

BOARD MEETING DATE: September 5, 2014

AGENDA NO. 13

PROPOSAL: Recommendation to Amend Governing Board Meeting Procedures

SYNOPSIS: The Governing Board has adopted written procedures for conducting Board meetings. The procedures address key issues the Board faces on a recurring basis. This item is a recommendation to amend the procedures to clarify the Board's policy on making modifications to the text of proposals at the Board hearing. This item also incorporates the Governing Board Meeting Procedures into the SCAQMD Administrative Code.

COMMITTEE: Administrative, July 18, 2014; Recommended for Approval as Revised

RECOMMENDED ACTIONS:

1. Approve amendments to the SCAQMD Governing Board Meeting Procedures as shown in Attachment A.
2. Incorporate the Governing Board Meeting Procedures, as amended, into the SCAQMD Administrative Code as new section 30 (Attachment A).

Barry R. Wallerstein, D.Env.
Executive Officer

KRW:vmr

Background

This item is to adopt a policy regarding the timing of changes to the text of any items that are considered by the Governing Board at Board meetings.

For rules and rule amendments, state law places limitations on the timing of changes to their text. Pursuant to Health & Safety Code section 40725(b), SCAQMD must provide the full text of rules and rule amendments to the public at least 30 days before the public

hearing at which the Governing Board considers the item. Any changes to the text of a proposed rule or rule amendment made after the 30-day notice is given—for example, at the Governing Board meeting—must comply with Health & Safety Code section 40726. That section states that the Board may adopt an item at a public hearing “unless the board makes changes in the text originally made available to the public that are so substantial as to significantly affect the meaning of the proposed rule or regulation.” The Governing Board has adopted procedures to implement this section of the Health & Safety Code to identify when last-minute changes are “so substantial to significantly affect the meaning of the proposed rule or regulation.”

Subject to the noticing requirements of the Brown Act, for items other than rules and rule amendments, there are no legal limitations on the timing of changes to the text of these items; nor has the Board adopted a policy regarding the timing of changes to these items.

The Administrative Committee has recently directed the staff to develop a new policy for making last-minute changes to any items that the Board considers. For rules and rule amendments, the Committee’s policy would tighten the time period in which changes can be made as compared to Health & Safety Code section 40726 and existing SCAQMD Governing Board Meeting Procedures implementing section 40726. The new policy, as revised by the Administrative Committee at the meeting on July 18, 2014, clarifies that as a policy matter, the Governing Board will not accept changes to the text of any item after the Friday of the week before the Governing Board meeting unless the change responds to an emergency. The policy does not change applicable law so, as a legal matter, the Board retains the discretion to change the text of a proposed rule or rule amendment at a public hearing on the item consistent with Health & Safety Code section 40726 and existing Board policy interpreting section 40726. Whether an emergency exists will be determined by the Chairman in consultation with the Executive Officer.

Proposal

- Amend Governing Board Procedures section 30.6, as shown in Attachment A. Only the underlined text on page 4 is new; the rest was adopted by the Board in 1994.
- Incorporate the Governing Board Procedures into the SCAQMD Administrative Code in a new section 30.

Resource Impacts

None.

Attachments

Resolution

A – Governing Board Meeting Procedures

RESOLUTION NO. 14-__

A Resolution of the South Coast Air Quality Management District Board amending procedures for meetings of the SCAQMD Board.

WHEREAS, the SCAQMD Board has adopted procedures ensuring that meetings of the Board are orderly, fair, and lawfully consider agenda items;

WHEREAS, the SCAQMD Board finds that fairness and orderly conduct of the Board meeting will be promoted by adopting a policy limiting changes to the text of items following the last Board Assistants' Briefing prior to the Board meeting where the item is considered;

NOW, THEREFORE BE IT RESOLVED that the SCAQMD Board hereby amends the SCAQMD Governing Board Meeting Procedures, as shown in Attachment A, and incorporates these procedures into section 30 of the Administrative Code.

DATED: _____

SAUNDRA McDANIEL
Clerk of the Board

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Section 30 – SCAQMD Governing Board Meeting Procedures

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Section 30.2 – General

These rules shall apply to meetings of the SCAQMD Governing Board. Except as otherwise required by law, these rules may be suspended by order of the Board. Failure to follow these rules shall not invalidate any action taken.

