Citizens’ Bond Oversight Committee
2014 Measure E
Fremont Unified School District

Committee Purpose (Bylaws Article II)
The purpose of the committee shall be to actively inform the public concerning the expenditure of bond revenues [Education Code section 15278 (b)]. The committee will be actively involved in gathering bond related information and advising the Fremont Unified School District Board of Education on all bond-related matters. The committee will act in an oversight capacity on all bond related proposals and expenditures.

AGENDA
6:30 – 7:30 p.m., December 5, 2018
Central Meeting Room, District Office, 4210 Technology Dr.

Call to Order
Pledge of Allegiance
Roll Call

1. Welcome and introductions – Information (5 Minutes)
2. Approval of Nov. 7, 2018 meeting minutes – Action (3 Minutes)
3. Oral & written communications – Public Comment (2 Minutes)
   Voicemail & email report – Information
4. Update on Board Actions – Information – Aaron Kael, Vanir (5 minutes)
5. Monthly Status Report – Information – Aaron Kael, Vanir (10 minutes)
7. Possibilities for Committee Outreach – Discussion (5 minutes)
8. Future meeting topics – Information/Discussion (5 minutes)
9. Adjournment
Fremont Unified School District  
2014 Measure E  
Citizens’ Bond Oversight Committee  
Wednesday, Nov. 7, 2018

Meeting Minutes
Meeting held at the FUSD District Office Central Meeting Room

Call to Order: Meeting called to order at 6:34 p.m. followed by the Pledge of Allegiance.

Attendance: (Quorum established)

Members Present: Jeff Bowen, Carla Cox, Bryan Gebhardt, Siv Mahanty, Kathy Lang Newman, Ashok Desai, Chip Koehler and Susan Hou

Members Absent: Paul Whitman

FUSD Staff Present: John Chwastyk, Director, Facilities and Construction; Ken Blackstone, Public Information Officer for Facilities and Construction

Others Present: Aaron Kael, Vanir Construction Management

1. Welcome and introductions:
All present introduced themselves, including new alternate parent Susan Hou, who was appointed by the Board at its Oct. 24 meeting.

2. Approval of previous month’s minutes:
The Oct. 3, 2018 meeting minutes were approved unanimously as drafted.

3. Oral & written communications:
None.

4. Quarterly (June 30, 2018) financial report review:
The Board approved the most recent (June 30, 2018) quarterly CBOC report at its Oct. 10 meeting. Aaron Kael led the review of the report and highlighted several noteworthy changes, including the reduced Proposition 39 dollars going back into the contingency fund, the addition of voluntary mitigation agreement dollars redirected into the contingency fund, and that interest dollars reflect the actual amount to date. The report is also broken down into three categories: projects in progress ($351.6 spent or committed), projects not started yet ($171.5 million), and projects completed ($117 million).

Mr. Kael said numbers were being pulled together to determine a new estimated amount needed for the remaining middle school conversion projects in light of recent and unusual cost escalations. This information will be presented to the Board at a future
meeting with a request for guidance on how funds can be reallocated to meet these needs.

5. **Monthly status report:**
   (Item was skipped to allow enough time to discuss the next item.)

6. **CBOC Annual Report Planning:**
   There was discussion about the date this report could be presented to the Board (January or February of 2019) and what key points should be emphasized. Contingency amount, remaining priorities and cost escalations were mentioned. Brian Gebhardt went through a draft slide deck based upon last year’s presentation for the committee to discuss. Brian, Chip Koehler and Jeff Bowen agreed to keep working on this draft incorporating the committee’s input and have an update at the next meeting.

7. **Brown Act presentation:**
   Members of the Facilities Advisory Committee joined the meeting to receive a presentation from Bond Counsel David Casnocha, who joined via a conference call. He had emailed a slide presentation that was viewed by the committees and walked through it over the phone.

8. **Future Meeting Topics:**
   There was a request to represent the construction schedule on the financial report by adding a column for original or projected start date to have a better context correlating the original budget to cost escalations. Another future topic requested was a discussion about possibilities for committee outreach, such as the recent presentation to the Kiwanis Club.

