



## WHEN DOES A SPECIAL DISTRICT NEED TO CALL A PUBLIC HEARING?

### INTRODUCTION

Special Districts are local government agencies formed to address a particular need. Accordingly, Special Districts are subject to the same open meeting laws as other local agencies.

This white paper addresses a specific and important issue: When must a Board or Commission of a Special District (hereafter “Board”) hold a public hearing on an agenda item? It also provides guidance regarding the information that should be provided by the Board to avoid potential confusion about why a public hearing is being held, and to ensure the Board fulfills all legal requirements before acting on the item.

### DISCUSSION

#### A. Public Meetings vs. Public Hearings

A public hearing differs from other types of public meetings. With few exceptions, the Brown Act (the state’s “open meetings law”) requires all Board actions to be taken during properly noticed and agendized public meetings. So long as the Act's requirements are met, the Board has substantial flexibility in how it conducts business during its meetings.

For example, a Board may approve by “consent” all items not requiring a public hearing. If a speaker card is submitted for a consent item, however, the item is pulled from the consent calendar so the Board may take public comment.<sup>1</sup> This does not convert the meeting into a “public hearing.” Rather, the Board merely receives public comment on the item.

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<sup>1</sup> Under the Brown Act, members of the public have a right to comment on any agenda item if they have not previously been given the opportunity on the subject.

## PUBLIC MEETING v. PUBLIC HEARING

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Our goal is to provide officials, commissioners and directors knowledge of all legal options and the pros and cons of each so that they are confident in making difficult decisions.

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Public hearings may be legislative or quasi-judicial in nature. Legislative hearings may involve zoning changes while quasi-judicial hearings may involve appeals of administrative decisions.

Public hearings must be publicized by notice published in a least one newspaper of general circulation within the jurisdiction of the Special District at least ten (10) days prior to the hearing. The length of notice required depends on the subject matter of the hearing being held. The public hearing notice must include the date, time and place of hearing, the identity of the hearing body and an explanation and general description of the matter under consideration. Items for which a public hearing must be held cannot be approved on the consent calendar.

A hearing must be held for the item even if no one shows up to speak. Some types of public hearing items may also trigger more extensive and expensive noticing requirements. For example, for many land use items, notice must be mailed or delivered to all affected property owners and neighbors within a certain distance.

B. When a Public Hearing is Required

As discussed above, the Board generally is not required to hold a public hearing for an agenda item. A public hearing is only required where a specific law or ordinance applicable to the item expressly requires a hearing or a hearing is required for constitutional reasons (usually to ensure "due process"). Sometimes the decision is made to hold a public hearing even though one is not required by law. There is no legal problem with this, but the agenda documents should explain that the public hearing is optional.

C. Staff Report; *Recommended Action*

Where a public hearing is to be held, the first two tasks in the *Recommended Action* section of the transmittal document should state:

- Open public hearing and receive testimony.
- Close public hearing.

D. Staff Report: *Reasons for Recommendation*

Among other things, the *Reasons for Recommendation* section of the transmittal should explain why a public hearing is being held. Agenda descriptions should give sufficient information to permit a person to make an informed decision as to whether they should attend or participate on the issue. Some common agenda items and sample transmittal text are provided below.

- Issuing bonds - "Pursuant to Government Code section 53410 *et seq.*, the Board [or Commission] must hold a public hearing before issuing the proposed bonds."



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- Increasing garbage or sewer fees - "Pursuant to California Constitution Article XIII D, the Board [or Commission] must hold a noticed public hearing before increasing garbage fees."
- Amending the Zoning Ordinance - "Pursuant to Government Code section 65856, the Board [or Commission] must hold a noticed public hearing before amending the Zoning Ordinance."
- Accepting cash in lieu of land for loss of parkland - "Pursuant to Public Resources Code section 5404, the Board [or Commission] must hold a public hearing prior to accepting cash in lieu of land to compensate for the loss of parkland."
- Weed abatement –
  - Putting properties on abatement list - "Pursuant to Health & Safety Code section 14898, the Board [or Commission] must hold a noticed public hearing to consider any property owner objections before ordering the abatements."
  - Assessments - "Pursuant to Health & Safety Code section 14910, the Board [or Commission] must hold a noticed public hearing to consider any property owner objections before ordering the assessments."
- Determining the tax rate for pest abatement – Pursuant to Health & Safety Code section 2871.7, the Board [or Commission] must hold a noticed public hearing to determine the rate of the tax for pest abatement."
- Decisions on discretionary land use permits/approvals - "Pursuant to Government Code section 65095, sections 5.20.080, 5.30.050 and 5.30.060 of the Revised Zoning Ordinance and constitutional due process requirements, the Board [or Commission] must hold a noticed public hearing before taking action on the [permit/appeal]."
- Vacating public streets, highways and service easements - "Pursuant to Streets & Highways Code section 8300 *et seq.*, the Board [or Commission] must hold a noticed public hearing before vacating a public street, highway or service easement."
- Maintaining water supplies – "Pursuant to Water Code sections 60305 *et seq.*, the Board [or Commission] must hold a noticed public hearing for raising funds to replenish water supplies."
- [Optional public hearings] - "A public hearing is not legally required for this item; however, one is being held because [*e.g.*, "the matter is of great public interest and the Board [or Commission] has so requested"]."



E. Staff Report: *Background*

The *Background* section of the transmittal should fully identify and explain all of the following:

- What specific action(s) the Board is being asked to take
- Why the Board is being asked to take the action(s)
- What the Board must do before it can take the action(s)

This information should be provided regardless of whether a public hearing is being held for the item.

With respect to the last bullet point, if federal or state law or the Municipal Code establishes certain requirements that must be fulfilled before taking the action, the agenda documents should explain how each of the requirements has been fulfilled. The evidence demonstrating how these requirements have been met should be provided to the Board, either in the agenda documents or by being on file and available for the Board's review in the Office of the Clerk of the Board. If the Board is adopting a resolution for the item, the resolution should also include this information. The department and counsel should work together to ensure consistency between the staff report and the resolution.

F. Continued Items

For controversial items involving significant public comment, the Board will often continue the matter to a subsequent meeting. In this situation, the Board may either hold the public hearing at the initial meeting or defer it to the future meeting. Where the Board holds the public hearing at the initial meeting, it should close the hearing at that meeting, and use the subsequent meeting for its deliberations and decision. Unless the Board decides otherwise, the public hearing should not be reopened at subsequent meetings unless the proposed action has materially changed or significant new information has come to light since the public hearing was closed.

CONCLUSION

Including the above information in Board transmittals will make it clear to the Board and the Clerk of the Board (i) why a public hearing is required (or is otherwise being held for the item); (ii) what legal requirements apply to the proposed action; and (iii) whether those requirements can be met in the context of the particular item.