



Regional Transportation Planning Agency - Local Transportation Commission
Monterey County Service Authority for Freeways & Expressways - Email: info@tamcmonterey.org

TRANSPORTATION AGENCY FOR MONTEREY COUNTY

Measure X eXcellent Transportation Oversight Committee (X-TOC)

Tuesday, July 16, 2019
2:00 PM

MEETING LOCATION:

Agricultural Center Conference Room, 1428 Abbott Street, Salinas

1. ROLL CALL

Call to order and self-introductions. If you are unable to attend, please contact Elouise Rodriguez, Senior Administrative Assistant. Your courtesy to the other members to assure a quorum is appreciated.

2. PUBLIC COMMENTS

Any member of the public may address the Committee on any item not on the agenda but within the jurisdiction of the Committee. Each member of the public is allotted with three minutes to address any concerns. Comments on items on today's agenda may be given when that agenda item is discussed.

3. BEGINNING OF CONSENT AGENDA

Approve the staff recommendations for items listed below by majority vote with one motion. Any member may pull an item off the Consent Agenda to be moved to the end of the **CONSENT AGENDA** for discussion and action.

3.1 APPROVE draft minutes of the April 16, 2019 committee meeting.

- Wright

3.2 RECEIVE information on House Resolution (H.R.) 2939, the State and Local General Sales Tax Protection Act, federal legislation regarding Federal Aviation Administration fuel sales tax and preservation of local sales taxes for projects listed in the expenditure plan.

- Hale

The Federal Aviation Administration (FAA) adopted a rule on aviation fuel sales

taxes in 2014 that reinterpreted federal law on aviation fuel taxes. Previously, fuel excise taxes were used for airport expenses, but sales taxes were exempt from this diversion. Now, the FAA is also applying that rule to sales taxes, including local transportation sales taxes, which could divert funding Monterey County voters designated to implement Measure X projects and programs and set a precedent for other entities to take similar action. The Executive Committee discussed this issue and recommended Board support for H.R. 2939 on June 5, 2019, on a vote of 4-1.

END OF CONSENT AGENDA

4. **RECEIVE** presentation on the local Measure X "Alta Street Rehabilitation Project" from the City of Gonzales.

- Wright/Dobbins

Patrick Dobbins, Public Works Director/City Engineer, City of Gonzales, will make a presentation on the city's local Measure X funded, "Alta Street Rehabilitation Project."

5. **Measure X Senior & Disabled Program:**

1. **RECEIVE** update on the Measure X Senior and Disabled Program and,
2. **PROVIDE** input on the program guidelines and draft needs assessment.

-Castillo

The Senior & Disabled Transportation Services Program is a grant program funded by Measure X. The Transportation Agency accepts grant applications from non-profit organizations to fund activities that increase transportation services for seniors and people with disabilities. Five non-profit organizations were awarded funding in the first cycle of the program. Staff will provide an update on the grantee's first annual reports and request input on potential changes to the program guidelines for the second grant cycle. The Transportation Agency is also conducting a needs assessment to address questions about services provided to South County communities by the organizations awarded funding. The public comment period for the needs assessment and program guidelines closes July 31, 2019.

6. **Measure X Annual Audit Streamlining:**

1. **RECEIVE** an update on the results of the Measure X annual audit and compliance reporting for 2017/18; and
2. **RECOMMEND** the Transportation Agency Board of Directors modify the Maintenance of Effort calculation to be consistent with the Senate Bill 1 Local Streets & Roads program.

- Zeller

The purpose of the Measure X annual audit is to confirm that the funding recipients -

- TAMC, the County of Monterey and the twelve incorporated cities -- have complied with the voter-approved requirements specified in Ordinance 2016-01 for the Transportation Safety and Investment Plan. Agency staff will provide an update on the receipt and review of annual audit compliance data, and present recommendations for streamlining the reporting process, including an update to the Maintenance of Effort calculation.

7. Bylaws for Measure X Citizens Oversight Committee:

1. **REVIEW** proposed changes in Measure X Citizens Oversight Committee Bylaws; and
2. **RECOMMEND** that the proposed changes be submitted to the Transportation Agency's Board of Directors for approval.

-Wright/Reimann

The Measure X Citizens Oversight Committee's Bylaws were approved by the Transportation Agency's Board of Directors on April 26, 2017. This report seeks to make changes to term of office for the committee's Chair and Vice Chair and clarify the language in other sections of the Measure X Citizens Oversight Committee Bylaws.

8. **RECEIVE** training on the Brown Act, which sets the rules for the noticing and conduct of public meetings.

-Wright/Reimann

The Ralph M. Brown Act (Government Code sections 54950-54963, referred to as the "Brown Act") is intended to provide public access to meetings of California local government agencies. Kay Reimann, Counsel for the Transportation Agency, will present a training session on the Brown Act to the Measure X Citizens Oversight Committee.

9. ANNOUNCEMENTS

10. ADJOURN

ANNOUNCEMENTS

Next Transportation Oversight Committee meeting:

Tuesday, October 15, 2019 at 2:00 p.m.

Ag Center Conference Room

1428 Abbott Street, Salinas

Light refreshments will be provided

If you have any items for the next agenda, please submit them to:

Theresa Wright
eXcellent Transportation Oversight Committee Coordinator
theresa@tamcmonterey.org

Documents relating to an item on the open session that are distributed to the Committee less than 72 hours prior to the meeting shall be available for public inspection at the office of the Transportation Agency for Monterey County, 55-B Plaza Circle, Salinas, CA. Documents distributed to the Committee at the meeting by staff will be available at the meeting; documents distributed to the Committee by members of the public shall be made available after the meeting.

Transportation Agency for Monterey County
55-B Plaza Circle, Salinas, CA 93901-2902
Monday thru Friday 8:00 a.m. - 5:00 p.m.
TEL: 831-775-0903
FAX: 831-775-0897

The Committee Agenda will be prepared by Agency staff and will close at noon nine (9) working days before the regular meeting. Any member may request in writing an item to appear on the agenda. The request shall be made by the agenda deadline and any supporting papers must be furnished by that time or be readily available.

If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 USC Sec. 12132), and the federal rules and regulations adopted in implementation thereof. Individuals requesting a disability-related modification or accommodation, including auxiliary aids or services, may contact Transportation Agency at 831-775-0903. Auxiliary aids or services include wheelchair accessible facilities, sign language interpreters, Spanish Language interpreters and printed materials, and printed materials in large print, Braille or on disk. These requests may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting, and should be made at least 72 hours before the meeting. All reasonable efforts will be made to accommodate the request.



Memorandum

To: eXcellent Transportation Oversight Committee
From: Theresa Wright, Community Outreach Coordinator
Meeting Date: July 16, 2019
Subject: eXcellent Transportation Oversight Committee Minutes

RECOMMENDED ACTION:

APPROVE draft minutes of the April 16, 2019 committee meeting.

