

ACTIONS BY THE BOARD

The Governing Board shall act by a majority vote of all of the membership constituting the Board, unless otherwise required by law. (Education Code 35164)

An “action” by the Board means: (Government Code 54952.6)

1. A collective decision by a majority of the Board members
2. A collective commitment or promise by a majority of the Board members to make a positive or negative decision
3. A vote by a majority of the Board members when sitting as the Board upon a motion, proposal, resolution, order or ordinance

The Board shall not take action by secret ballot, whether preliminary or final. (Government Code 54953)

Actions by the Board in open session shall be recorded in the Board minutes. (Education Code 35145)

Action on Non-Agenda Items

After publicly identifying the item, the Board may take action on a subject not appearing on the posted meeting agenda under any of the following conditions: (Government Code 54954.2)

1. When a majority of the Board determines that an emergency situation exists, as defined for emergency meetings pursuant to Government Code 54956.5
2. When two-thirds of the members present, or if less than two-thirds of the members are present then by a unanimous vote of all members present, determine that the need to take immediate action came to the district’s attention after the agenda was posted
3. When an item appeared on the agenda of, and was continued from, a meeting that occurred not more than five days earlier

Challenging Board Actions

The district attorney’s office or any interested person may file an action in court for the purpose of: (Government Code 54960, 54960.2)

1. Stopping or preventing the Board’s violation or threatened violation of the Brown Act
2. Determining the applicability of the Brown Act to ongoing or future threatened Board actions

ACTIONS BY THE BOARD (continued)

3. Determining the applicability of the Brown Act to a past action of the Board that is not specified in Government Code 54960.1, provided that:
 - a. Within nine months of the alleged violation, a cease and desist letter is submitted to the Board, clearly describing the past Board action and the nature of the alleged violation.
 - b. The time for the Board to respond has expired and the Board has not provided an unconditional commitment to cease and desist from and not repeat the past action alleged to have violated the Brown Act.
 - c. The action is brought within the time required by Government Code 54960.2.
4. Determining the validity, under state or federal law, of any Board rule or action which penalizes any of its members or otherwise discourages their expression
5. Compelling the Board to audio record its closed sessions because of a court's finding of the Board's violation of any applicable Government Code provision

The district attorney or any interested person may file an action in court to nullify a Board action which is alleged to be in violation of law regarding any of the following: (Government Code 54960.1)

1. Open meeting and teleconferencing (Government Code 54953)
2. Agenda posting (Government Code 54954.2)
3. Closed session item descriptions (Government Code 54954.5)
4. New or increased tax assessments (Government Code 54954.6)
5. Special meetings (Government Code 54956)
6. Emergency meetings (Government Code 54956.5)

Prior to bringing any action to nullify a Board action, the district attorney or other interested person shall present a demand to "cure and correct" the alleged violation. The demand shall clearly describe the challenged action and the nature of the alleged violation and shall be presented to the Board in writing within 90 days of the date when the action was taken. If the alleged violation concerns action taken in an open session but in violation of Government Code 54954.2 (agenda posting), the written demand must be made within 30 days of the date when the alleged action took place. (Government Code 54960.1)

ACTIONS BY THE BOARD (continued)

Within 30 days of receiving the demand, the Board shall do one of the following: (Government Code 54960.1)

1. Cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct.
2. Determine not to cure or correct the alleged violation and inform the demanding party in writing of its decision to not cure or correct.
3. Take no action. If the Board takes no action within the 30-day period, its inaction shall be considered a decision not to cure or correct the challenged action.

