

# **Bagley- Keene Open Meeting Act Training:**

## **Notice & Agenda Closed Session Requirements**

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CDFA Legal Office

# Duties under the Bagley-Keene Act

- Covers all state boards and commissions
- Includes District Agricultural Associations (DAAs)

# Duties under the Bagley-Keene Act

- Each board has essentially three (3) duties under Bagley-Keene:
  - To give the public advance notice of meetings
  - To conduct any business of the DAA in an open session meeting  
(Except where a closed session is specifically authorized)
  - To provide an opportunity for public comment before taking any action or on items not on the agenda

# Bagley-Keene Act Training

This training covers:

- Meeting Notice and Agenda Requirements
- Closed Session Requirements

# Meeting Notices and Agendas

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# What is a Meeting?

- When there is a “meeting” as defined by the Act, notice to the public is required.
- A meeting occurs when most of the board convenes, either serially or together in one location, to discuss or decide issues within the board’s jurisdiction

# When Does a Meeting Require Notice?

## Types of DAA Meetings

- Regular Monthly Meetings (10-day notice)
  - When a quorum meets under normal circumstances
- Committee Meetings
  - Formed by the board for a specific purpose
- Special Meeting (48-hour notice)
  - Only for specific purposes with a finding of substantial hardship by 2/3 vote of the board
- Emergency Meeting (1-hour notice)
  - Crippling disaster or work stoppage that severely impacts public health or safety

# Committee Meetings

## Standing Committees

- Three (3) or more board members
  - Full compliance with the Act
  
- Two (2) board members acting with the authority delegated by the Board
  - Full compliance with the Act



# Committee Meetings

## **Ad-Hoc Committee**

- Two (2) board members and staff
  - The Act does not apply
- For the purpose of information gathering only
- Report activity or recommendations to the board each month

# Committee Meetings

## Advisory Committee

- Special Exemption for DAAs – Food and Ag. Code § 3964.5
- Committees consist of board members only
- Formed by formal resolution or action of the full board
- Consists of less than a quorum
  - Four (4) board members or less

# Committee Meetings

## Advisory Committee

- If there are regular meetings held –
  - Bylaws or Board Policy Manual shall state the regular schedule
  - No other notice of regular meetings is required
  - Must post schedule online
- Meetings outside of regular schedule
  - Shall be noticed at least 24-hours in advance
  - Posted online
  - Emailed or mailed to the public requesting notice

# What is Not a Meeting?

Board member activity that does not require public notice:

- Individual contact between a board member and the public
- Attendance at a social event
- Attendance at an event of another government body
  - Provided that the board members do not discuss board business

# Examples of Non-Meetings

- Conferences, Conventions, Fair Fundraiser Events
- Local public meetings
- School board meetings
- Open, noticed meeting of another state body or local legislative body
- City Council, Board of Supervisors Meeting, etc.
- Purely social or ceremonial occasion
- Fair Fundraiser Event, Farm Show Event, etc.

# When a Non-Meeting Becomes a Meeting

- It would violate the Act for board members to meet privately over lunch and discusses Board business - even how the Act applies to the board
- (Cal. Atty. Gen. Opinion No. 18-901, September 22, 2020)

# Meeting Notice Requirements

- Meetings shall be noticed with an agenda
- The meeting notice and agenda are separate documents
- Post together 10 days in advance of the meeting
  - Online
  - DAA's Administrative Office
- The CEO prepares and notices the agenda with the board president's approval

# Meeting Notice Requirements

- Counting for the 10-day notice period:
  - Start with the day before the meeting – Day 1
  - Count backwards on the calendar up to Day 10
  - Notice and agenda should be posted on the day before Day 10
- Once the 10-day notice period has begun, no amendment to the agenda allowed
  - Amendments restart the 10-day clock



# Posting on the Internet

If the fair's website is down and it's time to notice the meeting, request that F&E post the notice and agenda to their website

# Meeting Notice Requirements

The meeting notice and agenda must be ADA compliant:

