Independent Citizens' Bond Oversight Committee
May 16, 2017
3 p.m.-4 p.m.
OC1038

I. Welcome

II. Staff Reports:

A. Actions by District since passage of Measure MM: (Certified Election Results; Adopted Bylaws for the Independent Citizens' Bond Oversight Committee (ICBOC); retained a Program Management Firm);

B. Independent Citizens' Bond Oversight Committee Bylaws *(attachment)* and Proposition 39 (including nature and scope of the Committee's responsibilities);

C. Committee Terms (split original group between 1 and 2 year assignments for continuity-by preference, or by straws, etc.);

D. Scheduling of Regular Meetings and scope of the Committee's authorized activities

E. No Bond Funds can be spent on ICBOC

F. Goals and Next Steps (for Measure MM and the ICBOC)

III. Nominations and Motion to Elect Committee Chair (1 year term)

IV. New Business (Meeting turned over to Chairperson)

A. Adoption of Regular Meetings Schedule;

B. Questions for Staff/Counsel Not Previously Addressed during Meeting; and

C. Other topics.

V. Old Business (None)

VI. Adjourn

MIRACOSTA COMMUNITY COLLEGE DISTRICT

RESOLUTION NO. 3–16/17

ESTABLISHING AN INDEPENDENT CITIZENS' BOND OVERSIGHT COMMITTEE AND APPROVING BYLAWS FOR THE MEASURE MM COMMITTEE THEREFORE

WHEREAS, the Board of Trustees of the MiraCosta Community College District (the "District") previously adopted a resolution requesting San Diego County, California (the "County") to call an election for general obligation bonds ("Election") held on Nov. 8, 2016 ("Measure MM"); and

WHEREAS, notice of the Election was duly given and on Nov. 8, 2016, the Election was duly held and conducted for the purpose of voting a measure for the issuance of bonds of the District in the amount of $455,000,000; and

WHEREAS, based on the Canvass and Statement of Results for the Counties, more than fifty-five percent of the votes cast on Measure MM were in favor of issuing the aforementioned bonds; and

WHEREAS, the Board of Trustees of the District (the "Board") desires to establish an independent citizens' bond oversight committee (the "Committee") in connection with issuance of bonds under Measure MM and to approve Bylaws governing such Committee.

NOW, THEREFORE, THE BOARD OF TRUSTEES OF THE MIRACOSTA COMMUNITY COLLEGE DISTRICT DOES HEREBY FIND, DETERMINE AND CERTIFY AS FOLLOWS:

Section 1. **Authorization**. Measure MM was authorized pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIIIA of the California Constitution and subdivision (b) of Section 18 of Article XVI of the California Constitution in accordance with the requirements of the Strict Accountability In Local School Construction Bonds Act of 2000 (the "Act").

Section 2. **Establishment of Committee**. An Independent Citizens' Bond Oversight Committee (the "Committee") is hereby established for the purposes set forth in the Act.

Section 3. **Bylaws**. The Committee shall operate pursuant to the Board approved Bylaws. The Committee shall have only those responsibilities granted to them in the Act and in the Bylaws. The Bylaws, as submitted herewith and attached hereto, are hereby approved.

Section 4. **Other Actions**. Officers of the Board and members of the Committee established hereunder are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents that they may deem necessary or advisable in order to give effect to and comply with the terms and intent of this Resolution. Such actions heretofore taken by such officers, officials and staff are hereby ratified, confirmed and approved.

MIRACOSTA COMMUNITY COLLEGE DISTRICT

INDEPENDENT CITIZENS' BOND OVERSIGHT COMMITTEE

BYLAWS

Section 1. Committee Established. The MiraCosta Community College District (the "District") was successful at the election conducted on Nov. 8, 2016, in obtaining authorization from the District's voters to issue up to $455,000,000 aggregate principal amount of the District's general obligation bonds ("Measure MM"). The Election was conducted under Proposition 39, being chaptered as the Strict Accountability in Local School Construction Bonds Act of 2000, at Section 15264 *et seq.* of the Education Code of the State ("Prop 39"). Pursuant to Section 15278 of the Education Code and a resolution of the Board of Trustees of the District (the "Board"), the District has established an Independent Citizens' Bond Oversight Committee (the "Committee"), which shall have the duties and rights set forth in these Bylaws. The Committee does not have legal capacity independent from the District.

