the chair would deal with the *third* (the last) motion on the floor, the substitute motion. After discussion and debate, a vote would be taken first on the third motion. If the substitute motion *passed*, it would be a substitute for the basic motion and would eliminate it. The first motion would be moot, as would the second motion (which sought to amend the first motion), and the action on the agenda item would be completed on the passage by the body of the third motion (the substitute motion). No vote would be taken on the first or second motions.

**Second**, if the substitute motion *failed*, the chair would then deal with the second (now the last) motion on the floor, the motion to amend. The discussion and debate would focus strictly on the amendment (should the committee be five or 10 members). If the motion to amend *passed*, the chair would then move to consider the main motion (the first motion) as *amended*. If the motion to amend *failed*, the chair would then move to consider the main motion (the first motion) in its original format, not amended.

**Third**, the chair would now deal with the first motion that was placed on the floor. The original motion would either be in its original format (five-member committee), or if *amended*, would be in its amended format (10-member committee). The question on the floor for discussion and decision would be whether a committee should plan and put on the annual fundraiser.

### To Debate or Not to Debate

The basic rule of motions is that they are subject to discussion and debate. Accordingly, basic motions, motions to amend, and substitute motions are all eligible, each in their turn, for full discussion before and by the body. The debate can continue as long as members of the body wish to discuss an item, subject to the decision of the chair that it is time to move on and take action.

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire of the body to move on. The following motions are not debatable (that is, when the following motions are made and seconded, the chair must immediately call for a vote of the body without debate on the motion):

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

**Motion to recess.** This motion, if passed, requires the body to immediately take a recess. Normally, the chair determines the length of the recess which may be a few minutes or an hour. It requires a simple majority vote.

**Motion to fix the time to adjourn.** This motion, if passed, requires the body to adjourn the meeting at the specific time set in the motion. For example, the motion might be: “I move we adjourn this meeting at midnight.” It requires a simple majority vote.

**Motion to table.** This motion, if passed, requires discussion of the agenda item to be halted and the agenda item to be placed on “hold.” The motion can contain a specific time in which the item can come back to the body. “I move we table this item until our regular meeting in October.” Or the motion can contain no specific time for the return of the item, in which case a motion to take the item off the table and bring it back to the body will have to be taken at a future meeting. A motion to table an item (or to bring it back to the body) requires a simple majority vote.

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

When a member of the body makes such a motion (“I move the previous question”), the member is really saying: “I’ve had enough debate. Let’s get on with the vote.” When such a motion is made, the chair should ask for a second, stop debate, and vote on the motion to limit debate. The motion to limit debate requires a two-thirds vote of the body.

**NOTE:** A motion to limit debate could include a time limit. For example: “I move we limit debate on this agenda item to 15 minutes.” Even in this format, the motion to limit debate requires a two-thirds vote of the body. A similar motion is a *motion to object to consideration of an item*. This motion is not debatable, and if passed, precludes the body from even considering an item on the agenda. It also requires a two-thirds vote.

## Majority and Super Majority Votes

In a democracy, a simple majority vote determines a question. A tie vote means the motion fails. So in a seven-member body, a vote of 4-3 passes the motion. A vote of 3-3 with one abstention means the motion fails. If one member is absent and the vote is 3-3, the motion still fails.

All motions require a simple majority, but there are a few exceptions. The exceptions come up when the body is taking an action which effectively cuts off the ability of a minority of the body to take an action or discuss an item. These extraordinary motions require a two-thirds majority (a super majority) to pass:

**Motion to limit debate.** Whether a member says, “I move the previous question,” or “I move the question,” or “I call the question,” or “I move to limit debate,” it all amounts to an attempt to cut off the ability of the minority to discuss an item, and it requires a two-thirds vote to pass.

**Motion to close nominations.** When choosing officers of the body (such as the chair), nominations are in order either from a nominating committee or from the floor of the body. A motion to close nominations effectively cuts off the right of the minority to nominate officers and it requires a two-thirds vote to pass.

**Motion to object to the consideration of a question.** Normally, such a motion is unnecessary since the objectionable item can be tabled or defeated straight up. However, when members of a body do not even want an item on the agenda to be considered, then such a motion is in order. It is not debatable, and it requires a two-thirds vote to pass.