9. **Adjournment:**
   The meeting was adjourned at approximately 7:42 p.m.

The next meeting of the CBOC will be at 6:30 p.m. on Dec. 5, 2018 in the Central Meeting Room at the FUSD district office.

# # #
November 27, 2018, FUSD Board of Education Meeting – Measure E Bond Program

The Board took the following action on agenda items related to the Measure E Bond Program:

The Board authorized staff to amend the agreement with Sensible Environmental Solutions, Inc. to provide construction phase industrial hygienist services for the new construction project at Horner Middle School (HMS). On July 25, 2018, the Board approved a contract in the amount of $24,571 for pre-construction phase services. At that time, it was advised that a planned amendment for construction phase services was forthcoming. This amendment of $59,018 is within the budget for the HMS project.

The Board authorized staff to enter into an agreement for $19,800 with LSA Associates, Inc. for California Environmental Quality Act (CEQA) consulting services for the new construction and modernization projects at Hopkins Middle School. The CEQA process is independent from the design process; staff anticipates bringing design options for Board approval at the December meeting.

The Board authorized staff to enter into agreements totaling $133,454 with Bay Area Geotechnical Group ($86,704) for geotechnical engineering services for the new construction and modernization projects at Centerville Middle School and Hopkins Middle School; and Ninyo & Moore ($46,750) for Thornton Middle School.

The Board authorized staff to amend the facilities lease agreement with McCarthy Building Companies, Inc. in the amount of $21,522,218 for completion of the work of improvement of Bid Package 5 for the new construction project at Horner Middle School (HMS). This bid package includes all remaining components not completed in bid packages 1-4. This amount was competitively bid by the Lease-leaseback entity. The work is subject to the provisions of Project Stabilization Agreement.
The District received bids on all five phased increments for the new construction project at HMS. Based on the total amount of the bids, there is a shortfall in the project budget of $30,588,162. The Board authorized staff to allocate this amount from the Measure E program contingency and fund the balance from the budgeted amounts for projects that have not yet started.

The Board authorized staff to amend the consultant services agreement with The Solis Group in the amount of $180,786 to administer the Project Stabilization Agreement (PSA). Solis has provided a proposal for PSA administration services to complete the two remaining IT upgrade projects not completed under the original agreement and nine new projects. Staff will bring a future amendment to the Board for the PSA administration for future Measure E projects, including the new construction and modernization projects at Centerville, Hopkins, and Thornton middle schools.

The Board authorized staff to amend the agreement with Rodan Builders, Inc in the amount of $293,247 for the new construction project at Walters Middle School. During pre-construction, the project was delayed substantially by the Department of Toxic Substances Control (DTSC). To ensure a fall 2019 schedule, the project was bid without the covered walkways and ornamental fencing as there was uncertainty about these items receiving DTSC approval. DTSC has since approved those items and this amendment will fund their construction as well as colored concrete in a portion of the central courtyard, a water bottle filling stations in the new building, and other minor modifications to the courtyard layout. The total contract is now $17,877,047, which is within the budget for the project.

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The Brown Act: Basics for Fremont USD CBOC and FAC Members

David G. Casnocha
Stradling Yocca Carlson & Rauth

November 7, 2018
The Big Question

• What does the Brown Act do?

The Brown Act requires that all meetings of public agencies take place in public after sufficient notice has been given to the public of the matters to be discussed at the meeting.

The purpose is to facilitate public participation in local government decisions and curb misuse of the democratic process by secret legislation by public bodies.
That Doesn’t Seem So Hard

• Unfortunately, the simple answer to the big question ends up raising a number of smaller questions, each of which has a more complicated answer.
  – What is a “public agency?”
  – What is a “meeting?”
  – What does it mean to meet “in public?”
  – What happens if a public agency does not meet in public?
What is a Public Agency?