Section 2. Purposes. The purposes of the Committee are set forth in Prop 39, and these Bylaws are specifically made subject to the applicable provisions of Prop 39 as to the duties and rights of the Committee. The Committee shall be deemed to be subject to the *Ralph M. Brown Public Meetings Act* of the State of California and shall conduct its meetings in accordance with the provisions thereof. The District shall provide necessary administrative support to the Committee as shall be consistent with the Committee's purposes, as set forth in Prop 39.

The proceeds of general obligation bonds issued pursuant to the Elections are hereinafter referred to as "bond proceeds." The Committee shall confine itself specifically to bond proceeds generated under Measure MM. Regular and scheduled maintenance projects and all monies generated under other sources shall fall outside the scope of the Committee's review.

Section 3. Duties. To carry out its stated purposes, the Committee shall perform only the duties set forth in Sections 3.1, 3.2, and 3.3 hereof, and shall refrain from those activities set forth in Sections 3.4 and 3.5.

3.1 Inform the Public. The Committee shall inform the public concerning the District's expenditure of bond proceeds. In fulfilling this duty, all official communications to either the Board or the public shall come from the Chair acting on behalf of the Committee. The Chair shall only release information that reflects the majority view of the Committee.

3.2 Review Expenditures. The Committee shall review expenditure reports produced by the District to ensure that (a) bond proceeds were expended only for the purposes set forth in the Measure MM; and (b) no bond proceeds were used for any teacher or administrative salaries or other operating expenses, in compliance with Attorney General Opinion 04-110, issued on Nov. 9, 2004.

3.3 Annual Report. The Committee shall present to the Board, in public session, an annual written report that shall include the following:

(a) A statement indicating whether the District is in compliance with the requirements of Article XIIIA, Section 1(b)(3) of the California Constitution; and

(b) A summary of the Committee's proceedings and activities for the preceding year.

3.4 Duties of the Board/Superintendent/President. Either the Board or the Superintendent/President, as the Board shall determine, shall have the following powers reserved to it, and the Committee shall have no jurisdiction over the following types of activities:

(i) Approval of construction contracts,

(ii) Approval of construction change orders,

(iii) Expenditures of construction funds,

(iv) Handling of all legal matters,

(v) Approval of construction plans and schedules,

(vi) Approval of scheduled maintenance plans, and

(vii) Approval of the sale of bonds.

3.5 Measure MM Projects Only. In recognition of the fact that the Committee is charged with overseeing the expenditure of proceeds of Measure MM, the Board has not charged the Committee with responsibility for:

(a) Projects financed through the State of California, developer fees, redevelopment tax increment, certificates of participation, lease/revenue bonds, the general fund or the sale of surplus property without bond proceeds of Measure MM shall be outside the authority of the Committee.

(b) The establishment of priorities and order of construction for the bond projects, which shall be made by the Board in its sole discretion.

(c) The selection of architects, engineers, soils engineers, construction managers, project managers, CEQA consultants and such other professional service firms as are required to complete the projects based on District criteria established by the Board in its sole discretion.

(d) The approval of the design for each project including exterior materials, paint color, interior finishes, site plan and construction methods (modular vs. permanent), which shall be determined by the Board in its sole discretion.

(e) The selection of independent audit firm(s), performance audit consultants or such other consultants as are necessary to support the activities of the Committee.

(f) The appointment or reappointment of qualified applicants to serve on the Committee, subject to legal limitations, and based on criteria adopted in the Board's sole discretion as part of carrying out its function under Prop 39.

Section 4. Authorized Activities.

4.1 In order to perform the duties set forth in Section 3.0, the Committee may engage in the following authorized activities:

(a) Receive copies of the District's annual, independent performance audit and annual, independent financial audit, required by Prop 39 (Article XIIIA of the California Constitution)

(together, the "Audits") at the same time said Audits are submitted to the District, no later than Mar. 31 of each year, and review the Audits.

(b) Inspect District facilities and grounds for which bond proceeds have been or will be expended, in accordance with any access procedure established by the District's Superintendent/President.

(c) Review copies of scheduled maintenance proposals or plans developed by the District.

(d) Review efforts by the District to maximize bond proceeds by implementing various cost-saving measures.

