



OFFICE OF THE COUNTY COUNSEL

MEMORANDUM

DATE: June 18, 2020

TO: Board of Supervisors

FROM: Christian M. Curtis, County Counsel *CMC*

RE: Possible Change to Rule 14 of the Board of Supervisors Rules of Procedure

County Counsel and Clerk of the Board are recommending that the Board of Supervisors adopt a rule or process for addressing allocation and prioritization of limited meeting time prior to agenda publication. Due to a variety of factors, including the amount of business, length of debate, and amount of public input, Board agendas have become increasingly congested over the last few years. The overall increase in meeting time is significant. While the Board's Rules of Procedure contemplate a "monthly" regular meeting between 9:00 a.m. and 5:30 p.m., the Board of Supervisors held approximately 33 meetings in 2019, many of them extending well past 5:30 p.m.

This increase in overall demand has highlighted the lack of any formal process for allocating limited space on agendas. Although staff has historically been able to resolve agenda allocation issues on an informal basis, the current congestion has highlighted the limits of this approach. In particular, the lack of any established Board criteria or priorities, the lack of any mechanism for addressing disagreements, and the inability to consult the entire Board due to Brown Act concerns leave a large amount of uncertainty.

BACKGROUND

The County of Mendocino currently has no rules for determining which items are published for a given agenda. The most relevant rules appear to be:

Rule 5. Regular Meetings

Regular monthly meetings will be conducted pursuant to the master calendar adopted at the beginning of each calendar year, with the exception that a scheduled meeting may be canceled if deemed appropriate by a majority vote the Board.

Regular meetings and continuances thereof shall commence at 9:00 a.m. and shall be held at the Supervisors Chambers at 501 Low Gap Road, Ukiah, California, unless the time, date and location is changed by a majority vote of the Board. Notice of any continuance must be posted within 24 hours of adjournment, at or near the place where the meeting was held. At each regular meeting, or

any continuance thereof, the Board may transact any and all business which it is authorized or permitted by law to transact.

Business shall normally be conducted between 9:00 a.m. and 5:30 p.m., but may continue past that time without objection from the members present. At any time from 5:30 p.m. onward, the “5:30 rule” may be invoked, at which time all business shall be adjourned except: (1) motions on the floor shall be voted upon; (2) closed session items may be considered by consent of a majority of the Board; (3) time-sensitive items may be considered by unanimous consent of the members present. All items agendized for that meeting and not concluded shall be continued to the next regular meeting of the Board.

All open sessions of the Board shall be recorded by audio or visual means or both and may also be recorded and broadcast by any member of the public or media so long as it does not disrupt the proceedings.

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Rule 14. Agenda Procedure

With the exception of items sponsored by Board members, all items to be placed on the agenda shall be presented to the Executive Office not later than 12:00 noon on the Monday two weeks preceding the regular meeting for which the agenda is prepared and shall include a complete agenda summary, all supporting documentation, and a fiscal analysis if necessary. The Chief Executive Officer/Clerk of the Board may authorize limited exceptions to the above procedure on a case by case basis to accommodate time sensitive items.

All Closed Session agenda items shall be submitted to County Counsel either prior to or simultaneously with submission to the Chief Executive Officer/Clerk of the Board. County Counsel shall submit to the Chief Executive Officer/Clerk of the Board a written agenda for all Closed Session matters no later than eight days (8) prior to the intended meeting date.

Late agenda items may be included as “Modifications to Agenda” provided Brown Act noticing requirements are met.

Prior to agenda publication, the Chair and Chief Executive Officer/Clerk of the Board (or their designees) shall hold an agenda summary meeting to review the order and timing of agenda items.

POSSIBLE MODELS

County Counsel has done some preliminary research into the various practices for agenda setting used by other boards, commissions, and other bodies, both inside and outside of California. What follows is a non-exhaustive list of some of the possible mechanisms that the Board of Supervisors could use to address the allocation of limited meeting time.

Option 1 – Unlimited Agenda

The first option is to place no limit on the number of items that may be placed on the agenda by any

department or member of the Board of Supervisors. At the time of publication, all items submitted would be posted on the agenda, regardless of time available. Items not completed during the scheduled meeting would be tabled or continued until a future meeting.

Under this option, the determination as to which business does and does not get completed is controlled primarily by the order in which agenda items are heard. To some degree, this may amount to a de facto delegation to the Chair for agenda setting. Because every item submitted would be published, however, the full Board would have the opportunity to override the Chair's decision on the date of the meeting.

Absent any clear rules on agenda setting procedure, many agencies may default to this model. This model appears to be most effective where the body can reasonably expect to conclude all or most of the business on an agenda at the time of a noticed meeting. Its disadvantage, however, is that agencies with a large amount of business may not be able to reliably inform the public when certain items will be heard. Similarly, not knowing when or if an item will be heard may prove inefficient for staff involved in department sponsored items, who may be unable to accurately know which day they'll be asked to present to the Board. Moreover, time spent debating and voting on the agenda would, itself, increase the length of Board meetings, further increasing overall agenda congestion. This potential process, however, does place some burden on the Clerk of the Board by means of determining the order by which items are agendaized and likely leaving it to schedule them in the order they are received vs. consideration being given to factors including potential amount of public interest, Board member interest, and/or priority or urgent needs related to deadlines.