Section 30.3 – Placement of Items on the Board Agenda.

1. Placement. Any Board member may place an item on the agenda for the next regular Board meeting, provided that the request for such placement is made prior to or at the Administrative Committee meeting which reviews the agenda for that Board meeting. The Chair may authorize the addition of items to the agenda after the Administrative Committee meeting if there is an urgent need for Board action.
2. Removal. A Board member may remove an agenda item that he or she placed on the agenda if such a request is made prior to public distribution of the agenda.
3. Reconsideration. The Board may reconsider any agenda item that previously received official action (i.e., approval or disapproval by the required majority vote of the Board), provided that the request for reconsideration is made by a Board member who voted with the prevailing side. If there was no prevailing side, i.e., no side received the number of votes required for action under applicable statutes, any member may request reconsideration.

Section 30.4 – Authorities and Duties of Chair.

The Chair shall preside over meetings of the Board and shall possess the authorities and perform the duties specified in this subdivision, subject to the right of appeal to the Board pursuant to subparagraph (e)(2)(D). In the absence of the Chair, the Vice Chair shall exercise the authorities and duties of the Chair. The authorities and duties of the Chair are as follows:

- (1) call the meeting to order;

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- (2) preserve order and decorum;
- (3) consistent with paragraph (d)(2), limit the amount of time that a person may address the Board during public testimony in order to accommodate those persons desiring to speak and to facilitate the business of the Board;
- (4) recognize members who are entitled to the floor;
- (5) state and put to vote all motions that are properly made, or, if a motion is not in order, to rule it out of order;
- (6) decide all questions of order;
- (7) schedule recesses and take other actions to endeavor to assure the presence of a quorum in the Board room at all times during a meeting;
- (8) declare the meeting adjourned when the Board so votes, or if less than a quorum is present, on the Chair's own initiative; and
- (9) designate an acting Chair to preside at the Board meeting in the absence of the Chair and Vice Chair.

Section 30.5 – Receipt of Testimony.

- (1) Public's Right to Testify. The Board will allow testimony by the public on any agenda item before or during the Board's consideration of the item. The Board need not allow public testimony on any item that has already been considered by the Board or a Board committee at a public meeting where all interested members of the public were afforded the opportunity to testify on the item, unless the item has been substantially changed since the Board or committee considered the item.
- (2) Time Allotted for Testimony. Each member of the public wishing to testify shall file a Request to Speak card with the Clerk of the Board. To facilitate an orderly proceeding, the card should be filed prior to commencement of consideration of the item, and must be filed prior to the close of the public testimony regarding the item. Each member of the public timely filing a Request to Speak card shall be afforded at least three minutes to testify. The Chair may increase this allotment for an individual speaker if the issues addressed are complex or if the speaker represents other persons.
- (3) Written Submittals. The Clerk of the Board shall not be required to accept written testimony or comments unless 25 copies of such testimony or comments are provided.
- (4) Public Hearings. Agenda items requiring a public hearing shall be subject to this paragraph.
 - (A) Closing Public Testimony. The Chair shall close the public testimony portion of a public hearing after all persons timely filing Request to Speak cards have testified. The Board may thereafter deliberate and vote on the item.