(e) Receive from the Board, within three months of the District receiving the Audits, responses to any and all findings, recommendations, and concerns addressed in the Audits, and review said responses.

Section 5. Membership.

5.1 Number.

The Committee shall consist of at least seven (7) members appointed by the Board from a list of candidates submitting written applications, and based on criteria established by Prop 39, to wit:

- One (1) student enrolled and active in a community college support group, such as student government.
- One (1) member active in a business organization representing the business community located in the District.
- One (1) member active in a senior citizens' organization.
- One (1) member active in a bona-fide taxpayers association.
- One (1) member active in a support organization for the District, such as a foundation.
- Two (2) members of the community at-large.

5.2 Qualification Standards.

(a) To be a qualified person, he or she must be at least eighteen (18) years of age.

(b) The Committee may not include any employee, official of the District or any vendor, contractor or consultant of the District.

5.3 Ethics: Conflicts of Interest.

(a) Members of the Committee are not subject to the Political Reform Act (Gov. Code §§ 81000 *et seq.*), and are not required to complete Form 700; but each member shall comply with the Committee Ethics Policy attached as "Attachment A" to these Amended and Restated Bylaws.

(b) Pursuant to Section 35233 of the Education Code, the prohibitions contained in Article 4 (commencing with Section 1090) of Division 4 of Title 1 of the Government Code ("Article 4")

and Article 4.7 (commencing with Section 1125) of Division 4 of Title 1 of the Government Code ("Article 4.7") are applicable to members of the Committee. Accordingly:

(i) Members of the Committee shall not be financially interested in any contract made by them in their official capacities or by the Committee, nor shall they be purchasers at any sale or vendors at any purchase made by them in their official capacity, all as prohibited by Article 4; and

(ii) Members of the Committee shall not engage in any employment, activity, or enterprise for compensation that is inconsistent, incompatible, in conflict with, or inimical to duties as a member of the Committee or with the duties, functions, or responsibilities of the Committee or the District. A member of the Committee shall not perform any work, service, or counsel for compensation where any part of his or her efforts will be subject to approval by any other officer, employee, board, or commission of the District's Board of Trustees, except as permitted under Article 4.7.

5.4 Term. Except as otherwise provided herein, each member shall serve a term of two (2) years, commencing as of the date of appointment by the Board. No member may serve more than three (3) consecutive terms. At the Committee's first meeting, members will draw lots to select a minimum of two members to serve for an initial one (1)-year term and the remaining members for an initial two (2)-year term. Members whose terms have expired may continue to serve on the Committee until a successor has been appointed. A term commences as of the date of appointment to the Committee by the Board.

5.5 Appointment. Members of the Committee shall be appointed by the Board through the following process: (a) the District shall advertise for members in local newspapers, on its website, and in other customary forums, as well as solicit appropriate local groups for applications; (b) the Superintendent/President will review the applications; and (c) the Superintendent/President will make recommendations to the Board.

5.6 Removal; Vacancy. The Board may remove any Committee member for any reason, including failure to attend two consecutive Committee meetings without reasonable excuse or for failure to comply with the Committee Ethics Policy. Upon a member's removal, his or her seat shall be declared vacant. The Board, in accordance with the established appointment process shall seek to fill any vacancies on the Committee within ninety (90) days of the occurrence of a vacancy.

5.7 Compensation. The Committee members shall not be compensated for their services.

5.8 Authority of Members. (a) Committee members shall not have the authority to direct staff of the District; (b) individual members of the Committee retain the right to address the Board, either on behalf of the Committee or as an individual; (c) the Committee shall not establish subcommittees for any purpose; and (d) the Committee shall have the right to request and receive copies of any public records relating to the projects funded by Measure MM.

Section 6. Meetings of the Committee.

6.1 Regular Meetings. The Committee shall meet at least once a year, but no more frequently than quarterly.

6.2 Location. All meetings shall be held within the boundaries of the MiraCosta Community College District, located in San Diego County, California.

6.3 Procedures. All meetings shall be open to the public in accordance with the *Ralph M. Brown Act*, Government Code Section 54950 *et seq.* Meetings shall be conducted according to such additional procedural rules as the Committee may adopt. A majority of the number of Committee members shall constitute a quorum for the transaction of any business.

Section 7. District Support.

