



Santa Barbara
SCHOOL DISTRICTS

Section 1
10/2/09 Board Brief

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October 1, 2009

To: Superintendent J. Brian Sarvis
From: Barbara Keyani, Administrative Services and Communications
Re: **Board Bylaw and Exhibit 9323.2 – Majority Vote**

Attached please find current Board Bylaw “Actions by the Board” and Exhibit 9323.2 “Actions by the Board-Actions Requiring More than a Majority Vote.”

This bylaw and exhibit address recent questions regarding a majority vote.

Adams Elementary School	McKinley Elementary School	Roosevelt Elementary School	Goleta Valley Junior High School	Dos Pueblos High School
Cesar Chavez Charter School	Monroe Elementary School	Santa Barbara Charter School	La Colina Junior High School	La Cuesta Continuation High School
Cleveland Elementary School	Open Alternative School	Santa Barbara Community Academy	La Cumbre Junior High School	San Marcos High School
Franklin Elementary School	Peabody Charter School	Washington Elementary School	Santa Barbara Junior High School	Santa Barbara High School
Harding Elementary School				Home School Santa Barbara

Santa Barbara School Districts

Board Bylaw

BB 9323.2

Bylaws of the Board

ACTIONS BY THE BOARD

The Board of Education 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 members to make a positive or negative decision
3. A vote by a majority of the members when sitting as the Board upon a motion, proposal, resolution, order or ordinance

The Board may take action in a regular meeting on a subject not listed on the published agenda only when it publicly identifies the item to be acted upon in conjunction with one of the following circumstances: (Government Code 54954.2)

1. The Board, by majority vote of its members, determines that the action responds to an emergency situation.

(cf. 9320 - Meetings and Notices)

2. The Board determines, either by a two-thirds majority vote of the members present at the meeting or, if less than two-thirds of the members are present, by a unanimous vote of all members present, that the need to take immediate action came to the district’s attention after the posting of the agenda.
3. The matter was properly posted for a previous meeting occurring not more than five days earlier and was continued to the meeting at which action is being taken.

(cf. 9322 - Agenda/Meeting Materials)

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

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

Challenging Board Actions

Any demand by the district attorney's office or any interested person to correct a Board action shall be presented to the Board in writing within 90 days of the date when the action was taken. Such demand shall allege a violation of any of the following: (Government Code 54960.1)

1. Government Code 54953, regarding open meeting and teleconferencing
2. Government Code 54954.5, regarding closed session item descriptions
3. Government Code 54954.6, regarding new or increased tax assessments
4. Government Code 54956, regarding special meetings
5. Government Code 54956.5, regarding emergency meetings

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)

Any demand to "cure and correct" an alleged violation shall clearly describe the challenged action and the nature of the alleged violation. (Government Code 54960.1)

Within 30 days of receiving the demand, the Board shall cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct. If the Board decides to not cure or correct the challenged action, the demanding party shall be informed in writing of that decision. (Government Code 54960.1)

If the Board takes no action within the 30-day review period, its inaction shall be considered a decision not to cure or correct the action. (Government Code 54960.1)

Legal Reference:

EDUCATION CODE

15266 School construction bonds

17466 Declaration of intent to sell or lease real property

17481 Lease of property with residence for nondistrict purposes

17510-17511 Resolution requiring unanimous vote of all members constituting board