**Motion to suspend the rules.** This motion is debatable, but requires a two-thirds vote to pass. If the body has its own rules of order, conduct or procedure, this motion allows the body to suspend the rules for a particular purpose. For example, the body (a private club) might have a rule prohibiting the attendance at meetings by non-club members. A motion to suspend the rules would be in order to allow a non-club member to attend a meeting of the club on a particular date or on a particular agenda item.

## Counting Votes

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

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

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

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

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

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

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

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

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

#### *How does this work in practice?*

##### *Here are a few examples.*

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

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

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

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

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

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

### **The Motion to Reconsider**

There is a special and unique motion that requires a bit of explanation all by itself; the motion to reconsider. A tenet of parliamentary procedure is finality. After vigorous discussion, debate and a vote, there must be some closure to the issue. And so, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to consider is made and passed.

A motion to reconsider requires a majority vote to pass like other garden-variety motions, but there are two special rules that apply only to the motion to reconsider.

First, is the matter of timing. A motion to reconsider must be made at the meeting where the item was first voted upon. A motion to reconsider made at a later time is untimely. (The body, however, can always vote to suspend the rules and, by a two-thirds majority, allow a motion to reconsider to be made at another time.)

Second, a motion to reconsider may be made only by certain members of the body. Accordingly, a motion to reconsider may be made only by a member who voted in the majority on the original motion. If such a member has a change of heart, he or she may make the motion to reconsider (any other member of the body — including a member who voted in the minority on the original motion — may second the motion). If a member who voted in the minority seeks to make the motion to reconsider, it must be ruled out of order. The purpose of this rule is finality. If a member of minority could make a motion to reconsider, then the item could be brought back to the body again and again, which would defeat the purpose of finality.

If the motion to reconsider passes, then the original matter is back before the body, and a new original motion is in order. The matter may be discussed and debated as if it were on the floor for the first time.



## Courtesy and Decorum

The rules of order are meant to create an atmosphere where the members of the body and the members of the public can attend to business efficiently, fairly and with full participation. At the same time, it is up to the chair and the members of the body to maintain common courtesy and decorum. Unless the setting is very informal, it is always best for only one person at a time to have the floor, and it is always best for every speaker to be first recognized by the chair before proceeding to speak.

The chair should always ensure that debate and discussion of an agenda item focuses on the item and the policy in question, not the personalities of the members of the body. Debate on policy is healthy, debate on personalities is not. The chair has the right to cut off discussion that is too personal, is too loud, or is too crude.

Debate and discussion should be focused, but free and open. In the interest of time, the chair may, however, limit the time allotted to speakers, including members of the body.

Can a member of the body interrupt the speaker? The general rule is “no.” There are, however, exceptions. A speaker may be interrupted for the following reasons:

**Privilege.** The proper interruption would be, “point of privilege.” The chair would then ask the interrupter to “state your point.” Appropriate points of privilege relate to anything that would interfere with the normal comfort of the meeting. For example, the room may be too hot or too cold, or a blowing fan might interfere with a person’s ability to hear.

**Order.** The proper interruption would be, “point of order.” Again, the chair would ask the interrupter to “state your point.” Appropriate points of order relate to anything that would not be considered appropriate conduct of the meeting. For example, if the chair moved on to a vote on a motion that permits debate without allowing that discussion or debate.

**Appeal.** If the chair makes a ruling that a member of the body disagrees with, that member may appeal the ruling of the chair. If the motion is seconded, and after debate, if it passes by a simple majority vote, then the ruling of the chair is deemed reversed.

**Call for orders of the day.** This is simply another way of saying, “return to the agenda.” If a member believes that the body has drifted from the agreed-upon agenda, such a call may be made. It does not require a vote, and when the chair discovers that the agenda has not been followed, the chair simply reminds the body to return to the agenda item properly before them. If the chair fails to do so, the chair’s determination may be appealed.

**Withdraw a motion.** During debate and discussion of a motion, the maker of the motion on the floor, at any time, may interrupt a speaker to withdraw his or her motion from the floor. The motion is immediately deemed withdrawn, although the chair may ask the person who seconded the motion if he or she wishes to make the motion, and any other member may make the motion if properly recognized.