7.1 The District shall provide to the Committee necessary technical and administrative assistance as follows:

(a) Preparation of and posting of public notices as required by the *Brown Act*, ensuring that all notices to the public are provided in the same manner as notices regarding meetings of the District Board;

(b) Provision of a meeting room, including any necessary audio/visual equipment;

(c) Preparation, translation, and copies of any documentary meeting materials, such as agendas and reports; and

(d) Retention of all Committee records, and providing public access to such records on an Internet website maintained by the District.

7.2 District staff and/or District consultants shall attend all Committee proceedings in order to report on the status of projects and the expenditure of bond proceeds.

Section 8. Reports. In addition to the Annual Report required in Section 3.3, the Committee may report to the Board from time to time in order to advise the Board on the activities of the Committee. The Annual Report shall be in writing and shall summarize the proceedings and activities conducted by the Committee.

Section 9. Officers. The Board, upon the recommendation of the superintendent/president shall appoint the initial Chair of the Committee. Thereafter, the Committee shall elect the Chair and a Vice-Chair who shall act as Chair only when the Chair is absent. The Chair and Vice-Chair shall serve in such capacities for a term of one year and may be re-elected by vote of a majority of the members of the Committee.

Section 10. Amendment of Bylaws. Any amendment to these Bylaws shall be approved by a majority vote of the Board.

Section 11. Termination. The Committee shall automatically terminate and disband concurrently with the Committee's submission of the final Annual Report, which reflects the final accounting of the expenditure of all Measure MM monies.

MIRACOSTA COMMUNITY COLLEGE DISTRICT

INDEPENDENT CITIZENS' BOND OVERSIGHT COMMITTEE

ETHICS POLICY STATEMENT

This Ethics Policy Statement provides general guidelines for Committee members in carrying out their responsibilities. Not all ethical issues that Committee members face are covered in this Statement; however, this Statement captures some of the critical areas that help define ethical and professional conduct for Committee members. The provisions of this Statement were developed from existing laws, rules, policies, and procedures, as well as from concepts that define generally accepted good business practices. Committee members are expected to strictly adhere to the provisions of this Ethics Policy.

POLICY

- CONFLICT OF INTEREST. A Committee member shall not make or influence a District decision related to: (1) any contract funded by bond proceeds; or (2) any construction project that will benefit the Committee member's outside employment, business, or a personal finance or benefit an immediate family member, such as a spouse, child, or parent.

- OUTSIDE EMPLOYMENT. A Committee member shall not use his or her authority over a particular matter to negotiate future employment with any person or organization that relates to: (1) any contract funded by bond proceeds, or (2) any construction project. A Committee member shall not make or influence a District decision related to any construction project involving the interest of a person with whom the member has an agreement concerning current or future employment, or remuneration of any kind. For a period of two (2) years after leaving the Committee, a former Committee member may not represent any person or organization for compensation in connection with any matter pending before the District that, as a Committee member, he or she participated in personally and substantially. Specifically, for a period of two (2) years after leaving the Committee, a former Committee member and the companies and businesses for which the member works shall be prohibited from contracting with the District with respect to: (1) bidding on projects funded by the bond proceeds; and (2) any construction project.

- COMMITMENT TO UPHOLD LAW. A Committee member shall uphold the federal and California Constitutions, the laws and regulations of the United States and the State of California (particularly the Education Code) and all other applicable government entities, and the policies, procedures, rules, and regulations of the MiraCosta Community College District.

- COMMITMENT TO DISTRICT. A Committee member shall place the interests of the District above any personal or business interest of the member.

ADOPTED, SIGNED AND APPROVED this 14th day of December, 2016.

BOARD OF TRUSTEES OF THE MIRACOSTA
COMMUNITY COLLEGE DISTRICT

President, Board of Trustees

ATTEST:

Secretary, Board of Trustees

STATE OF CALIFORNIA)
)ss
SAN DIEGO COUNTY)

I, Sunita V. Cooke, Ph.D., do hereby certify that the foregoing is a true and correct copy of Resolution No. 3-16/17, which was duly adopted by the Board of Trustees of the MiraCosta Community College District at the meeting thereof held on the 14th day of December, 2016, and that it was so adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

By _____
Sunita V. Cooke, Ph.D.
Secretary, Board of Trustees