Policy Reference Disclaimer: These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State References

CCP. 1245.240
 CCP.1245.245
 CCP.425.16
 Ed. Code 15266
 Ed. Code 17466
 Ed. Code 17481
 Ed. Code 17510-17512
 Ed. Code 17546
 Ed. Code 17556-17561
 Ed. Code 35140-35149
 Ed. Code 35160-35178.4
 Ed. Code 48660-48661
 Gov. Code 53090-53097.5
 Gov. Code 53724
 Gov. Code 53790-53792
 Gov. Code 53820-53833
 Gov. Code 53850-5385
 Gov. Code 53850-53858
 Gov. Code 54950-54963
 Gov. Code 54952.6
 Gov. Code 54953
 Gov. Code 54960-54960.5
 Gov. Code 65352.2
 Pub. Cont. Code 20111
 Pub. Cont. Code 20113
 Pub. Cont. Code 20114

 Pub. Cont. Code 22034

 Pub. Cont. Code 22035
 Pub. Cont. Code 22050
 Pub. Cont. Code 3400

Description

Eminent domain vote requirements
 Eminent domain, resolution adopting different use
 Special motion to strike in connection with a public issue
 School construction bonds
 Declaration of intent to sell or lease real property
 Lease of property with residence for nondistrict purposes
 Leasing for production of gas, resolution requiring unanimous vote
 Private sale of personal property
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 Repair or replacement of facilities in case of emergency
 Emergency contracting procedures
 Bid specifications

ACTIONS BY THE BOARD (continued)

Management Resources References

Attorney General Publication
Court Decision
Court Decision
Court Decision

Court Decision

CSBA Publication
League of California Cities Publication

Website
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The Brown Act: Open Meetings for Local Legislative Bodies, 2003
Bell v. Vista Unified School District (2002) 82 Cal.App.4th 672
Boyle v. City of Redondo Beach (1999) 70 Cal.App.4th 1109
Los Angeles Times Communications LLC v. Los Angeles County Board of Supervisors (2003) 112 Cal.App.4th 1313
McKee v. Orange Unified School District (2003) 110 Cal.App.4th 1310

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Institute for Local Government
California Office of the Attorney General
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Cross Reference

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Description

Fees and Charges
Sale and Disposal of Books, Equipment and Supplies
Sale or Lease of District Owned Real Property
Bids
Uniform Public Construction Cost Accounting Procedures
Community Day School
School Facilities Improvement Districts
General Obligation Bonds
Role Of The Board
Governance Standards
Board Member Electronic Communications
Student Board Members
Limits of Board Member Authority
Filling Vacancies
Board Policies
Meetings and Notices
Agenda Meeting Materials
Meeting Conduct
Minutes and Recordings

Bylaw
Adopted: June 14, 2005
Bylaw
Revised: February 1, 2022

EL RANCHO UNIFIED SCHOOL DISTRICT
Pico Rivera, California

ACTIONS BY THE BOARD

ACTIONS REQUIRING A SUPER MAJORITY VOTE

Actions Requiring a Two-Thirds Vote of the Board

1. Resolution declaring the Governing Board's intention to sell or lease real property (Education Code 17466)

(cf. 3280 – Sale, Lease and Rental of District-Owned Real Property)

2. Resolution declaring the Board's intent to convey or dedicate property to the state or any political subdivision for the purposes specified in Education Code 17556 (Education Code 17557)

3. Resolution authorizing and directing the Board president, or any other presiding officer, secretary, or member, to execute a deed of dedication or conveyance of property to the state or a political subdivision (Education Code 17559)

4. Lease, for up to three months, of school property, which has a residence on it and which cannot be developed for district purposes because funds are unavailable (Education Code 17481)

5. Request for temporary borrowing of funds needed for immediate requirements of the district to pay obligations incurred before receipt of district income for the fiscal year sufficient to meet the payment(s) (Government Code 53821)

6. Upon complying with Government Code 65352.2 and Public Resources Code 21151.2, action to render city or county zoning ordinances inapplicable to a proposed use of the property by the district (Government Code 53094)

(cf. 7131 – Relations with Local Agencies)

(cf. 7150 – Site Selection and Development)

(cf. 7160 – Charter School Facilities)