ATTACHMENTS:

- eXcellent Transportation Oversight Committee Meeting Draft Minutes - April 2019

TRANSPORTATION AGENCY FOR MONTEREY COUNTY (TAMC)
eXcellent Transportation Oversight Committee (X-TOC)
April 16, 2019 Meeting

Held at the Marina Branch Library, Community Room
190 Seaside Circle, Marina CA

Voting	JANUARY 15 2019	APR 16 2019	JULY 16 2019	OCTOBER 15 2019	JANUARY 21 2020	APRIL 21 2020	JULY 21 2020	OCTOBER 20 2020
Members								
Kevin Dayton, Chair Salinas Valley Taxpayers Association <i>(Rick Giffin)</i>	P	P						
Cesar Lara Transit Users <i>(Monica Gurmilan)</i>		A A						
Janet Brennan League of Women Voters <i>(Howard Fosler)</i>	P P	P P						
Tom Rowley Monterey Peninsula Taxpayers Association Rick Heuer		P E						
Kalah Bumba Senior or disabled services agency <i>(Teresa Sullivan)</i>	P	P P						
Victoria Beach Bicycling Advocate <i>(Claire Rygg)</i>	P A	E A						
Rod Smalley Labor Organization <i>(Glen Schaller)</i>	P P	P A						
Cliff Fasnacht Central Coast Builders Association <i>(Kristine O'Dell)</i>		A A						
John Haupt Salinas Valley Chamber of Commerce <i>(John Bailey)</i>	P A	P A						
Dan Limesand Monterey Peninsula Chamber of Commerce <i>(vacant)</i>	P A	P -						
Scott Waltz Habitat Preservation <i>(Rachel Saunders)</i> Big Sur Land Trust	E E	P P						

Barbara Meister Hospitality (<i>Gary Cursio</i>)	P A	P A						
Norm Groot Agriculture (<i>bill Lipe</i>)	P A	E E						
Joshua Jorn Education (<i>Jarrett Garife, Patrick Deberdt</i>)	P - P	A P						
Paula Getzelman South County (<i>Carol Kenyon</i>)	P P	P P						
Chris Barrera Latino Organization (<i>Manuel Valencia</i>)	P -	E E						
Ron Rader North County (<i>Scott Freeman</i>)	P	E A						
Daniel Hernandez Pedestrian (<i>vacant</i>)		P -						
Alexis Garcia- Arrazaola Youth/College (<i>Vacant</i>)	A -	P -						
Sean Hebard Construction (<i>Keith Severson</i>)	P P	P P						
TRANSPORTATION AGENCY STAFF								
Debbie Hale, Executive Director								
Todd Muck, Deputy Executive Director	P							
Theresa Wright, Community Outreach Coordinator	P	P						
Mike Zeller, Principal Transportation Planner	P	P						
Kay Reimann, Transportation Agency Council		P						
Rich Deal, Transportation Engineer								
Ariana Green, Transportation Planner								

Rita Goel, Deputy for Administration & Finance		P						
Dave Delfino, Finance Director		P						
Laurie Williams, Transportation Engineer	P							
OTHERS PRESENT:								
Joyce Halabi, Program Manager, Public Works Department, City of Pacific Grove,		P						
Adam Guise, C.P.A. Partner Moss, Levy & Hartzheim LLP		P						

P-PRESENT
E-EXCUSED
A-ABSENT
- VACANT POSITION

1. **WELCOME**

Paula Getzelman, Committee Chair, called the meeting to order at 2:01 p.m. Chair Getzelman asked each member to introduce themselves and for Theresa Wright, TAMC's Community Outreach Coordinator, to use their introductions as a roll call, by noting who was present. Chair Getzelman also asked TAMC staff and members of the public to introduce themselves.

2. **PUBLIC COMMENT**

Chair Getzelman called for public comment. Receiving none, she proceeded to items on the consent agenda.

3. **APPROVE CONSENT AGENDA**

Chair Getzelman asked if any members wanted any item pulled from the consent agenda. Hearing none, she asked if there were any public comments on the consent agenda. Receiving none, she asked for a motion to approve the consent agenda. The motion was made by member Dayton, seconded by member Hebard and passed unanimously.

The Chair proceeded to items on the regular agenda.

4. **RECEIVE PRESENTATION ON MEASURE X LOCAL PROJECTS FROM THE CITY OF PACIFIC GROVE**

Joyce Halabi, Program Manager, Public Works Department, City of Pacific Grove, provided a presentation on the status of local Measure X projects in the city. Ms. Halabi provided an overview of the \$315,000 Fountain Avenue Repaving Project completed last year. She then talked about the \$1.2 million Congress Avenue Road Rehabilitation project which is currently underway. The funding source for this project is a combination of Measure X, SB 1, RSTP and General Funds monies. She ended her presentation with an explanation of the \$1.8 million Pavement Management Program Road Rehabilitation Project to for two of their main thoroughfares: 17 Mile Drive and Central Avenue. This project will be funded with monies from Measure X, SB1 and the city's General Fund. Chair Getzelman asked if there were any questions at the end of the presentation. Receiving none, she thanked Ms. Halabi for her presentation and proceeded to the next item on the agenda.

5. **RECEIVE REPORT ON AUDIT PROCESS AND ACCEPT THE TRANSPORTATION SAFETY AND INVESTMENT PLAN (MEASURE X) AUDIT REPORT FOR FISCAL YEAR ENDING JUNE 30, 2018**

Rita Goel, Director of Finance & Administration, Transportation Agency and Adam Guise, C.P.A., Partner, Moss Levy & Hartzheim, LLP, provided a report on the audit conducted by Moss Levy & Hartzheim on the Transportation Agency for Monterey County's financials for fiscal year ending June 30, 2018. They reported that the auditors found no instances of noncompliance by TAMC that required to be reported under Government Auditing Standards, nor did they note any matters involving the internal control over financial reporting and its operation that they consider to be material weakness. However, Mr. Guise, did report that some jurisdictions that received Measure X funds have only met partial compliance of the independent audits' requirements and that at least one jurisdiction was not in compliance with its Maintenance of Effort requirement.

A vigorous discussion followed with members asking questions about the partial compliances and how those results differed from the information about to be presented in Item 6 on the agenda. During this question and answer period, Chair Getzelman talked about the audit conducted by sub-committee assigned to perform the Measure X First Year Audit Results and the Measure X Annual Report in January.

During the discussion the following motions were made:

Member Dayton motioned that the draft Annual Report compliance chart be corrected to indicate that Marina is not in compliance with the Maintenance of Effort requirement and that the City of Pacific Grove did not provide the 2014-15 expenditures and Seaside did not provide the 2017-18 expenditures to determine if they were in compliance with their Maintenance of Effort requirements. He also asked that another column be added to the graphic in the Measure X First Year Audit Results and Measure X Annual Report to indicated that the cities of Marina, Monterey, Pacific Grove, Salinas, and Seaside were not in compliance with the Article III.B.2 independent audit on Measure X compliance requirements.

Member Limesand, seconded the motion for discussion. After discussion, Member Limesand made a friendly amendment that the committee pick a deadline date for the jurisdictions to get into compliance and if they did not meet that date to move forward and indicate that they were not in compliance. More discussion followed with members asking questions, then Member Rowley proposed a friendly amendment recommending the suspension of the May 30, 2019 funding cycle to the non-compliant jurisdictions. Further discussion ensued, and it was pointed out that suspension of Measure X allocations were required for non-compliance under the Ordinance and Tax Sharing Agreements, and that TAMC staff had suspended some payments in the past, until compliance was obtained.

Member Brennen motioned to delay the release of the First Year Audit Results and Annual Report for at least two weeks to give jurisdictions time to come into compliance. Her motion was seconded by member Dayton for discussion. At the end of the discussion, Chair Getzelman called for a vote. It received 1 aye and 13 nay votes.

Member Dayton then restated his motion to have the chart on the Report be corrected to show that Marina was not in compliance on its Maintenance of Effort and that the cities of Seaside and Pacific Grove were deemed incomplete. The motion was seconded by Member Meister. The motion passed unanimously.

Member Dayton motioned that a new “Independent Auditor Compliance Letter” column should be added to the First Year Audit Results and Annual Report to accurately reflect the findings of the Moss, Leavy audit that the cities of Marina, Monterey, Pacific Gove, Salinas and Seaside were not in compliance with Article III.B.2 independent audit on Measure X compliance requirements to ensure that the annual report was accurate and complete. The motion was seconded by member Meister. After discussion, Chair Getzelman called for a vote. The Measure received 1 nay vote and 13 yea votes.