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- (B) Reopening Public Testimony.
- (i) Reopening During Hearing. Public testimony may be reopened by the Chair or Board at any time prior to the conclusion of the Board's consideration of the item. The Chair or Board may restrict testimony to a limited number of persons specified by the Chair or Board, if such testimony is solely to summarize or clarify information already in the record.
 - (ii) Reopening After Continuance. If, after closing public testimony, the Board continues the item to a later time or date for deliberations and voting, public testimony may not be reopened at the continued hearing unless (1) public notice required for a hearing on the matter has been given, or (2) prior to continuing the item, the Board announced its intention to reopen public testimony at the continued hearing.
- (C) Receipt of Information Outside of Record Regarding Proposed Rules. If a Board member receives information which is not in the record and which is material to the member's vote on a proposed rule, the member shall disclose that information on the record either verbally or in writing. If the information disclosed by a Board member could substantially influence the decision of the Board and was not available to the public prior to the close of public testimony, the hearing shall be reopened to allow public comment on the new information.
- (D) Testimony and Action on Proposed Rules Modified After Public Notice.
- (i) If, subsequent to issuance of the 30 day public notice of hearing to adopt or amend a rule, changes are made in the text of the proposed rule which significantly affect its meaning, the Board may consider and hear public comment regarding the proposed rule at the noticed hearing but shall not take action on the changed text. The Board shall publicly release or summarize the text changes and shall continue the hearing to no earlier than its next regular meeting. At the subsequent meeting, the Board shall allow testimony regarding the changed text prior to taking final action. In determining whether or not a proposed change significantly affects the meaning of a rule, the following factors shall be considered:
 - (a) impact of the change on emission reductions,
 - (b) impact of the change on sources regulated by the rule,
 - (c) the contents of the public notice, and
 - (d) the range of project alternatives described in the CEQA document.

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Section 30.6 – Changes to Text of Proposed Items

It is the Board's policy that no changes may be made to the text of any item after the Friday of the week prior to the Board Meeting unless the change responds to an emergency. The determination of whether an emergency exists will be made by the Chairman in consultation with the Executive Officer. The Board retains the discretion to change the text of a proposed rule or rule amendment at a public hearing on the item consistent with the provisions in 4. D. above.

Section 30.7 – Motions.

- (1) **Procedure, General.** The following procedure shall be utilized in making and ruling upon motions:
 - (A) **Making Motion.** A member who has been recognized by the Chair as having the floor may make a motion.
 - (B) **Seconding.** A motion may be seconded without receiving the floor.
 - (C) **Stating by Chair.** The Chair shall state the question on the motion. Alternatively, the Chair may request the Clerk or the member making the motion to state the motion. The Chair shall ensure that the question is put into clear and suitable form--preserving the content to the satisfaction of the mover--before the question is stated. The Chair shall require that lengthy or complex motions be in writing before stating.
 - (D) **Modification.** Until the question on the motion is stated by the Chair, it may be modified by its maker and, if so, the second may be withdrawn. After stating by the Chair, a motion may only be modified by the Board through a motion to amend.
 - (E) **Debate.** The Chair shall assign the floor for debate on the motion first to the maker of the motion and then to each member wishing to speak to the motion. Unless a motion calling for the question is adopted by the Board (see subparagraph (e)(2)(C)), the Chair shall not close debate so long as any member has not had the opportunity to speak twice on the question.
 - (F) **Vote.** The Chair shall put the question to a vote.
 - (G) **Announcement, Change of Vote.** The Chair shall announce the result of the vote, either verbally or by electronic display. A member has the right to change his or her vote up to the time the result is announced. Thereafter the member can change a vote only by permission of the Board.
- (2) **Types of Motions.** The following types of motions shall be handled in the manner specified:
 - (A) **Main Motion.** A main motion must be seconded, is debatable, and may only be made when no other motion is pending.

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- (B) Amend a Pending Motion. A motion to amend must be seconded, is debatable if the motion to be amended is debatable, and takes precedence over (i.e., must be voted upon prior to) the main motion. A motion to amend may be amended (i.e., a "second degree" motion to amend). A motion to amend a second degree motion is not allowed. An amendment must be germane to the subject of the motion amended, but may be hostile to the original motion. An amendment is improper if it merely makes adoption of the amended question equivalent to a rejection of the original motion. A "substitute" is a type of amendment striking all or part of a main motion and inserting new provisions. The Chair may first accept only amendments to the motion proposed to be struck, and then only amendments to the proposed substitute, so that the Board will understand the final form of the main motion and proposed substitute prior to voting on the substitute.
- (C) Call for the Question ("Previous question"). Adoption of a motion calling for the question immediately closes debate and subsidiary motions and puts the matter to a vote. The motion must be seconded, and is not debatable. In order to minimize restriction of a member's right to debate, the motion must be adopted by the affirmative votes of two-thirds of the members present, or by a majority of the members of the full Board, whichever is greater.
- (D) Appeal. An appeal allows the Board decide whether or not to overrule a procedural ruling of the Chair. An appeal must be made immediately upon the Chair's ruling, must be seconded, and is debatable. A majority vote is required to reverse the Chair's decision. The appeal takes precedence over any question pending at the time the Chair makes a ruling from which the appeal is made.
- (E) Point of Order. A point of order questions the appropriateness of procedure. A point of order need not be seconded, is not debatable, may be made by a member who does not have the floor, and is ruled upon by the Chair. It takes precedence over any pending question out of which it may arise.
- (F) Amend Something Previously Adopted.¹ This motion must be seconded and is debatable.
- (G) Reconsider.¹ A motion to reconsider brings back for further consideration a motion which has already been voted on. In order to protect against dilatory use, the motion can be made only by a member who voted with the prevailing side. If there was no prevailing side, i.e., no side received the number of votes required for action under applicable statutes, any member may move to reconsider. The motion must be seconded (by any member) and is debatable. Unless otherwise specified in the motion, the effect of