## Special Notes About Public Input

The rules outlined above will help make meetings very public-friendly. But in addition, and particularly for the chair, it is wise to remember three special rules that apply to each agenda item:

**Rule One:** Tell the public what the body will be doing.

**Rule Two:** Keep the public informed while the body is doing it.

**Rule Three:** When the body has acted, tell the public what the body did.



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- Board of Directors  
*Legal and Claims Committee*

7/13/2021 Board Meeting

7-10

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## Subject

Authorize increase of \$100,000, to a maximum amount payable of \$300,000, for existing General Counsel contract with Olson Remcho LLP to provide general government law advice related to the Political Reform Act, the Fair Political Practices Commission regulations, conflict of interest law and other legislative and ethics matters; the General Manager has determined the proposed action is exempt or otherwise not subject to CEQA

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## Executive Summary and Details

The General Counsel entered into a contract with the law firm of Olson Hagel & Fishburn LLP (Olson Hagel) on July 1, 2014, for \$50,000 to provide Metropolitan with general government law advice related to the Political Reform Act (PRA), the Fair Political Practices Commission (FPPC) regulations, conflict of interest law and other legislative and ethics matters. The firm focuses on election and political law, campaign reporting, conflicts of interest, ethics and other public law matters. Under a separate contract, the firm was engaged to assist in a review of the policies and procedures of Metropolitan's Ethics Office and to propose amendments to Metropolitan's Administrative Code relative to Ethics matters. In 2020 the name of the firm was changed to Olson Remcho LLP. Lance Olson continues to perform most of the work under the contract.

Under this contract, the firm provides valuable advice and assistance to Legal and the Ethics Office on an as-requested basis. As part of the contract, the firm serves as Metropolitan's designated agent for the required electronic filing of Lobbyist Reports under the PRA, and regularly reviews and files these reports with the FPPC for Metropolitan. The firm also assists the General Counsel and the Ethics Officer in joint discussions of the interpretation and requirements of the PRA in researching and responding to questions from staff and members of the Board. The firm provided Brown Act training to the Board in January 2021 and assisted in responding to additional questions from the Board regarding the training and related matters.

The agreement was amended on November 1, 2016, to increase the maximum amount payable to \$100,000 and in August 2018 by \$100,000 to a maximum amount payable of \$200,000. The expenditures are approaching the \$200,000 maximum. This letter requests an increase of \$100,000 to a maximum of \$300,000 so that Olson Remcho LLP can continue to provide these legal services for Metropolitan. This agreement remains in effect until terminated. While the rate of expenditure is subject to the number and nature of the matters requiring assistance from the firm, it is anticipated that the increase will be adequate for at least an additional year.

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## Policy

Metropolitan Water District Administrative Code Section 6430: General Counsel's employment of attorneys to render special counsel services

Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities

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## California Environmental Quality Act (CEQA)

### CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA (Public Resources Code Section 21065, State CEQA Guidelines Section 15378) because the proposed action involves fiscal decisions that will not cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. In addition, the proposed action is not defined as a project under CEQA because it involves continuing

administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines) and other government fiscal activities, which do not involve any commitment to any specific project, or which may result in a potentially significant physical impact on the environment (Section 15378(b)(4) of the State CEQA Guidelines). Finally, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

**CEQA determination for Option #2:**

None required

**Board Options**

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**Option #1**

Authorize the General Counsel to increase the amount payable under its agreement with Olson Remcho LLP by \$100,000 to a maximum amount payable of \$300,000.

**Fiscal Impact:** The sum of \$100,000 is added to this agreement for the provision of the authorized legal services, funded within the FY 2021/22 budget

**Option #2**

Do not authorize an increase in the maximum amount payable under this agreement with Olson Remcho LLP, effectively terminating this contract when the current funds are exhausted.

**Fiscal Impact:** No known fiscal impact but Metropolitan will not have access to the valuable expertise and assistance provided by this law firm

**Staff Recommendation**

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Option #1



Marcia Scully  
General Counsel

6/30/2021  
Date

Ref# I12676880