Member Brennan motioned that the audit report results be presented to the TAMC Board of Directors, along with a letter by the Oversight Committee Chair expressing the committee’s concerns about the audit process and the non-compliance results. The motion was seconded by Member Rawley. After discussion, the motion was amended to included that the letter be attached to the staff report to the TAMC Board of Directors for the Measure X Citizens Oversight Committee’s presentation of the First Year Audit Results and Annual Report in May. The motion passed unanimously.

Chair Getzelman asked members of the audit sub-committee were available to help write letter. Members Dayton and Meister said they were available.

6. **RECEIVE PRESENTATION ON MEASURE X FIRST YEAR AUDIT RESULTS AND THE MEASURE X ANNUAL REPORT**

The presentation of the audit results and the annual report were tabled by the Chair, since this issue was incorporated in the discussion of the previous agenda item.

7. **RECEIVE INFORMATION ON THE MEASURE X LOAN POLICIES AND THE RECENT LOANS TO THE CITIES OF DEL REY OAKS, GONZALES AND MONTEREY-SALINAS TRANSIT**

Mike Zeller, Principle Planner, Transportation Agency for Monterey County, presented information on the Measure X loan policies and the recent loans to the cities of Del Rey Oaks, Gonzales and Monterey-Salinas Transit. Mr. Zeller explained that The Policies and Project Descriptions for the Transportation Safety & Investment Plan, states that the Transportation Agency may issue limited loans, from time to time, to finance programs or projects. He explained that loans across categories require a recommendation from the Measure X Citizens Oversight Committee; and that advancement of funds within the same category may be approved by the Transportation Agency.

At the conclusion of his presentation, Chair Getzelman called for questions. Receiving none, she thanked Mr. Zeller for his presentation.

8. **ANNOUCEMENTS AND/OR COMMENTS**

Chair Getzelman called for announcements and/or comments. Receiving none, she proceeded to adjourn the meeting.

9. **ADJOURMENT**

Chair Getzelman adjourned the meeting at 3:50 p.m.



TRANSPORTATION AGENCY FOR MONTEREY COUNTY

Memorandum

To: Measure X Oversight Committee
From: Debra L. Hale, Executive Director
Meeting Date: July 16, 2019
Subject: **Napolitano Legislation Regarding Aviation Fuel Sales Tax**

RECOMMENDED ACTION:

RECEIVE information on House Resolution (H.R.) 2939, the State and Local General Sales Tax Protection Act, federal legislation regarding Federal Aviation Administration fuel sales tax and preservation of local sales taxes for projects listed in the expenditure plan.

SUMMARY:

The Federal Aviation Administration (FAA) adopted a rule on aviation fuel sales taxes in 2014 that reinterpreted federal law on aviation fuel taxes. Previously, fuel excise taxes were used for airport expenses, but sales taxes were exempt from this diversion. Now, the FAA is also applying that rule to sales taxes, including local transportation sales taxes, which could divert funding Monterey County voters designated to implement Measure X projects and programs and set a precedent for other entities to take similar action. The Executive Committee discussed this issue and recommended Board support for H.R. 2939 on June 5, 2019, on a vote of 4-1.

FINANCIAL IMPACT:

Unknown, likely minimal impact to Measure X revenues.

DISCUSSION:

H.R. 2939 is intended to overturn a 2014 FAA rulemaking and "re-establish Congressional intent and 29 years of federal interpretation that the limitation on the use of sales taxes collected on aviation fuel for airport purposes is applied to excise taxes on aviation fuel only, and not to general sales taxes that states and localities impose on all goods."

This legislation was brought to the attention of TAMC staff by the Self Help Counties Coalition. The overriding concern is delivering on the promise to voters when they approved the Measure X project list. Any proposal that diminishes the amount of funding coming to TAMC through the 3/8 of a cent

sales tax diminishes TAMC's ability to secure matching funds in order to deliver projects. It could also set a precedent for other entities to act in a similar way, further reducing the amount of funding available for the voter-approved intention.

The statewide impact of the FAA rule is estimated by the Board of Equalization (BOE) to be \$53 million per year. Although Monterey County only has a few small airports (including the Monterey Regional Airport), and the actual amount of funding at risk is likely to be minimal, the reason the Executive Committee voted to recommend the Board support this legislation is based on the principle of standing firm to protect Measure X revenues for the purpose intended by the voters.

Attachment 1 is a summary of the 2014 FAA rulemaking and the legislation introduced by Representative Grace F. Napolitano (CA-32) on May 23, 2019. **Attachment 2** is the draft bill (H.R. 2939) and **Attachment 3** is a redline showing how the bill will change current law. Online as **web attachment** is the Congress Member's news release.

ATTACHMENTS:

- ▣ FAA tax summary
- ▣ Draft Napolitano bill
- ▣ Redline of current law

WEB ATTACHMENTS:

- [May 23, 2019 News Release, "Napolitano introduces bill to protect California from FAA's recent threat"](#)

Napolitano Legislation regarding FAA's 2014 rulemaking on state and local general sales taxes as they apply to aviation fuel

- This legislation protects 45 states and approximately 10,000 local governments that have general sales taxes from federal government intrusion in the use of their general sales tax revenues.

Summary

- Re-establish Congressional intent and 29 years of federal interpretation that the limitation on the use of sales taxes collected on aviation fuel for airport purposes is applied to excise taxes on aviation fuel only, and not to general sales taxes that states and localities impose on all goods.

Background

- In 1987 Congress passed the FAA authorization amendments that required airports to spend aviation fuel excise tax revenue on airport uses. The conference report for the 1987 amendments to the FAA statute (H.R. Conf. Rept. No. 484, 100th Cong., 1st Sess. 1987 accompanying P.L. 100-223) clearly stated that the requirement that local taxes on aviation fuel must be spent on airports “is intended to apply to local fuel taxes only, **and not to other taxes imposed by local governments, or to state taxes**”.

Problem

- On December 8, 2014 (79 FR 66282), FAA made a final rulemaking that contradicts the Congressional intent and 29 years of practice by saying that “*the agency interpreted the provisions of Sections 47107(b) and 47133 to apply to any state or local tax on aviation fuel, whether the tax was specifically targeted at aviation fuel or was a general sales tax on products that included aviation fuel without exemption.*”

Concerns

- This FAA rulemaking is contrary to states' rights and is an assault on state and local control of their general application sales tax measures.
- Many local governments have voter approved sales tax measures for specific purposes such as transportation funding. This rulemaking will overturn the decision of local voters in taxing themselves for specific purposes.
- Due to the fact that sales taxes on aviation fuel are not segregated from other taxable sources, the burden placed on states and local governments to implement the tracking system necessary is extensive and represents an unfunded mandate.

Solution

- The bill would overturn the FAA rulemaking of 2014 and re-establish 29 years of FAA interpretation by clarifying Congress' original intent that general sales taxes are not subject to 49 U.S.C. Sections 47107(b)(1) and 47133(a), and that “local tax on aviation fuel” means local excise taxes on aviation fuel.

.....
(Original Signature of Member)

115TH CONGRESS
1ST SESSION

H. R.

To amend title 49, United States Code, to clarify the use of certain taxes and revenues.

IN THE HOUSE OF REPRESENTATIVES

Mrs. NAPOLITANO introduced the following bill; which was referred to the Committee on _____

A BILL

To amend title 49, United States Code, to clarify the use of certain taxes and revenues.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. USE OF REVENUES.**

4 (a) WRITTEN ASSURANCES ON USE OF REVENUE.—

5 Section 47107(b) of title 49, United States Code, is
6 amended—

7 (1) in each of paragraphs (1) and (2) by strik-
8 ing “local taxes” and inserting “local excise taxes”;

1 (2) in paragraph (3) by striking “State tax”
2 and inserting “State excise tax”; and

3 (3) by adding at the end the following:

4 “(4) This subsection does not apply to State or local
5 general sales taxes nor to State or local generally applica-
6 ble sales taxes.”.

