



Moraga-Orinda Fire District  
**BOARD OF DIRECTORS**  
**SPECIAL BOARD MEETING MINUTES**  
February 18, 2022  
(APPROVED MARCH 16, 2022)

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**1. OPENING CEREMONIES**

The Board of Directors convened a teleconference Open Session at **12:05 p.m.** on **February 18, 2022**, via the Zoom application <https://us02web.zoom.us/j/81983466599>, webinar id: 81983466599 and by phone 669-900-6833. This meeting was conducted by webinar and teleconference only in accordance with AB 361. The meeting was not available for in-person attendance.

President Donner called the meeting to order and requested an attendance roll call. Present were the following Directors and Staff. President Donner led the pledge of allegiance.

President Donner	Director Jex	Gloriann Sasser, Admin. Services Director
Director Baitx	Director Jorgens	Mariam Morley, District Counsel
Director Danziger	Dave Winnacker, Fire Chief	Marcia Holbrook, District Clerk

**2. PUBLIC COMMENT – ITEMS NOT ON THE AGENDA**

President Donner opened Public Comment. District Clerk Holbrook announced one written public comment was received from Charles Porges, Orinda resident, questioning the notice for the special meeting. The comment was forwarded to the Board and made available for viewing on the District website; attached to these minutes, Written Public Comments Attachment A. There were no further requests to address the Board. President Donner closed Public Comment. Fire Chief Winnacker commented the section of the law cited in the correspondence applies to State agency meetings. The MOFD is a local agency, and local agencies are held under government code section 54956. Fire Chief Winnacker deferred to District Counsel about the permissibility of the special meeting and if the meeting was appropriately noticed. District Counsel Morley confirmed the special meeting required 24 hours' notice and was appropriately noticed under the applicable Brown Act laws.

**3. SPECIAL AGENDA**

**3.1 Authorize Emergency Paid Sick Leave in Accordance with SB114**

Fire Chief Winnacker provided the report. On February 9, 2022, Governor Newsome signed SB114. The law reauthorizes COVID-19 Supplemental Paid Sick Leave (SPSL) effective February 19, 2022, through September 30, 2022. The law is retroactive to January 1, 2022. The law requires public and private employers that employ 26 or more workers to provide additional SPSL equivalent to the hours worked in the prior week to be used for specified reasons defined by SB114 and outlined in the staff report. Under SB 114, the compensation for SPSL for employees is determined by the employees' exemption status and their pay rate. For nonexempt employees, compensation is based on the employee's regular rate of pay or the employee's total wages, less any overtime premium pay. For exempt employees, the law requires employers to calculate employee compensation for SPSL as they would for other forms of paid leave time. Employers are not required to pay employees more than \$511 per day when using SPSL and not more than \$5,110 in total. If an employee's regular compensation exceeds \$511 per day, the employee may elect to supplement the SPSL maximum pay amount with other accrued paid leaves to make up the difference in pay. Staff recommended granting additional paid sick leave as follows:

- 1) Determine an expiration date for SB114 required COVID-19 supplemental sick leave.
- 2) Authorize all existing and new benefitted 56-hour work week employees to receive up to 112 hours of COVID-19 Supplemental Paid Sick Leave in the manner specified in SB114. This leave can be used for any reason consistent with the COVID-19 related reasons included in SB114.
- 3) Authorize all existing and new benefitted 40-hour work week employees to receive up to 80 hours of COVID-19 Supplemental Paid Sick Leave in the manner specified in SB114. This leave can be used for any reason consistent with the COVID-19 related reasons included in SB114.
- 4) Authorize all existing and new part-time employees to receive COVID-19 Supplemental Paid Sick Leave hours in accordance in the manner specified in SB114. This leave can be used for any reason consistent with the COVID-19 related reasons included in SB114.
- 5) Upon request, authorize retroactive use of COVID-19 Supplemental Paid Sick Leave by employees during the period January 1, 2022 through February 18, 2022 and a restoration of non-SB114 COVID-19 supplemental sick leave to the employee's sick leave accrual bank.

**President Donner opened Public Comment. There were no requests to address the Board.  
President Donner closed Public Comment.**

Director Jorgens expressed concerns with the description of the agenda item title, staff recommendations, and staff report as the notice only describes the minimum SB114 requirements by law and not the previously

discussed options of offering more to employees than what is required by law. Director Jorgens questioned if Board action could be taken other than what is written in the documents. Fire Chief Winnacker stated if there is a concern, the meeting can be adjourned. Staff will amend and republish the staff report to hold a special meeting on Saturday, February 19, 2022, to adopt SB114 to meet the statutory timeline. Fire Chief Winnacker deferred to District Counsel. Director Jorgens stated an option would be to approve the minimum requirement and consider adjustments to pay more than the minimum requirement at a regular board meeting. Director Jorgens expressed concerns about holding a special meeting to discuss extra compensation that is not required.