7. When the district is organized to serve only grades K-8, action to establish a community day school for any of grades K-8 (Education Code 48660)

(cf. 6185 – Community Day School)

8. When the district is organized to serve only grades K-8, has an average daily attendance (ADA) of 2,500 or less, or desires to operate a community day school to serve any of grades K-6 (and no higher grades) and seeks to situate a community day school on an existing school site, certification that satisfactory alternative facilities are not available for a community day school (Education Code 48661)

9. Resolution of intent to issue general obligation bonds with the approval of 55 percent of the voters of the district (Education Code 15266)

(cf. 7214 – General Obligation Bonds)

10. Resolution of intent to issue bonds within a school facilities improvement district with the approval of 55 percent of the voters of the school facilities improvement district (Education Code 15266)

cf. 7213 – School Facilities Improvement Districts)

11. Resolution to place a parcel tax on the ballot (Government Code 53724)

cf. 3471 – Parcel Taxes)

12. Resolution of necessity to proceed with an eminent domain action and, if the Board subsequently desires to use the property for a different use than stated in the resolution of necessity, a subsequent resolution so authorizing the different use (Code of Civil Procedure 1245.240, 1245.245)

13. Any contract over the annual adjustment to bid threshold for contracts.

Actions Requiring a Two-Thirds Vote of the Board Members Present at the Meeting

1. Determination that there is a need to take immediate action and that the need for action came to the district's attention after the posting of the agenda. If less than two-thirds of the Board members are present at the meeting, a unanimous vote of all members present is required. (Government Code 54954.2)
2. Determination that a closed session is necessary during an emergency meeting. If less than two-thirds of the Board members are present, a unanimous vote of all members present is required. (Government Code 54956.5)

(cf. 9320 – Meetings and Notices)

(cf. 9321 – Closed Session Purposes and Agendas)

Actions Requiring a Four-Fifths Vote of the Board

1. Resolution for district borrowing based on issuance of notes, tax anticipation warrants, or other evidences of indebtedness, in an amount up to 50 percent of the district's estimated income and revenue for the fiscal year or the portion not yet collected at the time of the borrowing (Government Code 53822, 53824)
2. Resolution for district borrowing, between July 15 and August 30 of any fiscal year, of up to 25 percent of the estimated income and revenue to be received by the district during that fiscal year from apportionments based on ADA for the preceding year (Government Code 53823-53824)
3. Declaration of an emergency in order to authorize the district to include a particular brand name or product in a bid specification (Public Contract Code 3400)

(cf. 3311 – Bids)

4. When the district has a five-member Board and has adopted the procedures set forth in UPCCAA, action to respond to an emergency facilities condition without giving notice for bids to let contracts, including the repair or replacement of district facilities, the taking of any other action that is directly related to and immediately required by that emergency, the procurement of the necessary equipment, services, and supplies for those purposes, the delegation of authority to the Superintendent or designee to take such action, and the determination during a regular Board meeting of the need to continue the action (Public Contract Code 22035, 22050)
5. Resolution to award a contract for a public works project at \$212,500 or less to the lowest responsible bidder, when the district is using the informal process authorized under the UPCCAA for projects of \$200,000 or less, all bids received are in excess of \$200,000, and the Board determines that the district's cost estimate was reasonable (Public Contract Cod 22034)

Action Requiring a Four-Fifths Vote of the Board Members Present at the Meeting

A four-fifths vote of the Board members present at the meeting shall be required to approve the expenditure and transfer of necessary funds and use of district property or personnel to meet a national or local emergency created by war, military, naval, or air attack, or sabotage, or to provide for adequate national or local defense. (Government Code 53790-53792)

(cf. 3110 – Transfer of Funds)

Actions Requiring a Unanimous Vote of the Board

1. Resolution authorizing and prescribing the terms of a lease of district property for extraction and taking of gas not associated with oil (Education Code 17510-17511)
2. Authorization of the use of day labor or force account, or waiver of the competitive bid process pursuant to Public Contract Code 20111, when the Board determines that an emergency exists requiring the repair, alteration, work, or improvement to any facility to permit the continuance of existing classes or to avoid danger to life or property, and upon approval of the County Superintendent of Schools (Public Contract Code 20113)
3. Authorization to enter into any construction project of \$100,000 or more.