17546 Private sale of personal property

17556-17561 Dedication of real property

17582 District deferred maintenance fund

17583 Deferred maintenance fund; transfer of excess local funds

35144 Special meeting

35145 Public meetings

35164 Majority vote of all members constituting board for board action

35165 Vacancies, effect on majority and unanimous vote

48660 Establishment of community day schools

48661 School site restrictions for community day schools

CODE OF CIVIL PROCEDURE

1245.240 Eminent domain vote requirement

1245.245 Eminent domain, resolution adopting different use

GOVERNMENT CODE

53094 Authority to render zoning ordinance inapplicable

53097 Compliance with ordinances

53097.3 Charter school ordinances

53724 Parcel tax resolution requirements

53790-53792 Exceeding the budget

53820-53833 Temporary borrowing

53850-53858 Temporary borrowing

54950 Meetings: declaration; intent; sovereignty

54952.6 Action taken, definition

54953 Meetings to be open and public; attendance; secret ballots

54953.5 Right to record proceedings; conditions

54954.2 Agenda posting requirements; board actions

54954.5 Closed session item descriptions

54954.6 New or increased taxes or assessments; hearings; notice

54956 Special meetings; call; notice

54956.5 Emergency meetings in emergency situations

54960 Action to prevent violations

54960.1 Challenge of governing board actions

54960.5 Costs and attorney fees

65352.2 Coordination with planning agency

PUBLIC CONTRACT CODE

20111 Contracts over \$50,000; contracts for construction; award to lowest responsible bidder

20113 Emergencies, award of contracts without bids

COURT DECISIONS

Bell v. Vista Unified School District, (2002) 82 Cal.App.4th 672

Boyle v. City of Redondo Beach, (1999) 70 Cal.App.4th 1109

Management Resources:

CSBA PUBLICATIONS

The Brown Act: School Boards and Open Meeting Laws, 1999

ATTORNEY GENERAL PUBLICATIONS

The Brown Act: Open Meetings for Legislative Bodies, California Attorney General's Office, 2002

CALIFORNIA CITY ATTORNEY PUBLICATIONS

Open and Public III: A User's Guide to the Ralph M. Brown Act, 2000

WEB SITES

CSBA: <http://www.csba.org>

California Attorney General's Office: <http://www.caag.state.ca.us>

Bylaw: SANTA BARBARA SCHOOL DISTRICTS

Adopted: May 23, 2006 Santa Barbara, California

Technical Revision: July 17, 2009

Santa Barbara School Districts

Exhibit

E 9323.2

Bylaws of the Board

ACTIONS BY THE BOARD

ACTIONS REQUIRING MORE THAN A MAJORITY VOTE

Actions Requiring a Two-Thirds Vote of the Board:

1. Resolution declaring intention to sell or lease real property (Education Code 17466)
(cf. 3280 - Sale, Lease and Rental of District-Owned Real Property)
2. Resolution declaring intent of Board of Education 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 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. Temporary borrowing before receipt of fiscal income, if implemented pursuant to Government Code 53820-53833 (Government Code 53821)
6. Upon complying with Government Code 65352.2 and Public Resources Code 21151.2, ordering 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. Resolution to transfer excess local funds from a deferred maintenance fund when state funds are insufficient to match local funds being held in the deferred maintenance fund (Education Code 17582, 17583)
8. For districts with an ADA of 2,500 or less seeking to add 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. For K-8 districts (and no higher grades) seeking to add 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)
10. For districts desiring to operate a community day school on an existing school site to serve grades K-6 (and no higher grades), certification that satisfactory alternative facilities are not available for a community day school. (Education Code 48661)

(cf. 6185 – Community Day School)

11. Resolution 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)

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. 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)

2. Adoption of a resolution, between July 15 and August 30, to borrow funds of up to 25 percent of the estimated income and revenue to be received by the district during the fiscal year from apportionments based on average daily attendance for the preceding year (Government Code 53822-53824)
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)

Actions Requiring a Unanimous Vote of the Board:

1. Resolution authorizing and prescribing the terms of a community lease for extraction of gas (Education Code 17510-17511)
2. Waiver of the competitive bid process pursuant to Public Contract Code 20111 when the Board determines that an emergency exists (Public Contract Code 20113)

Action Requiring a Unanimous Vote of the Board Members Present at the Meeting:

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 in the local dump 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)

Exhibit: SANTA BARBARA SCHOOL DISTRICTS
Version: May 23, 2006 Santa Barbara, California