Director Baitx requested guidance from District Counsel. District Counsel Morley stated the law requires that you give enough notice to the public to understand what action the Board will take. The agenda states that the Board may authorize all existing and new benefitted 56-hour work week employees to receive up to 112 hours of covid-19 supplemental paid sick leave in the manner specified in SB114. The notice does give the public notice of how much sick leave is intended to provide the firefighters. Director Baitx requested guidance from District Counsel if the Board could exceed the requirement to pay employees more than \$511/day when using SPSL and not more than \$5,110 in total. President Donner asked if the Board could pay the firefighter at their position rate, which exceeds the minimum requirement. District Counsel Morley explained the law requires that employees be paid at their pay rate but provides a Cap amount per day which is \$511/day. Director Jorgens reviewed the statement in the staff report stating that the employee, not the employer, may elect to supplement the SPSL maximum pay amount with other accrued paid leaves. The staff report fails to disclose the intent to pay them double the amount provided in the report.

Fire Chief Winnacker recommended adjourning the meeting and convening a special meeting on Saturday, February 19, 2022. Staff will modify the staff report as directed. Director Jorgens opposed holding a special meeting to add extra compensation when not required. Fire Chief Winnacker explained the legal requirements mandated to adopt a policy by February 19, 2022. If the Board intends to increase the rate in the future, many administrative items will need to be addressed internally due to the retroactive application back to January 1. Fire Chief Winnacker deferred to the Board about scheduling items of this nature in the future. Director Baitx preferred to adopt the policy with the correct phrasing by the statutory deadline.

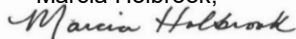
Director Danziger inquired about the \$511/day language and the possibility of approving more than the minimum. Fire Chief Winnacker answered if it is the Board's pleasure to pay above the minimum, it would have been beneficial in the interest of transparency for the information to be better articulated in the staff report. Fire Chief Winnacker suggested correcting the staff report. Fire Chief Winnacker stated a question had been posed about the appropriateness of holding a special meeting to award sick leave allocations above the legal minimum in a special meeting versus a regular meeting where the packet goes out with additional time for public review. Fire Chief Winnacker requested board direction.

President Donner recommended adjourning the meeting, issuing notice to the public, and convening on Saturday. Director Jex suggested adopting the policy as presented and considering modifications at the regular March meeting. Director Baitx supported adjourning the meeting and adopting a corrected policy to avoid the additional administrative work in delaying adoption. Director Jorgens stated once adopted, the item should be placed on a regularly scheduled agenda, so the public has time to read it and react. Director Jorgens requested the options to be quantified in the staff report to properly consider the financial implications. President Donner recommended holding the special board meeting to discuss the SB114 on Saturday, February 19, 2022. All directors agreed to Saturday, February 19, 2022, at 5:00 p.m. No further discussion by the Board.

#### 4. ADJOURNMENT

**At 12:29 p.m., Director Jorgens motion and seconded by Director Jex to adjourn the meeting. Said motion carried 5-0 roll call vote (Ayes: Baitx, Danziger, Jex, Jorgens, and Donner; Noes: None; Absent: None; Abstain: None).**

Marcia Holbrook,



District Secretary/District Clerk

Public comment for special meeting on 2/18/2022

Board members,

I wish to inform you that I believe that CA law does not allow the special meeting you are about to hold to be a “special” meeting. I believe that nothing pressing is occurring that cannot wait for the next regular meeting.

Please see

[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=11125.4.&lawCode=GOV](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=11125.4.&lawCode=GOV)

This meeting does not conform to any of the 9 reasons listed.

The second issue I want to inform you of is that the Brown Act now requires the posting of the agenda electronically.

Please see §54954.2 (A) and (B).

[https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?division=2.&chapter=9.&part=1.&lawCode=GOV&title=5](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?division=2.&chapter=9.&part=1.&lawCode=GOV&title=5).

In particular I also wish to draw your attention to §54956 (b) about prohibited special meetings.

The Brown act *may* also require that you give timely electronic notice to those who are subscribed to your meeting notification system.

Charles Porges.