• Public agencies include:
  – Governing bodies of local agencies (e.g. City Councils, School Boards, Public Utilities Boards); AND
  – Sub-Committees of governing bodies that:
    – Include a majority of board members, OR
      • Are standing committees with a specific purpose, OR
      • Are created by formal action of the body.

• The Board of Education approved bylaws for both the CBOC and the FAC which state that the CBOC and the FAC are subject to the Brown Act. For CBOC, Education Code states CBOC is subject to the Brown Act.
What is a Meeting?

- Any gathering of a majority of the members of the legislative body to hear, discuss, and/or deliberate on any item of business **within the subject matter jurisdiction of the body.**

- “Gatherings” do not have to happen in person.
  - Conference calls
  - Group e-mails
  - Serial Meetings (more later)
What is **not** a Meeting?

If a majority of the CBOC or FAC does not discuss CBOC or FAC business, there is no “meeting” when a majority of members attend:

- Conferences and similar gatherings which are open to the public.
- Open and public meetings held by another person or organization.
- Open and noticed meetings of another legislative body.
  - So a majority of you can attend meetings of the Board of Education so long as you are not talking about CBOC or FAC business.
- Purely social or ceremonial occasions.
  - So you do not need to run away from each other at the supermarket.
Serial Meetings

• In addition to prohibiting gatherings of a majority of the CBOC or FAC to discuss business, the Brown Act also limits how CBOC and FAC members can interact one-on-one.
  – Communications with less than a quorum of other Board members on a topic are permissible.
  – Using a series of such communications to circumvent the Brown Act is not.

• Separate conversations or communications outside of a meeting with members of a legislative body are OK if the person does not communicate to the other members of the CBOC and FAC the comments or positions of any other member of the respective committee.
Best Practices to Avoid Serial Meetings

• If an e-mail concerns an issue that needs the District’s attention, consider sending it to the District representative instead of another CBOC or FAC member. That minimizes the risk of e-mail chains.

• Scrupulously avoid the “reply-all” button.

• Do not ask staff if they know how other members feel about a given issue. Even though staff are not part of the agency for Brown Act purposes, if staff conveys the position of other members, it is a violation of the Act.
What Does It Mean to Meet “In Public?”

- Notice must be given of the time, and agenda of issues to be discussed at a meeting (72 hours for regular meeting, 24 hours for special meeting).
- CBOC and FAC may not take action on non-agendized items in the absence of an emergency.
- Location must be accessible to the public.
- Teleconferences are permitted. But if you call in, the location you call from must be both accessible to the public and identified in advance on the meeting notice.
  - Yes, this means that if you called in from your house, you would have to make your house publicly accessible during the meeting.
What Does It Mean to Meet “In Public?”

• Public must be given the opportunity to comment.
  – General comments on any item within the jurisdiction of the CBOC or FAC.
  – Additional comments on each agenda item.

• While Board of Education recesses into “closed session” to discuss litigation, land acquisition or personal matters, all of the CBOC and FAC business should be discussed in public. No need for closed sessions.
Meeting in Public vs. Meeting With Public

While the public must be given the opportunity to comment, they do not have the right to have their questions answered then and there.

- The Brown Act requires that any “meeting” of a majority of CBOC or FAC members be accessible to and viewable by the public.
- The Brown Act does not require the agency to allow the public to derail or control the discussion during a meeting. You are meeting, not them.
Enforcement

- Invalidation of actions taken in violation of the Act.
- Court order forbidding the agency from violating the Act again.
  - This means that if there were future violations, the member(s) at issue would be violating not just the Act, but a court order, leaving themselves open to civil contempt charges.
- Misdemeanor criminal changes.
  - For intentional violations only; this is very rare.
Takeaways

1. All CBOC and FAC meetings should take place in public at properly noticed meetings. No closed sessions.

2. Discussion of topics of interest to the CBOC and FAC should be limited to those topics on the published agenda. Therefore, be sure you get topics to the chair or District staff so that items can be placed on the agenda.

3. No serial meetings.
Questions?