



Santa Clara Valley Water District

File No.: 19-1104

Agenda Date: 12/10/2019

Item No.: 4.1.

BOARD AGENDA MEMORANDUM

SUBJECT:

Review of Board Governance Policy, GP-9.2.1, Governance Process, Board Committee Structure, Board Members Representation on Board Standing and Ad Hoc Committees.

RECOMMENDATION:

Review Board Governance Policy, GP-9.2.1, Governance Process, Board Committee Structure, Board Members Representation on Board Standing and Ad Hoc Committees and make revisions as the Board deems necessary.

SUMMARY:

At the October 22, 2019, Board meeting Director Santos requested that an item be placed on a future Board agenda for the Board to discuss Board Governance Policy, Governance Process (GP) 9.2.1, Board Committee Structure, Board Members Representation on Board Standing and Ad Hoc Committees.

The Board's Governance Policy GP-9.2.1 currently states:

"Board members who are not the appointed representatives to Board Standing or Ad Hoc Committees shall not be in attendance at any open and noticed meeting of such committees."

Relevant Legislative Language

The Ralph M. Brown Act, specifically Government Code Section 54952.2(c)(6), generally states that the attendance of a majority of the members of a legislative body at an open and noticed meeting of a standing committee of that body, is allowed provided that the members of the legislative body who are not members of the standing committee attend only as **observers**.

In this context, the term **observer** means one who observes and listens but does not officially participate in a meeting. Generally, the observer could only attend a meeting to watch and listen without participating and must refrain from asking questions or making statements. Appointed Members of the committee would need to refrain from asking the observer questions or otherwise soliciting input from him or her during the meeting. The observer would not be permitted to sit at the dais or at the table where the standing committee is conducting business and would be required to silently sit in the area designed for members of the public.

Potential Policy Revision

For discussion and consideration, based on the above language, if the Board so chooses, Board Governance Policy GP-9.2.1 could be revised to read:

“Board members who are not the appointed representatives to Board Standing or Ad Hoc Committees shall ~~not be in attendance at any~~ **be permitted to attend** open noticed meetings of such committees **only as observers to watch and listen, and not participate in discussion, ask questions or make statements. The non-appointed Board member(s) must observe the meeting from the area designated for members of the public. During the course of the meeting, appointed representatives of Board Standing or Ad Hoc Committees shall not speak to or otherwise engage with non-appointed Board members attending the meeting as observers.”**

Potential Repercussions of Violation

If the Board modifies the Governance Policy to allow non-appointed Board members to attend Board Standing or Ad Hoc Committee meetings, full compliance with the silent observer requirement is imperative. The District Attorney or other interested parties may seek injunctive relief to stop any violations of the Brown Act. (Government Code section 54960.) Additionally, under certain circumstances, violations of the Brown Act may be considered a crime. Government Code Section 54959 states “Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this chapter, is guilty of a misdemeanor.”

Committee Representative Appointments

Currently, the Board Chair appoints and the Board approves three Board members to serve as representatives (two members) and an alternate (one member) to the Board’s external Standing Committees (Santa Clara Valley Water Commission, Environmental and Water Resources Committee, and Agricultural Water Advisory Committee).

The Board’s internal Standing and Ad Hoc Committees currently have three Board members appointed by the Board Chair and approved by the Board.

FINANCIAL IMPACT:

There is no financial impact associated with this item.

CEQA:

The recommended action does not constitute a project under CEQA because it does not have the potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

None.

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UNCLASSIFIED MANAGER:
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