7 (b) RESTRICTION ON USE OF REVENUES.—Section
8 47133 of title 49, United States Code, is amended—

9 (1) in subsection (a) in the matter preceding
10 paragraph (1) by striking “Local taxes” and insert-
11 ing “Local excise taxes”;

12 (2) in subsection (b)(1) by striking “local
13 taxes” and inserting “local excise taxes”;

14 (3) in subsection (c) by striking “State tax”
15 and inserting “State excise tax”; and

16 (4) by adding at the end the following:

17 “(d) LIMITATION ON APPLICABILITY.—This section
18 does not apply to State or local general sales taxes nor
19 to State or local generally applicable sales taxes.”.

Proposed Napolitano Legislation Regarding FAA Aviation Fuel Sales Tax

Changes to current law that would be made by this amendment are in red.

49 U.S.C. § 47107

(b) Written assurances on use of revenue.--(1) The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that local **excise** taxes on aviation fuel (except taxes in effect on December 30, 1987) and the revenues generated by a public airport will be expended for the capital or operating costs of--

(A) the airport;

(B) the local airport system; or

(C) other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

(2) Paragraph (1) of this subsection does not apply if a provision enacted not later than September 2, 1982, in a law controlling financing by the airport owner or operator, or a covenant or assurance in a debt obligation issued not later than September 2, 1982, by the owner or operator, provides that the revenues, including local **excise** taxes on aviation fuel at public airports, from any of the facilities of the owner or operator, including the airport, be used to support not only the airport but also the general debt obligations or other facilities of the owner or operator.

(3) This subsection does not prevent the use of a State **excise** tax on aviation fuel to support a State aviation program or the use of airport revenue on or off the airport for a noise mitigation purpose.

(4) This subsection does not apply to State or local general sales taxes nor to State or local generally applicable sales taxes.

49 U.S.C. § 47133

(a) Prohibition.--Local **excise** taxes on aviation fuel (except taxes in effect on December 30, 1987) or the revenues generated by an airport that is the subject of Federal assistance may not be expended for any purpose other than the capital or operating costs of--

(1) the airport;

(2) the local airport system; or

(3) any other local facility that is owned or operated by the person or entity that owns or operates the airport that is directly and substantially related to the air transportation of passengers or property.

(b) Exceptions.--

(1) Prior laws and agreements.--Subsection (a) shall not apply if a provision enacted not later than September 2, 1982, in a law controlling financing by the airport owner or operator, or a covenant or assurance in a debt obligation issued not later than September 2, 1982, by the owner or operator, provides that the revenues, including local **excise** taxes on aviation fuel at public airports, from any of the facilities of the owner or operator, including the airport, be used to support not only the airport but also the general debt obligations or other facilities of the owner or operator.

(2) Sale of private airport to public sponsor.--In the case of a privately owned airport, subsection (a) shall not apply to the proceeds from the sale of the airport to a public sponsor if--

(A) the sale is approved by the Secretary;

(B) funding is provided under this subchapter for any portion of the public sponsor's acquisition of airport land; and

(C) an amount equal to the remaining unamortized portion of any airport improvement grant made to that airport for purposes other than land acquisition, amortized over a 20-year period, plus an amount equal to the Federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996, is repaid to the Secretary by the private owner.

(3) Treatment of repayments.--Repayments referred to in paragraph (2)(C) shall be treated as a recovery of prior year obligations.

(c) Rule of construction.--Nothing in this section may be construed to prevent the use of a State **excise** tax on aviation fuel to support a State aviation program or the use of airport revenue on or off the airport for a noise mitigation purpose.

(d) Limitation of Applicability. - This section does not apply to State or local general sales taxes nor to State or local generally applicable sales taxes.



TRANSPORTATION AGENCY FOR MONTEREY COUNTY

Memorandum

To: eXcellent Transportation Oversight Committee
From: Theresa Wright, Community Outreach Coordinator
Meeting Date: July 16, 2019
Subject: City of Gonzales Local Measure X Project Update

RECOMMENDED ACTION:

RECEIVE presentation on the local Measure X "Alta Street Rehabilitation Project" from the City of Gonzales.

SUMMARY:

Patrick Dobbins, Public Works Director/City Engineer, City of Gonzales, will make a presentation on the city's local Measure X funded, "Alta Street Rehabilitation Project."

FINANCIAL IMPACT:

Measure X is estimated to generate \$20 million annually for a total of \$600 million over 30 years for transportation improvements in Monterey County. Of that amount, \$360 million (60%) will be distributed to the cities and the County for local projects, while the remaining \$240 million (40%) is programmed to regional safety and mobility projects. The City of Gonzales is estimated to receive \$233,150 in fiscal year 2019/2020.

DISCUSSION:

On November 8, 2016, the voters of Monterey County, approved Measure X on the Monterey County Ballot, thereby authorizing TAMC to impose and administer the proceeds from a three-eighths cent transaction and use tax ("Measure X"). Measure X is estimated to generate \$600 million over 30 years for transportation improvements in Monterey County. Of that amount, \$360 million (60%) will be distributed to the cities and the County for local projects, while the remaining \$240 million (40%) is programmed to regional safety and mobility projects.

The first year of Measure X revenues received by the Transportation Agency was \$28.2 million, which exceeded the anticipated amount of \$20 million. This additional funding provides the revenue to fund limited funds to finance programs or projects through a provision of the Policies and Project

Descriptions for the Transportation Safety & Investment Plan, approved by the Transportation Agency Board of Directors in May 2016. In addition, the Transportation Agency Board approved a policy to allow the three smallest cities (Gonzales, Del Rey Oaks, and Sand City) to borrow funds from the Transportation Agency to complete specific projects and repay the principal and interest using their local share of Measure X revenues.

The City of Gonzales requested that the Transportation Agency provide a \$2.5 million loan to the City for their Alta Street Rehabilitation project. This \$5.2 million rehabilitation project consisted of grinding the existing pavement of Alta Street between Gonzales River Road and Gloria Road down to the base layer, and reusing the ground pavement to reestablish the base and repave the roadway. This is an area that receives a high portion of truck traffic and was the City's top priority Measure X project.

The Gonzales "Alta Street Pavement Rehabilitation Project" which began in November 2017 and was completed in March 2018, was the largest capital improvement project in the City of Gonzales in 25 years. It was also the second major Measure X project completed in South Monterey County. Without an advancement of Measure X funds from the Transportation Agency, the project would have been delayed by several years. The City is repaying the interest-bearing loan from the City's share of Measure X revenues.



Memorandum

To: eXcellent Transportation Oversight Committee
From: Stefania Castillo, Transportation Planner
Meeting Date: July 16, 2019
Subject: **Measure X Senior & Disabled Program Update**

RECOMMENDED ACTION:

Measure X Senior & Disabled Program:

- 1. RECEIVE** update on the Measure X Senior and Disabled Program and,
- 2. PROVIDE** input on the program guidelines and draft needs assessment.

SUMMARY:

The Senior & Disabled Transportation Services Program is a grant program funded by Measure X. The Transportation Agency accepts grant applications from non-profit organizations to fund activities that increase transportation services for seniors and people with disabilities. Five non-profit organizations were awarded funding in the first cycle of the program. Staff will provide an update on the grantee's first annual reports and request input on potential changes to the program guidelines for the second grant cycle. The Transportation Agency is also conducting a needs assessment to address questions about services provided to South County communities by the organizations awarded funding. The public comment period for the needs assessment and program guidelines closes July 31, 2019.

