



MEMORANDUM

To: Board of Directors of Maywood Mutual Water Company No. 3

From: Andy Turner and Reid Miller

Re: Assembly Bill 240 and the Mutual Water Company Open Meeting Act

Date: April 23, 2024

On October 8, 2013, Governor Jerry Brown signed Assembly Bill (AB) 240 into law, which took effect on January 1, 2014. Most significantly, AB 240 established a new Mutual Water Company Open Meeting Act (“Act”), codified in Corporations Code sections 14305-14307. The Act applies to mutual water companies many of the requirements for open meetings and records that were previously applicable to homeowner associations under the Davis-Stirling Act.

AB 240’s Provisions

AB 240’s provisions can be broken down into five categories: **(1)** open meeting requirements; **(2)** record inspection requirements; **(3)** financial requirements; **(4)** lien recording authority; and **(5)** AB 54 training renewal. The remainder of this memo discusses each of these categories as well as **(6)** violations of the Act and procedures for curing violations.

(1) Open Meeting Requirements¹

The Act sets forth various requirements for board of directors’ meetings. The Act defines a “meeting” as a congregation of a majority of the members of the board at the same time and place to hear, discuss, or deliberate upon any item of business that is within the board’s authority. The open meeting requirements apply to any mutual water company that operates a “public water system,” i.e., a system that provides service to 15 or more service connections. The Act includes the following requirements:

- (a) **Notice - Timing.** Notice of board meetings must be provided to “eligible persons” (defined below) at least four days before the meeting, unless the meeting is an emergency meeting, in which case

¹ Cal. Corp. Code § 14305.



prior notice is not required. Also, if the board meeting will consist only of an “Executive Session” (defined below), the notice must be given at least 2 days before the meeting.

- (b) **Notice – How Given.** Notice is to be given by posting the notice in a “prominent, publicly accessible place or places” within the company’s service area, and by mail to any “eligible person” who has requested such notice, and the company may recover the reproduction and mailing costs for such requested notice. At the company’s option, the notice may be mailed to each shareholder or sent by e-mail or other electronic means if the recipient consents.
- (c) **Notice – What it Must Contain.** The notice must contain the time and place of the board meeting and must include the agenda for the meeting.
- (d) **Attendance – Eligible Persons.** Except for executive sessions, board meetings must be open to all “eligible persons.” However, to be able to attend such a board meeting, an eligible person must provide at least 24 hours’ advance written notice of his or her intent to attend the meeting.

The Act defines “eligible persons” as any one of the following: (1) a shareholder of the company; (2) a tenant or other occupant of property that receives water service from the company; (3) an elected city or county official who represents people who receive drinking water from the company on a retail basis; or (4) any other person eligible to participate in the company's board meetings under the company’s articles of incorporation or bylaws. An eligible person in attendance at a board meeting must be allowed to speak, but the board can establish a reasonable time limit for such comments.

- (e) **Executive Sessions.** Eligible persons may be excluded from executive sessions of the board of directors that consider: (1) litigation; (2) matters relating to the formation of contracts with third parties; (3) shareholder discipline, provided that the shareholder that is the subject of any fine, penalty or other discipline has the right to attend the executive session; (4) personnel matters; or (5) a shareholder’s payment of assessments where the shareholder requests the meeting in executive session.
- (f) **Limitation to Agendized Items: No Action Outside of Meeting.** Subject to the exceptions listed in subsection (g) immediately below, mutual water company board members are now prohibited from discussing or taking action at a board meeting on any items under the board’s authority that are not included on the agenda for the board meeting. Board members are also prohibited from taking action on any items outside of a board meeting unless the item has been delegated by the board to another person or entity, or to a board committee made up of less than a majority of the board’s members.



(g) **Exceptions to Agenda Limitation.** There are several exceptions to the general rule prohibiting discussion and action on non-agenda items. Under those exceptions, a board member may do any of the following regardless of whether the item is set forth on the meeting agenda:

(1) Briefly respond to statements made or questions posed by a person speaking at a meeting.

(2) Ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities, whether in response to questions posed by an eligible person or based upon his or her own initiative.

(3) Provide a reference to, or provide other resources for factual information to, the company's officers or staff.

(4) Request that the company's officers or staff report back to the board at a subsequent meeting concerning any matter, or direct that a matter of business be placed on a future agenda.

(5) Direct the company's officers or staff to perform administrative tasks that are necessary to carry out the Act's requirements.

(6) The board may also take action on any item of business not on the agenda that is posted and distributed under any of the following conditions (provided that when the board begins discussing the item, it must first openly identify the item to the persons in attendance at the meeting):

(i) Upon a determination made by a majority of the board present at the meeting that an emergency situation exists. An emergency situation exists if there are circumstances that could not have been reasonably foreseen by the board, that require immediate attention and possible action by the board, and that, because of necessity, make it impracticable to provide notice. This scenario applies to a particular item of business, rather than calling an emergency meeting as discussed in the "Emergency Meetings" section below;

(ii) Upon a determination made by the board by a vote of two-thirds of the directors present at the meeting, or, if less than two-thirds of the board is present at the meeting, by a unanimous vote of the directors present, that (a) there is a need to take