Option 2 – Approval at a Prior Meeting (County of Tehama Model)

A second option is for the Board of Supervisors to approve items for the next meeting's agenda at the conclusion of each meeting. Much like the prior option, this model would vest agenda setting authority with the full Board. Unlike the prior option, however, it would limit the scope of those items included on the published agenda to what was actually likely to be heard. This would, in turn, reduce the risk that the public would be misled by an inaccurate or overly ambitious agenda.

As with the prior option, this process would require an investment of some Board time in determining which items will be on an agenda. Additionally, it extends the overall amount of time necessary for items to be heard by the full Board. This would likely require some amount of a safety valve for time-sensitive items. This model would also require an investment of time on behalf of the Clerk of the Board to prepare an overview of the forecasted items for the upcoming meeting and would limit the flexibility to address urgent operational needs of the County's departments. Further, many items are agendaized months in advance by County departments in anticipation of deadlines and mandates; this would need to be taken into consideration if this option were to be implemented.

Currently, the County of Tehama uses this model for Board sponsored items. On their published agendas, they have a standing item which reads:

BOARD MATTERS - Discussion of new items for further study/future agendas - Board Matters is an opportunity for one Board member to present a topic to the full Board and County Departments

and allow the Board to express consensus that staff should be directed to address the issue and bring it back to the full Board as an agenda item. This is not a time for the Board to address the merits or express their opinions on the issue but solely to decide if staff should expend resources in researching and preparing documents for consideration at a public Board meeting. More complex issues may result in a future study session.

Option 3 – Express Delegation (State Legislature Model)

A third option is to simply delegate the agenda setting function to a specific person or body. Delegation can be made to a standing committee, the Chair, the Clerk of the Board, or another appropriate person or entity. This person is given broad (often unfettered) discretion to set the agenda and determine which items come forward and which times.

This model would provide a clear method for determining what does and does not go on the agenda while minimizing the Board's meeting time and resources. The disadvantage to this option, however, is that it relies heavily on the discretion of the decision maker. Item sponsors may find themselves without an effective recourse for bringing an item to the Board if they are unable to persuade the decision maker to bring something forward. This approach also may create its own inefficiency, since an inability to consult the full Board may require the decision maker to speculate as to how the Board may best want to use its time and may involve unproductive conversations between the decision maker and the item sponsor regarding when and if the item should be agenda item.

While their published rules are somewhat more complex, this model is effectively employed by the State Legislature. Agendas for individual committees are set by the chair whereas the agenda for the floor is set by the Rules Committee. These decision makers are given broad discretion to determine what items will and will not go forward. (Prior rules allowed a legislator to force a committee hearing on any bill, but this has since been changed.) Notably, however, the State Legislature is not subject to the Brown Act, and is therefore able to have more extensive communication outside of formal meetings, which may facilitate the agenda setting process.

Option 4 – Rationing and Advance Allocation

A fourth option would be to devise a system for allocation of time to potential sponsors in advance of the meetings. Under the current model, the Clerk of the Board allocates a set amount of time forecasted in each meeting dedicated for unknown / anticipated Board sponsored items. Further, due to the historically agenda congestion issues, departmentally sponsored items that were presentation only in nature were limited to one time per quarter (or four meetings per year). The Board could implement a more formalized process and adopt as part of its master meeting calendar an allocation of time for discretionary items among various supervisorial districts on a rotating basis throughout the year. Under any such model, the majority of the meeting time would likely need to be preserved for routine items, the budget, public hearings, appeals, and certain time-sensitive matters that cannot be forecast that far in advance. Discretionary items, however, such as ordinance changes, policy changes, proclamations, and others could potentially be allocated in a way that might divide time equitably among potential sponsors. Another rule change would be to consider altering the agenda submission deadline for Board members, ensuring that their items were

submitted for any potential agenda timely and complete in nature (ensuring that at a minimum items were meeting the intent of the Brown Act).

There are too many possible permutations of this approach to fully explore here. Each such option would have its own advantages and disadvantages. One disadvantage common to all such processes, however, is a relative inflexibility and an inability to agendize based on policy issues rather than by rule. If the Board is interested in a structure along these lines, it may be prudent to ask staff to prepare more detailed recommendations and assessments.

ADDITIONAL FACTORS TO CONSIDER

In addition to considering a process for allocating agenda time, the Board may also want to consider a reduction in the overall congestion of the Board calendar. While it would not eliminate the need for an agenda creation process, a reduction in congestion would reduce the urgency and frequency of scheduling challenges. The current length and frequency of Board of Supervisors meetings make the County of Mendocino something of an outlier among local governments, suggesting the a reduction of congestion may be attainable. Possible methods to reduce congestion could include the more robust use of standing committees to vet and refine items, more consistent application of the time limits for debate under Rule 19, creation and application of an aggregate time limit on public comment, numerical or time limits to discretionary items, and an emphasis on reaching final decisions on items in as few meetings as practicable.

CONCLUSION

The Board has a range of options as to how to allocate space on its agendas, including not only those options outlined above but also various combinations or hybrids of those options and other possible creative models. In determining which system works best for this Board, it is important to consider practical limitations on Clerk of the Board staff, the amount of time spent on the agendizing process, effective means of triage or prioritization, and an approach that is equitable to everyone involved. Additionally, any system developed will need to have adequate flexibility to accommodate unexpected emergency items, appeals and public hearings that may be initiated by project applicants or members of the public, and time for department-sponsored items.

CMC/jc