FINANCIAL IMPACT:

Measure X allocates \$15 million over 30 years to this program, which is approximately \$500,000 per year. At the January 24, 2018 meeting, the TAMC Board of Directors voted to use \$1.5 million of Measure X funds for the initial Senior & Disabled Transportation Program's 3-year cycle covering fiscal years 2017/18, 2018/19, and 2019/20.

DISCUSSION:

The purpose of the Measure X Senior & Disabled Transportation Services Program is to increase transportation services for seniors and persons with disabilities to support their ability to live independently in their homes and communities.

In 2017, program guidelines including eligible activities and expenses, a grant application and scoring criteria were developed with input from the Monterey-Salinas Transit Mobility Advisory Committee and the eXcellent Transportation Oversight Committee. The TAMC Board of Directors opened the call for proposals on October 30, 2017 with a grant application deadline of December 1, 2017. For the first cycle, the grant application was comprised of five sections with a total of 90 points possible, the chart below provides a summary of the application sections and corresponding score criteria. Pages 5-7 of the program guidelines (**web attachment**) provide a more detailed breakdown of the application questions and scoring criteria.

Section	Scoring Criteria	Points
1) Applicant information	Applicant experience	20
2) Project description, timeline	Project feasibility and readiness	20
3) Project benefits	Project need and level of urgency	20
4) Communities served	Geographic equity	15
5) Project budget	Cost effectiveness and funding leverage	15

The Transportation Agency received five (5) complete applications for the first grant cycle. The applications were scored by a grants review committee composed of members from the MST Mobility Advisory Committee and the Citizens Oversight Committee. The **attached** application scoring summary provides an overview of each proposal and the score averages. The review committee recommended funding all applications, with a reduction of ITN Monterey County's request. The five proposals were presented to the Citizens Oversight Committee which recommended using \$1.5 million in Measure X funds for the first grant cycle covering fiscal years 2017/18, 2018/19, and 2019/20. In January 2018, the TAMC Board approved funding of the five proposals and executing agreements with each organization. In February 2018, the Board received criticism regarding the application selection process and geographic distribution of funds. Specific concerns were voiced about the limited services provided to South County communities by the organizations awarded funding.

The Transportation Agency is conducting a needs assessment (**web attachment**) and an evaluation of the first grant cycle to address these concerns and to incorporate any changes to the application selection process for the second grant cycle to better meet the program's purpose. Staff will give an overview of the work completed by grantees during the first grant year and discuss how each program is performing. Each grantee submitted an annual report (**web attachment**) outlining tasks completed, tasks pending, funds expended and pictures of grant funded activities. The success of grantees has been measured by comparing consistency between the work completed and the work outlined in their grant agreements. Grantees submit quarterly claims and progress reports with documentation on how funds are being spent.

The following items will be discussed for potential changes to the program guidelines:

- Evaluating the proposals is difficult, since each organization provides very different services. Should the program define metrics to evaluate effectiveness, such as the number of trips provided, clients served, areas served, or cost per client?
- Reviewing the eligible activities and expenses based on how each meets the program's goals may be beneficial. For instance, should purchase of MST services (bus passes, senior taxi vouchers,

- etc.) be an eligible expense? What type of activities best meet the Measure X mission?
- Requiring a site visit during the application process may be a way to understand the proposed grant-funded activities - should that be a part of the process?

Based on the evaluation of the first grant year, staff is requesting input from Committee members on the needs assessment and changes to the program guidelines for the second grant cycle scheduled to begin in fiscal year 2020/21. The assessment and program guidelines were presented at the May 29, 2019 MST Mobility Advisory Committee meeting and will also be vetted by the public and stakeholders with the public comment period ending on July 31, 2019. The proposed timeline for this project is below:

Date	Task
May 22, 2019	<ul style="list-style-type: none"> • TAMC Board of Directors releases draft guidelines and needs assessment for public review
May 29, 2019	<ul style="list-style-type: none"> • MST Mobility Advisory Committee reviews draft guidelines and needs assessment
July 16, 2019	<ul style="list-style-type: none"> • Measure X Citizens Oversight Committee reviews draft guidelines and needs assessment
July 31, 2019	<ul style="list-style-type: none"> • Public comment period closes
September 25, 2019	<ul style="list-style-type: none"> • TAMC Board of Directors adopts guidelines and needs assessment, opens Cycle 2 call for projects
November 29, 2019	<ul style="list-style-type: none"> • Cycle 2 Applications Due
December, 2019	<ul style="list-style-type: none"> • Review Committee meets to score applications
January 16, 2020	<ul style="list-style-type: none"> • Draft Program of Projects presented to Measure X Citizens Oversight Committee
January 31, 2020	<ul style="list-style-type: none"> • Draft Program of Projects presented to MST Mobility Advisory Committee
February 27, 2020	<ul style="list-style-type: none"> • TAMC Board of Directors adopts 3-Year Program of Projects
March 28, 2020	<ul style="list-style-type: none"> • Execute Cycle 2 grant agreements

ATTACHMENTS:

- Cycle 1 Scoring Summary

WEB ATTACHMENTS:

- [Draft Program Guidelines](#)
- [Draft Needs Assessment](#)
- [Annual Reports](#)

Summary of Cycle 1 Measure X Funded Programs

Approximately \$1.5 million were set aside for the program’s initial 3-year cycle covering fiscal years 2017/18, 2018/19, and 2019/20 (July 2017 to June 2020). Funds not expended in the current funding cycle will be carried forward and made available in future cycles. **Table 1-1** summarizes the programs awarded funds in the first grant cycle. **Table 1-2** summarizes the work completed by each applicant from January 2018 to December 2018, including funds expended and funds remaining.

Table 1-1 Cycle 1 Measure X Senior & Disabled Transportation Successful Applications

Applicant	Project Title	Summary	Total Request	Total Project Budget	Rank	Average Score	Average Rank
Veterans Transition Center	Mobility Opportunities for Veterans	Transportation for elderly and disabled veterans in Monterey County.	\$258,689	\$321,659	1	80.17	2.50
Blind & Visually Impaired Center	Orientation & Mobility Training	Provide orientation & mobility training, which is used to help people with vision loss maintain travel independence.	\$178,550	\$247,050	2	75.17	2.67
Josephine Kernes Memorial Pool	Kernes Pool Transportation Voucher Program	Transportation voucher assistance for senior and disabled residents of Monterey County to participate in therapeutic adaptive aquatic sessions at Kernes Pool.	\$147,000	\$196,425	3	74.50	3.00
Alliance on Aging	Senior Transportation Specialist Project	Transportation information, training and support for seniors.	\$170,000	\$201,208	4	72.67	3.33
ITN Monterey County	Dignified Transportation of Seniors and Visually Impaired Adults	Provide individualized transportation for seniors and visually impaired adults on a daily basis.	\$745,761	\$1,562,766	5	70.83	3.50

Table 1-2 Cycle 1 Summary of Work Completed (January 2018 to December 2018)