Actions Requiring a Unanimous Vote of the Board Members Present at the Meeting

1. Private sale of surplus property without advertisement in order to establish that such property is not worth more than \$2,500. Disposal of surplus property or donation to a charitable organization requires the unanimous vote of the Board members present to establish that the value of such property would not defray the cost of arranging its sale. (Education Code 17546)

(cf. 3270 – Sale and Disposal of Books, Equipment and Supplies)

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| CCP. 1245.240 | Eminent domain vote requirements |
| CCP.1245.245 | Eminent domain, resolution adopting different use |
| CCP.425.16 | Special motion to strike in connection with public issue |
| Ed. Code 15266 | School construction bonds |
| Ed. Code 17466 | Declaration of intent to sell or lease real property |
| Ed. Code 17481 | Lease of property with residence for nondistrict purposes |
| Ed. Code 17510-17512 | Leasing for production of gas, resolution requiring unanimous vote |
| Ed. Code 17546 | Private sale of personal property |
| Ed. Code 17556-17561 | Dedication of real property |
| Ed. Code 35140-35149 | Meetings |
| Ed. Code 35160-35178.4 | Powers and duties |
| Ed. Code 48660-48661 | Community day schools, establishment and restrictions |
| Gov. Code 53090-53097.5 | Regulation of local agencies by counties and cities |
| Gov. Code 53724 | Parcel tax resolution requirements |
| Gov. Code 53790-53792 | Exceeding the budget |
| Gov. Code 53820-53833 | Temporary borrowing |
| Gov. Code 53850-5385 | Temporary borrowing |
| Gov. Code 53850-53858 | Temporary borrowing |
| Gov. Code 54950-54953 | The Ralph M. Brown Act |
| Gov. Code 54952.6 | Action taken, definition |
| Gov. Code 54953 | Meetings to be open and public; attendance |
| Gov. Code 54960-54960.5 | Actions to prevent violations |
| Gov. Code 65352.2 | Communicating and coordinating of school sites |
| Pub. Cont. Code 20111 | School district contracts |
| Pub. Cont. Code 20113 | Emergencies, award of contracts without bids |
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Cross References

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| 3260 | Fees and Charges |
| 3270 | Sale and Disposal of Books, Equipment and Supplies |
| 3280 | Sale Or Lease of District-Owned Real Property |

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| 3311 | Bids |
| 3311.1 | Uniform Public Construction Cost Accounting Procedures |
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UNCONDITIONAL COMMITMENT LETTER

To: *(Name of district attorney or any interested person)*

The Governing Board of the El Rancho Unified School District has received your cease and desist letter dated *(date)* alleging that the following past action taken by the Board violates the Ralph M. Brown Act: *(Describe alleged past action as set forth in the cease and desist letter.)*

In order to avoid unnecessary litigation and without admitting any violation of the Ralph M. Brown Act, the Board hereby unconditionally commits that it will cease, desist from, and not repeat the challenged past action described above. The Board may rescind this commitment only by a majority vote of its membership taken in open session at a regular meeting and noticed on its posted agenda as "Rescission of Brown Act Commitment." You will be provided with written notice, sent by any means or media you provide in response to this message, to whatever address(es) you specify, of any intention to consider rescinding this commitment at least 30 days before any such regular meeting. In the event that this commitment is rescinded, a notice will be delivered to you by the same means as the commitment, or by mail to an address that you have designated in writing, and you will have the right to commence legal action pursuant to Government Code 54960(a).

Sincerely,

(Name)

(Title of Board President or other designee)

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