- immediate action, and (b) the need for that immediate action came to the board's attention after the agenda was posted and distributed; and
- (iii) The item appeared on an agenda that was posted and distributed for a prior board meeting that occurred within 30 calendar days before the date that action is taken on the item and, at the prior meeting, action on the item was continued to the meeting at which the action is taken.
- (h) **Minutes**. The minutes of any board meeting conducted after January 1, 2014, other than minutes of any executive session, must be made available to eligible persons within 30 days of the meeting if requested by an eligible person and after the eligible person pays the company's costs incurred in providing those minutes. Matters discussed in executive session must be generally noted in the minutes of the immediately following meeting that is open to eligible persons.
- (i) **Emergency Meetings**. An emergency meeting may be called by the company's president or board chairman, or by any two other board members if unforeseen circumstances require immediate attention and possible action by the board, and the circumstances make it impracticable to provide notice as otherwise required by the Act.
- (j) **General Prohibition Against Electronic Meetings**. The board is prohibited from conducting a meeting via a series of electronic transmissions, including, but not limited to, electronic mail, except for an emergency meeting if all board members consent in writing to the action, and if the written consents are filed with the minutes of that board meeting.
- (k) **Teleconference Meetings**. Board meetings by teleconference, in which a majority of the board members are connected by electronic means, through audio or video or both, are permissible, so long as the meeting is conducted in a way that protects the rights of eligible persons and otherwise complies with the Act's requirements. Except for a meeting that will be held solely in executive session, the notice of the teleconference meeting must identify at least one physical location so that eligible persons may attend and at least one board member or a person designated by the board must be present at that location. A board meeting held by teleconference must be audible by any eligible persons at the designated location. Participation by board members in a teleconference meeting constitutes their presence at that meeting as long as all board members participating in the meeting are able to hear one another and to hear any eligible person speaking on matters before the board.



(2) Record Inspection Requirements²

The Act also expands the types of mutual water company records that are open to inspection and copying. The Act requires a mutual water company that operates a public water system to make specified records promptly available upon written request to an eligible person (defined the same as for open meeting purposes) upon payment of fees covering direct costs of duplication (as construed under the Public Records Act, “direct costs of duplication” refers to the direct overhead cost of actually making a photocopy and does not include staff time in compiling any responsive records). The records that are open to inspection and copying by eligible persons under the Act are:

- Agendas and minutes of board meetings conducted on or after January 1, 2014.
- A copy of the company’s annual budget.
- A copy of the accounting report that is now required.
- A copy of any records reporting the results of a water quality test.
- A copy of the company’s annual report that is distributed to shareholders.

(Any request for those records is limited to the three calendar years preceding the date of the request for the records.)

(3) Financial Requirements³

The Act also imposes two new financial requirements. First, a mutual water company that operates a public water system must adopt, in an open meeting, an annual budget each year on or before the start of the company’s fiscal year. That budget must be made available to eligible persons within 30 days of the board meeting at which the budget is adopted. Second, a mutual water company that operates a public water system must contract with a CPA or public accountant to conduct an annual review in accordance with generally accepted accounting standards of the company’s financial records and reports. An eligible person may request a copy of that report.

(4) Lien Recording Authority⁴

In addition, AB 240 specifically authorizes a mutual water company to record a lien against the real property of a shareholder who is delinquent in payment of any rate, charge or assessment related to water service provided to that shareholder’s property if: (i) recording of such a lien is *authorized in*

² Cal. Corp. Code § 14307.

³ Cal. Corp. Code § 14306.

⁴ Cal. Corp. Code § 14304.



the company's articles of incorporation or bylaws, and (i) at least 20 days' prior written notice regarding the recording of the lien is given to the shareholder. The recording of such a lien against real property has proven to be an effective way to collect delinquent charges, especially where a shareholder's property will be transferred.

(5) Repeat AB 54 Training Every 6 Years

AB 240 clarifies that the mutual water company director training required under AB 54 must be repeated *every 6 years* (AB 54 did not specify how often that training needed to be repeated).

(6) Violations; Notice to Cure

An eligible person may bring a lawsuit to enforce the Act's requirements and to declare void any action taken by a board that violates the Act. However, a board action will not be determined to be void if the action was taken in *substantial compliance* with the Act.

Prior to filing such a lawsuit, the eligible person must make a written demand on the board to cure or correct the action that allegedly violates the Act. That written demand must (i) be submitted to the board within 90 days after the date the challenged action was taken and (ii) identify the challenged action and the nature of the alleged violation of the Act.

Within 30 days of receipt of that demand, the board must either: (i) cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct, or (ii) inform the demanding party in writing of the board's decision not to cure or correct the challenged action. If the board decides to cure or correct that action, its act in doing so is not admissible as evidence of a violation of the Act.

Within 15 days of receipt of the written notice of the board's decision to cure or correct or not to cure or correct, or within 15 days of the expiration of the 30-day period to cure or correct, whichever is earlier, the demanding party may file its lawsuit. If the demanding party fails to file its lawsuit by the end of that 15-day period, that party is barred from later filing that lawsuit.

An eligible person who prevails in a lawsuit to enforce his or her rights under the Act is entitled to his or her reasonable attorneys' fees and court costs incurred in the lawsuit. However, if the company prevails, it cannot recover any attorneys' fees or costs unless the court finds the lawsuit to be frivolous, unreasonable, or without foundation.