¹ See subdivision (g) for restrictions on reconsidering or amending an agenda item after the Board completes consideration of the item.

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adoption of the motion is to suspend all action that depends on the vote to be reconsidered.

- (H) Depart From Agenda¹ (e.g., immediately take up an item out of order). This motion must be seconded and is not debatable.

Section 30.8 – Voting.

- (1) Majority Vote Requirement. Notwithstanding any contrary principles of parliamentary procedure, adoption of any motion by the Board shall require the affirmative votes of a majority of the members of the Board, unless otherwise required by law. Calif. Health & Saf. Code §40424 ("no official action shall be taken by the Board except in the presence of a quorum and upon the affirmative votes of a majority of the members of the Board").
- (2) Procedure. Voting on the adoption of all items on the Board agenda shall be by roll call or by electronic display of the vote of each member. Unless any Board member objects, a unanimous voice vote may be utilized to adopt any motion, including adoption of an agenda item. A unanimous voice vote shall be recorded by the Clerk as an "aye" vote for each member present. For purposes of this subdivision, the consent calendar may be considered a single item.

Section 30.9 – Reconsideration or Amendment of Completed Agenda Items.

- (1) Requirement. In the case of an agenda item requiring a public hearing, the Board shall not reopen the agenda item for reconsideration or amendment if the Board completed its consideration of the item earlier during the same meeting and (1) such completion was publicly announced by the Chair, (2) the Board proceeded to consider another item, or (3) the Board subsequently recessed.
- (2) Exceptions. Paragraph (1) shall not apply if:
 - (A) prior to completing consideration of the agenda item, the Chair announced its intention to further consider the item at a later time during the meeting;
 - (B) the Board is reopening an item for the sole purpose of determining whether or not to schedule a motion to reconsider or amend the item for a subsequent meeting which will be publicly noticed pursuant to law; or
 - (C) placement of a new agenda item for the purpose of reconsidering or amending an agenda item would be authorized by Government Code Section 54954.2(b)(1) (emergencies involving threatened disruption of public facilities) or Government Code Section 54954.2(b)(2) (authorizing addition of new agenda items at regular meetings after 72 hour agenda posting if Board, by two-thirds vote, determines that there is a need to take immediate action

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and that the need for action came to the attention of the agency subsequent to the agenda being posted).

- (3) The agenda for each meeting of the Board shall include a notice to the public that the Board may reconsider or amend any item not requiring a public hearing at any time during the meeting.

Section 30.10 – Continuance Upon Lack of Action.

Unless otherwise specified by the Board, any agenda item which is not acted upon by the Board shall by operation of this provision be continued to the next regular meeting of the Board. The Clerk shall provide notice of such continuance as set forth in Government Code Section 54955.1. As used in this subdivision, the term "acted upon" shall mean adoption or defeat of a main motion by the votes of a majority of the Board.

Section 30.11 – Prohibition of Megaphones, Large Signs, and Sticks.

No megaphones, bullhorns, or placards, signs, or posters which are higher or wider than 18 inches, or which have protruding sticks or handles, shall be brought into the Board room during a Board meeting or prior to a Board meeting on the day of the meeting. Upon prior authorization of the Chairman, charts, graphs or other graphic devices to be used in conjunction with testimony may be brought into the Board room.