- Arial font
- 11 point minimum
- Use only one font style for emphasis (bold, underline, italics)
  - “OLD BUSINESS” or Old Business or **Old Business**
  - Do not: “**OLD BUSINESS**”

# Meeting Notice Requirements

## Legal Office Template Provided

Elements of the Meeting Notice:

- Title “Meeting Notice”
- Date, time and location of meeting (teleconference information)
- Website where Board packet may be accessed by the public
- Names of Directors
- Public Participation Information
- Americans With Disabilities Act (ADA) Information

# Teleconference Information

COVID -19 Executive Order has relaxed the teleconference requirements

- Locations are not required to be noticed or open to the public
- Teleconference information must be posted on the notice and agenda
- Include website URL where meeting documents may be accessed by the public
- Include both the toll-free phone number and internet link for video conferencing
- All other Act requirements still apply

# Public Access to Board Packet

The public has a right to view all materials considered, discussed, or referenced by the Board during the meeting

“All meeting notices, agendas and materials considered by the Board during the meeting will be available online, in advance of the meeting, at: [www.fairwebsite.com/meetings](http://www.fairwebsite.com/meetings).”

# Notice of Public Participation

- Members of the public are encouraged to provide comment on each agenda item
- Placement of an item on an agenda is within the discretion of the Board
- Public comment may be limited – Example: 3 minutes
- See Legal Office Template for example

# ADA Information

- Must include the CEO's or staff's name and contact information for arranging accommodations or modifications
- Do not bury this information in small point font in a footnote. ADA information must be ADA compliant.
- “All Board meetings must be accessible to the physically disabled. Any person needing a disability related accommodation or modification in order to attend or participate in any Board or Committee meetings or other fair activities may request assistance by contacting John Smith at the fair office or calling (808)777-777.”

# Meeting Notice Requirements

## Legal Office Template Provided

Elements of the Meeting Agenda:

- “Meeting Agenda” Title
- Date, time and location of meeting (teleconference information)
- Agenda Items – Be specific
- Public Comment on Items Not on the Agenda
- Americans With Disabilities Act (ADA) Information



# Meeting Agenda Requirements

## Public Comment on Items Not Listed on the Agenda

- “In accordance with state law, the Board will not comment or otherwise consider Public Comment matters until and unless such items have been properly noticed for a future meeting.”
- The board may not engage with the speaker or respond to questions and accusations because the issue is not on the agenda
- Do not list individuals or entities who have given advance notice that they want to address the board

# Meeting Agenda Requirements

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## Agenda Items Must be Specific

The agenda must identify all items of business to be discussed or transacted with enough specificity to inform the public

Not Specific Enough:

- “Other Business”
- “Miscellaneous”
- “Other Reports”
- “Funding Request”
- “Construction Update”
- “Speedway”

# Meeting Agenda Requirements

## Agenda Items Must be Specific

Examples of agenda items with specificity:

- “Funding Request to CDFA for Emergency Repair to Administrative Office Roof”
- “Construction Update on the Repairs to Administrative Office Roof”
- “Review of current operations agreement for the speedway”

# Meeting Agenda Requirements

- Listing action items with “approve” erroneously conveys to the public that a board has already made a decision.
  - List the subject matter
  - Discussion/Action by Board
- “New Business” (*Discussion/Action by Board*)
  - “Short-term rental policy and occupancy for RV Park”
- Do not: “Approve short-term rental policy and occupancy agreement for RV Park”

# Meeting Agenda Requirements

- The public must be given an opportunity to directly address the Board on each open session agenda item
- Board President must call for public comment
- May take place before or during board discussion of each agenda item
  - Always before the Board acts
- The Board must allow for critical and negative comments to be expressed

# Items of Business NOT on the Agenda

**The board may not deliberate or vote on matters that are not on the agenda**

- Any board member may request an item be added to a future agenda
  
- Board members may ask questions for clarification and discuss only to the extent necessary to determine whether the item should be placed on a future meeting agenda
  
- The board president may refer the matter to the following:
  - The CEO
  - A standing committee
  - Create an Ad-Hoc committee