Applicant	Project Title	Summary of Work Completed	Funds Expended	Funds Remaining
Veterans Transition Center	Mobility Opportunities for Veterans	<ul style="list-style-type: none"> • Purchased three (3) vehicles and leased one (1) van. • Provided 155 rides for hospital visits, medical appointments, and legal appointments. • Begun development of marketing plan. 	\$112,694.50	\$145,964.50
Blind & Visually Impaired Center	Orientation & Mobility Training	<ul style="list-style-type: none"> • Encountered challenges during recruitment process and Executive Director was out on medical leave. • Hired Orientation & Mobility Specialist. • Purchased office supplies and mobility equipment. • Developed individualized navigation plans. 	\$22,814.95	\$155,735.05
Josephine Kernes Memorial Pool	Kernes Pool Transportation Voucher Program	<ul style="list-style-type: none"> • Developed an agreement and accounts payable with the transportation service provider. • Assisted clients and the transportation provider with scheduling 236 rides for therapeutic adaptive aquatic sessions at Kernes Pool. 	\$27,250	\$119,750
Alliance on Aging	Senior Transportation Specialist Project	<ul style="list-style-type: none"> • Hired and trained Transportation Coordinator. • Developed database of transportation resources and individual transportation plans. • Attended outreach events, developed transportation services flyer and coordinated interagency meetings. • Distributed MST bus passes. 	\$34,465.74	\$135,534.26
ITN Monterey County	Dignified Transportation of Seniors and Visually Impaired Adults	<ul style="list-style-type: none"> • Provided over 9,000 arm-through-arm, door-through-door rides. • Added 130 new members and recruited and trained 5 new volunteers. • Attended outreach events, developed marketing materials and gave 7 “Age Well Drive Smart” community presentations. • ITNAmerica chose ITNMontereyCounty to become a pilot site for ITNCountry, a rural transportation effort to be supported by newly developed ITNRides 2.0 software. 	\$322,844.73	\$422,916.27



Memorandum

To: eXcellent Transportation Oversight Committee
From: Michael Zeller, Principal Transportation Planner
Meeting Date: July 16, 2019
Subject: Measure X Annual Audit Streamlining

RECOMMENDED ACTION:

Measure X Annual Audit Streamlining:

1. **RECEIVE** an update on the results of the Measure X annual audit and compliance reporting for 2017/18; and
2. **RECOMMEND** the Transportation Agency Board of Directors modify the Maintenance of Effort calculation to be consistent with the Senate Bill 1 Local Streets & Roads program.

SUMMARY:

The purpose of the Measure X annual audit is to confirm that the funding recipients -- TAMC, the County of Monterey and the twelve incorporated cities -- have complied with the voter-approved requirements specified in Ordinance 2016-01 for the Transportation Safety and Investment Plan. Agency staff will provide an update on the receipt and review of annual audit compliance data, and present recommendations for streamlining the reporting process, including an update to the Maintenance of Effort calculation.

FINANCIAL IMPACT:

Approved by 69% of the voters in 2016, Measure X was projected to generate an estimated \$20 million annually, for a total of \$600 million over thirty years. Revenues have been collected since April, 2017, and in fact, the receipts for fiscal year 2017/18 totaled \$28,026,311. The funding source is a retail transactions and use tax of 3/8 cents. The revenue from the sales tax measure can only be used to fund transportation safety and mobility projects in Monterey County. A maintenance of effort requirement exists to assure that the cities and county do not use Measure X funding to backfill prior levels of transportation expenditures.

DISCUSSION:

The Transportation Agency has fiduciary responsibility for the administration of the voter-approved Transportation Safety and Investment Plan (Measure X) funds. Each jurisdiction entered into a tax sharing agreement with the Transportation Agency in order to receive their share of Measure X Local Streets & Roads revenues. In exchange, these agreements require the jurisdictions to submit audit reports annually to the Transportation Agency detailing the steps taken to comply with the implementing ordinance.

In accordance with the Policies & Project Descriptions for the Transportation Safety & Investment Plan, a Citizens Oversight Committee representing a diverse range of community interests was formed within 6 months of voter approval of Measure X. Members and their alternates were nominated by the organization they are representing. Additional members were nominated by the Transportation Agency Board of Directors to assure that a broad range of geographic and stakeholder interests are represented on the committee.

The duties of the Committee as defined in the Policies & Project Descriptions for the Transportation Safety & Investment Plan are as follows:

- Conduct independent audits to assure that funds are being expended in accordance with requirements of the Transportation Safety & Investment Plan;
- Review and make recommendations on any proposed changes to the plan, prior to the Transportation Agency Board consideration; and
- Prepare annual reports regarding the administration of the program, to be presented to the Transportation Agency Board of Directors and available for public review.

In accordance, the Measure X Citizen Oversight Committee established a subcommittee on January 15, 2019 to conduct the independent audit of the revenues and expenditure of Measure X funds. The subcommittee was asked to report the results of the audit to the full committee and to prepare the Measure X Annual Report.

The first full year of Measure X reporting, for fiscal year 2017/18, was due on December 31, 2018. As this was the first year of the independent audits' requirements, there has been a learning curve for all entities involved. Five out of the thirteen entities were late in submitting their reporting materials. As a result, the review by the TAMC auditors and the Measure X Transportation Oversight Committee was delayed. The oversight committee has requested that jurisdictions redouble their efforts to submit their audit reports on time to allow them adequate review prior to issuing their annual report in late February, for publication in April and delivery in May. In addition, some of the reports were incomplete. As of July 1, 2019, of the thirteen recipient jurisdictions, twelve have fully complied and one has only partially complied with the independent audit requirements. Below is a chart detailing the reporting status of each jurisdiction.

City or County	Funds Received	Reports Submitted on Time?	Annual Program Compliance Report	Maintenance of Effort	5-Year Program of Projects	Independent Financial Audit	Pavement Management Report	Independent Audit Compliance Letter
Monterey County	\$7,212,614	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Carmel	\$195,926	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Del Rey Oaks	\$71,397	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Gonzales	\$229,707	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Greenfield	\$426,723	Late	Yes	Yes	Yes	Yes	Yes	Yes
King City	\$388,534	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Marina	\$670,802	Late	Yes	Yes	Yes	Yes	Yes	Yes
Monterey	\$1,027,838	Yes	Yes	Yes	Yes	Yes	Yes	In Progress
Pacific Grove	\$557,922	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Salinas	\$4,247,511	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Sand City	\$28,228	Late	Yes	Yes	Yes	Yes	Yes	Yes
Seaside	\$1,007,912	Late	Yes	Yes	Yes	Yes	Yes	Yes
Soledad	\$569,545	Late	Yes	Yes	Yes	Yes	Yes	Yes
Total	\$16,634,659	5 Late	All Compliant	All Compliant	All Compliant	All Compliant	All Compliant	1 Non-Compliant

In addition to the local agency audits, TAMC was also audited for compliance with the Measure X requirements. The Transportation Agency for Monterey County financial audit found no instances of noncompliance that are required to be reported under Government Auditing Standards, nor did they note any matters involving the internal control over financial reporting and its operation that they consider to be material weaknesses.

At this time, staff is continuing to work with the non-compliant jurisdictions to ensure all reporting materials are submitted. Staff will then evaluate this year's process and develop a set of recommend changes to help clarify the requirements and avoid reporting delinquencies in the future. One of the changes staff is recommending is an adjustment to the Maintenance of Effort requirement. The purpose of the Maintenance of Effort requirement is to assure that no funds previously used for transportation are shifted to other uses and then backfilled with Measure X monies - the so-called "bait and switch." Measure X currently has a rolling three-year average calculation of Maintenance of Effort. By contrast, the state's Senate Bill 1 program calculates Maintenance of Effort based on a fixed three years of past expenditures (Fiscal Years 2009/2010, 2010/2011, and 2011/2012). The Senate Bill 1 calculation would meet the Measure X Maintenance of Effort intent without penalizing agencies that make a large one-time investment in transportation.

The Transportation Safety and Investment Plan Policies includes an established process for how the policies may be amended:

- Recommendation of approval of the amendment from the Citizens Oversight Committee;
- Hold a noticed public hearing and provide a 45-day comment period; and
- Receive approval from the Transportation Agency Board by a 2/3 vote and by a simple majority weighted vote based on population.

Agency staff will present the review of the 2017/18 audit reports from the cities and county and requests a recommendation to the Transportation Agency Board of Directors to modify the Maintenance of Effort calculation to be consistent with the Senate Bill 1 Local Streets & Roads program.