# Items of Business NOT on the Agenda

## Purposes for Referring the Matter

- Researching further information
- Reporting to the board at a future meeting
- Directing the matter be placed on a future agenda

# **Closed Sessions**

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# Closed Session

## Authorized Topics

- Personnel Matters (CEO)
  - Does not include routine staff issues
  - Does not include issues between board members
- Pending Litigation
  - Attorney must be present
- Real Estate
  - To negotiate price and terms of payment only
- Threat of Criminal or Terrorist Activity

# Closed Session

## **Specific notice and agenda requirements**

- May be held for specific purposes under the Act
- Held only during a regular or special meeting
- Must reference the specific Government Code section
- Must provide some specificity
- All closed session agenda topics must be submitted to Legal for review prior to the agenda being posted

# Closed Session

## Specific notice and agenda requirements

- May not be included on the agenda as a place holder
- Only the topic on the agenda may be discussed
- Only those necessary to deliberations may attend
- In open session, Board Chair/President must announce the following:
  - State the purpose
  - Who is attending

# Closed Session

## Conducting via Video Conferencing

- Set up a separate, confidential teleconference line or zoom call for closed session
- Do not notice the teleconference line or Zoom line on the agenda
- Email the separate information to all the directors in advance of the meeting
- Conduct a roll call at beginning to ensure all directors transferred to the closed session

# Closed Session

## Conducting via Video Conferencing

- While in closed session, the public teleconference line must be kept open for purposes of reconvening
- Disconnect the board members and the CEO from the public line to maintain confidentiality during closed session deliberations
- For videoconferencing, move the public to the “waiting room” during closed session

# Closed Session

## Minutes

- Minutes are required
- Kept confidential in a separate file than open session minutes
- President shall designate the CEO, another board member, or F&E to take minutes
- President and Vice-President approve and sign minutes
- Include any legal memo

# Closed Session

## Minutes

- Record brief summary of deliberations and action, if taken
- Roll call vote
- Never audio/video record

# Closed Session

## Adjourning

- Include on agenda: “Reconvene Open Session: Report of any action taken during closed session”
- Reminder: keep the discussion confidential
  - Sharing information outside the closed session waives privilege, it will no longer be confidential!



# Closed Session

## Reconvening into open session

- Permit attendees into the room, call, or videoconference meeting
- Announce roll call vote of any action taken
- Do not announce action taken for:
  - Litigation
  - Direction given to attorney
  - Direction given to negotiator

# Closed Session

## Reconvening into open session

- Example Announcements in Open Session:
  - “No disclosable action taken”
  - “No action to report”
  - “Board provided direction to its negotiator”
  - “Board provided direction to its legal counsel”

# Closed Session

## Personnel Matters

- Consider the appointment, employment, performance evaluation, disciplinary action/dismissal, or hear charges or complaints against the CEO
- Compensation of the CEO and/or staff as a fiscal or budget matter, must be in open session

# Closed Session

## Personnel Matters – Disciplinary Action/Complaint

- CEO must be served with a notice of their right to a public hearing
- If the CEO chooses to hold a public hearing, it must be properly noticed on the meeting agenda
- Board President should contact F&E to request CDFA Legal, HR, and EEO Office assistance before agenda is developed

# Closed Session

## Real Estate

- To provide instructions to the negotiator on price and terms of payment
- Agenda must identify the specific parcel, Board's negotiator, and the party with whom the Board is negotiating

# Closed Session

## Pending Litigation

- To receive legal advice from attorneys
- Protect the attorney-client privilege
- For the matters of:
  - Significant risk of litigation to the Board
  - Deciding whether to file formal litigation
  - Formal litigation has been filed against the board

# Closed Session

## Pending Litigation

- CDFA Legal and/or AGO must be in attendance
  - In-person
  - Via phone
- CDFA Legal must prepare a confidential memo authorizing the closed session
  - Memo must be filed with the minutes
- If CDFA Legal is not in attendance:
  - Session is not privileged
  - Board members may be deposed
  - Notes may be subpoenaed



# QUESTIONS?

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