TRANSPORTATION AGENCY FOR MONTEREY COUNTY

Memorandum

To: eXcellent Transportation Oversight Committee
From: Theresa Wright, Community Outreach Coordinator
Meeting Date: July 16, 2019
Subject: **Bylaws for Measure X Citizens Oversight Committee**

RECOMMENDED ACTION:

Bylaws for Measure X Citizens Oversight Committee:

1. **REVIEW** proposed changes in Measure X Citizens Oversight Committee Bylaws; and
2. **RECOMMEND** that the proposed changes be submitted to the Transportation Agency's Board of Directors for approval.

SUMMARY:

The Measure X Citizens Oversight Committee's Bylaws were approved by the Transportation Agency's Board of Directors on April 26, 2017. This report seeks to make changes to term of office for the committee's Chair and Vice Chair and clarify the language in other sections of the Measure X Citizens Oversight Committee Bylaws.

FINANCIAL IMPACT:

There are no financial impacts to revising the Measure X Citizens Oversight Committee's bylaws.

DISCUSSION:

In accordance with the Policies & Project Descriptions for the Transportation Safety & Investment Plan, a Citizens Oversight Committee representing a diverse range of community interests was formed within 6 months of the passage of Measure X; and members of the committee were appointed to serve by the Transportation Agency's Board of Directors on March 22, 2017.

The committee was formed in order to facilitate the Transportation Agency's Transportation Safety and Investment Plan and Retail Transaction and Use Tax Ordinance 2016-01. The Ordinance, known as Measure X is anticipated to raise \$30 million annually for an anticipated \$600 million over 30 years. The Oversight Committee's purpose is to be an additional layer of transparency so that the public is assured that the Transportation Agency, the County of Monterey and the participating cities

are operating consistent with the terms of the Ordinance.

Their duties as defined in the Policies & Project Descriptions for the Transportation Safety & Investment Plan are as follows:

- Conduct independent audits to assure that funds are being expended in accordance with requirements of the Transportation Safety & Investment Plan;
- Review and make recommendations on any proposed changes to the plan, prior to the Transportation Agency Board consideration;
- Review and comment on project delivery schedules as represented in the Strategic Expenditure Plan and make recommendations to the Transportation Agency on any proposals for changing project delivery priorities; and
- Prepare annual reports regarding the administration of the program, to be presented to the Transportation Agency Board of Directors and available for public review.

On April 26, 2017, the Transportation Agency Board of Directors approved the Measure X Citizens Oversight Committee Bylaws which governs the committee. After consulting with the current officers, staff is recommending updating the bylaws to change the term of office for the committee's Chair and Vice Chair from one year to two years. Other changes are proposed to clarify the language in the attendance, voting, communication and conflicts of interest sections of the bylaws.

Attached to this report are the Measure X Citizens Oversight Committee Bylaws with the proposed changes for the Committee's discussion. This report asks the Oversight Committee to approve the proposed changes. The report also seeks the Committee's approval to submit the Bylaw revisions to the Transportation Agency's Board of Directors for approval.

WEB ATTACHMENTS:

[Proposed X-TOC Bylaws Revisions-July 2019](#)



TRANSPORTATION AGENCY FOR MONTEREY COUNTY

Memorandum

To: eXcellent Transportation Oversight Committee
From: Theresa Wright, Community Outreach Coordinator
Meeting Date: July 16, 2019
Subject: **Brown Act Public Meetings Training**

RECOMMENDED ACTION:

RECEIVE training on the Brown Act, which sets the rules for the noticing and conduct of public meetings.

SUMMARY:

The Ralph M. Brown Act (Government Code sections 54950-54963, referred to as the “Brown Act”) is intended to provide public access to meetings of California local government agencies. Kay Reimann, Counsel for the Transportation Agency, will present a training session on the Brown Act to the Measure X Citizens Oversight Committee.

FINANCIAL IMPACT:

None.

DISCUSSION:

The Ralph M. Brown Act (Government Code sections 54950-54963), referred to as the "Brown Act") is intended to provide public access to meetings of California local government agencies.

In order to achieve this objective, governmental bodies subject to the requirements of the Brown Act must provide public notice of their meetings, post agendas of the subjects to be discussed at those meetings, and provide public access to those meetings. Public notice of every meeting subject to the Brown Act is required, and access is mandatory unless the meeting is held in closed session under a specific exception contained in the Act.

However, the Brown Act is complex, and problems often arise in application. The following issues come up consistently:

- What kinds of public bodies are subject to the Act?

- Has the public body properly given notice of the matters it intends to address in the agenda for the meeting?
- What constitutes a “meeting,” and what kinds of communications among members of a legislative body are permitted outside of meetings?
- Are the exceptions permitting closed sessions being properly applied?

Kay Reimann, Counsel for the Transportation Agency for Monterey County, will present a training session on the Brown Act to the Measure X Citizens Oversight Committee.

Attached to this report is the "The ABCs of Open Government Laws" brochure.

ATTACHMENTS:

- The ABCs of Open Government Laws

The ABCs of Open Government Laws

The underlying philosophy of the open government laws is that public agency processes should be as transparent as possible. Such transparency is vital in promoting public trust in government.

This concept of governmental transparency is so important to the public that some 83 percent of voters supported adding it to California's constitution by adopting Proposition 59 in 2004.

California's open government laws require public officials to:

A

Conduct meetings of public bodies openly, except for limited circumstances under which the law allows the public's business to be conducted privately in closed sessions.

B

Allow the public to participate in meetings of public bodies through a public comment process.

C

Allow inspection and copying of public records, except when non-disclosure is authorized by law.

This pamphlet summarizes these three requirements in general terms.

Local officials are also encouraged to consult with their agency attorneys for information about how these requirements apply in any given situation or more information about this area of the law.

The Institute is able to make this resource available to local officials and others as a result of much appreciated financial support from:



The Institute is grateful for this firm's ongoing commitment to public service ethics and public service ethics education.

All decisions regarding the final content of this pamphlet were the Institute's.

A

Conducting the Public's Business in Public

General Rules

- Elected and most appointed local-agency bodies – which include many advisory committees – must conduct their business in open and public meetings.
- A “meeting” is any situation involving a majority of a public body in which agency business is transacted or discussed. In other words, a majority of the body cannot talk privately about a matter of agency business no matter how the communication occurs, whether by telephone or e-mail, or at a local coffee shop.
- The public must be informed of 1) the time and place of and 2) the issues to be addressed at each meeting. In general, public officials may only discuss and act on items included on the posted agenda for a meeting. The agenda must be posted at least 72 hours in advance of a regular meeting and written in a way that informs people of what business will be discussed. Many local agencies are required to post agendas on their websites (if they have one). Members of the public may request a copy of the agenda packet be mailed to them at the time the agenda is posted or upon distribution to the governing body. Some agencies also maintain e-mail lists to distribute agendas and related materials.

Key Things to Know

- **Advisory Bodies.** Advisory bodies formally created by the governing body are subject to the open meeting laws. In some cases, committees of less than a quorum of the public body are also subject to these laws.
- **Serial Meetings.** Avoid unintentionally creating a “serial” meeting—a series of communications that result in a majority of the body's members discussing, deliberating, or taking action on a matter of agency business.

A

Conducting the Public's Business in Public

- **Permissible Gatherings.** Not every gathering of members of a public body outside a noticed meeting violates the law. For example, a violation would not occur if a majority of the members attend the same educational conference or attend a meeting not organized by the local agency as long as members do not discuss among themselves agency business except as part of the gathering. Nor is attendance at a social or ceremonial event in itself a violation. The basic rule to keep in mind is a majority of the members cannot gather *and* discuss agency business except at an open and properly noticed meeting.
- **Closed Sessions.** The open meeting laws include provisions for private discussions under very limited circumstances. The reasons for holding the closed session must be noted on the agenda and different disclosure requirements apply to different types of closed sessions.
- **Posting and Following the Agenda.** In general, public officials may only discuss and act on items included on the posted agenda for a meeting. However, they or staff may briefly respond to questions or statements during public comments that are unrelated to the agenda items. Officials can also request staff to look into a matter or place a matter on the agenda for a subsequent meeting. Only under unexpected circumstances can matters that are not on the agenda be discussed or acted upon.

Consequences of Non-Compliance with Open Meeting Requirements

- **Nullification of Decision.** Many decisions that are not made according to the open meeting laws are voidable. After asking the agency to cure the violation, either the district attorney or any interested person may sue to have the action declared invalid.
- **Criminal Sanctions.** Additionally, members of the body who intentionally violate the open meeting laws may be guilty of a misdemeanor. The penalty for a misdemeanor conviction is imprisonment in county jail for up to six months, a fine of up to \$1,000 or both.
- **Other Measures.** Either the district attorney or any interested person may sue to remedy past and prevent future violations of the open meeting laws. Another remedy, under certain circumstances, is for a court to order that all closed sessions be tape-recorded. Regulations of public participation beyond those allowed by applicable statutory and constitutional principals can be a civil rights violation.
- **Attorneys' Fees and Costs.** Attorneys' fees and costs may be awarded to those who successfully challenge open meeting violations.

Example

If two members of a five-member public body consult outside of a public meeting (which is not in and of itself a violation) about a matter of agency business and then one of those individuals consults with a third member on the same issue, a majority of the body has consulted on that issue. Note the communication does not need to be in person and can occur through a third party. For example, sending or forwarding e-mail can be sufficient to create a serial meeting, as can a staff member's polling the body's members in a way that reveals the members' positions to one another.

- **Taping or Recording of Meetings Is Allowed.** Anyone attending a meeting may photograph or record it with an audio or video recorder unless the governing body makes a finding that the noise, illumination, or obstruction of view will disrupt the meeting. Any meeting tape or film made by the local agency becomes a public record that must be made available to the public for at least 30 days.
- **Sign-In Must Be Voluntary.** Members of the public cannot be required to register their name or satisfied any other condition for attendance. If an attendance list is used, it must clearly state that signing the list is voluntary.

A

A

A

General Rules

- **Democracy in Action.** The public has a right to address the public body at any meeting. A public official's role is to both hear and evaluate these communications.
- **The Public's Right to be Heard.** Generally, every regular meeting agenda must provide an opportunity for the public to address the public body on any item within the body's jurisdiction. If the issue of concern is one pending before the body, the opportunity must be provided before or during the body's consideration of that issue.

Open-Government-Is-Good-Politics Note

The media are highly vigilant in monitoring compliance with open government requirements—and quick to report on perceived violations.

Key Things to Know

- **Anonymous Speech Must Be Permitted.** Members of the public cannot be required to give their name or address as a condition of speaking. The clerk or presiding officer may request speakers to complete a speaker card, or identify themselves "for the record," but must respect a speaker's desire for anonymity.
- **Reasonable Time Limits May Be Imposed.** Local agencies may adopt reasonable regulations to ensure everyone has an opportunity to be heard in an orderly manner. For example, some agencies impose a uniform time limit on each person providing public comments on an issue.
- **Dealing with Dissension.** The chair cannot stop speakers from expressing their opinions or their criticism of the body. If an individual or group willfully interrupts a meeting and order cannot be restored, the room may be cleared. Members of the media must be allowed to remain and only matters on the agenda can be discussed.

General Rules

- Public agencies must generally make their records available for inspection by the public. Disclosure is the rule; withholding is the exception. In addition, there are a number of state laws that require affirmative disclosure of certain kinds of information (for example, by posting the information on the agency's website).

Key Things to Know

- **Agenda and Meeting Materials.** Copies of the agenda materials and other documents not exempt from disclosure distributed to the body must be available to the public. Any nonexempt materials prepared by the local agency must be available for public inspection at the meeting. Materials prepared and distributed by some other person must be made available after the meeting.
- **Scope of Access.** The public has the right to see nonexempt materials that are created as part of the conduct of the people's business. These materials include any writing that was prepared, owned, used, or retained by a public agency. This can include documents, computer data, e-mails, facsimiles, and photographs.
- **Presumption and Exceptions.** Written materials are presumed to be a public record unless an exception applies. There are a number of exceptions. For example, personnel records are typically exempt from disclosure because their release may violate an employee's privacy rights.

The public's right of access to public records is broadly construed and applies to many documents that public officials might otherwise assume are protected from disclosure.

Consequences of Violation

Anyone can sue the agency to enforce his or her right to access public records subject to disclosure. If the agency loses or otherwise produces the records as the result of the lawsuit, it must pay costs and attorneys fees.

It is important to note that the requirements discussed in this pamphlet are legal minimums for local government transparency in decision-making. Local agencies can provide for greater transparency.

In thinking about how an agency might provide for greater transparency, questions local agency officials might ponder include the following:

- 1 How can the agency make public information more readily available and easily understandable by the public in order to promote public trust and confidence in the agency and demonstrate the agency's commitment to transparency?
- 2 Are there kinds of information that are already publicly available in some form, but could be made available more conveniently to the public (for example, through voluntarily posting the information on the agency's website or including links on the agency's website to where information is available on other websites)?
- 3 What kinds of information might be of interest to a cross-section of the public relating to the agency's operations and decision-making processes? Are there ways this information can be made available without individual members of the public having to ask for it?

Ongoing consideration of these kinds of questions enables a local agency's officials to engage in collective discussion and decision-making about ways in which their agency can set its sights higher than the minimum requirements of the law.

A Note on Civility in Public Discourse

For communities to be able to work through difficult issues, it's important that people be able to express differing opinions about what best serves the public's interests in a respectful and civil manner.

This includes focusing on the *merits* of one's position. Even if people disagree about what's best for the community in this situation, it doesn't mean that those holding different views are bad people. Treat others with the same respect as one would like to be treated. Questioning others' motives or intelligence, being hostile, engaging in name-calling or making threats undermines one's effectiveness.

No matter how passionate one is about an issue, the goal is to conduct oneself in a way that will add to one's credibility and standing as a thoughtful member of the community.

California's open government laws are complex and extensive. Consult the following resources for more information on these laws.

- Understanding the *Basics of Public Service Ethics: Transparency Laws*, available at www.ca-ilg.org/Understanding-Public-Service-Ethics-Laws (includes discussions of other kinds of disclosure laws, in addition to Open Meeting Law and Public Records Act).
- *Open and Public IV: A User's Guide to the Ralph M. Brown Act, 2d Edition*, 2010. Available on the League of California Cities website at www.cacities.org or by calling 916.658.8200.
- *The People's Business: A Guide to the California Public Records Act*, 2008. Available on the League of California Cities website at www.cacities.org or by calling 916.658.8200.

Local officials should also consult their agency counsel with questions.

The Attorney General also offers guides on these laws; they are available from the Attorney General's website: http://ag.ca.gov/publications/2003_Intro_BrownAct.pdf (Brown Act Guide) and http://ag.ca.gov/publications/2003_Intro_BrownAct.pdf (Public Records Act).



The Institute for Local Government promotes good government at the local level with practical, impartial, and easy-to-use resources for California communities.

ILG is the research and education affiliate of the California State Association of Counties, the League of California Cities and the California Special Districts Association.

1400 K STREET, SUITE 205
SACRAMENTO, CALIFORNIA 95814
TELEPHONE: 916.658.8208 ■ FAX: 916.444.7535

©2015 all rights reserved. Institute for Local Government.