

Mountain View Whisman School District
Measure B Parcel Tax Oversight Committee

October 20, 2020

The Brown Act

I. Purposes of the Brown Act

- A. To keep the public informed of the actions, debates and views of locally elected representatives; and
- B. To provide the procedural framework for local legislators to meet, debate, act and listen collectively to their constituents.

II. Applicability: Applies to a “member of the legislative body of a local agency” which includes “[a]ny person elected to serve as a member of a legislative body who has not yet assumed the duties of office...” Once elected, officials are expected to know the requirements of the Brown Act, even before taking office. (Government Code § 54952.1)

- A. **PTOC Bylaws:** Meetings shall be conducted in strict compliance with the Brown Act.

III. Legislative Body

- A. Includes any:
 - 1. Commission
 - 2. Committee
 - 3. Board
 - 4. Other body
 - 5. Also includes advisory committees that are standing committees that have continuing subject matter jurisdiction or fixed meeting schedules. (Government Code § 54952)
- B. Whether:
 - 1. Permanent or Temporary
 - 2. Decision-making or advisory

3. Established by charter, ordinance, resolution, or *formal action of the Board*. (Government Code § 54952)

IV. **Meetings**

A. General Rule: A majority of the members of the committee shall not, outside a meeting authorized by the Brown Act, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the committee.

1. “*Deliberation*” refers to not only collective decision-making, but also the collective acquisition and exchange of facts preliminary to the ultimate decision. The California Supreme Court has stated that deliberative action includes a “collective design-making process” and “deliberative gathering.” It also includes ‘informal sessions at which a legislative body commits itself to a particular future decision concerning the public business.
2. “*Action taken*” means a collective decision made by a majority of the members, a collective commitment or promise by a majority of the members to make a positive or negative decision or an actual vote of a majority of the members.

B. **What is a meeting?**

1. Any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, *deliberate* or take action upon any item that is within the subject matter jurisdiction of the legislative body; or
2. Any use of direct communication, personal intermediary, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence (Government Code § 54952.2), including:
 - a) Telephone, email, Facebook, Twitter, Instagram, blogs, etc.;
 - b) Communication through an intermediary.

A series of “meetings” by which a majority of the PTOC members commit to a decision or engage in collective deliberation concerning public business violates the Brown Act’s open meeting requirements.

C. **Meetings – substance v. procedure:** Communication limited to providing information (i.e., Superintendent’s weekly report) or procedural or administrative matters (scheduling meetings, determining agenda and time allotted to each of them) do not constitute meetings if they do not constitute *substantive* discussions of a topic within the subject matter of the Board/Committee.

D. **Meetings – developing a collective concurrence:** Test: If discussion can potentially contribute to developing a collective concurrence, it is likely to constitute a “meeting” for

Brown Act purposes. Even if a Board/Committee member does not participate in a discussion, the mere act of listening may contribute to developing a collective concurrence.

E. Individual Contact Between Members of the Public and Committee Members: Individual contacts or conversations between a committee member and any other person do not violate the Brown Act. The purpose of this exception appears to be to protect the constitutional rights of individuals to contact their government representatives regarding issues which concern them.

1. But a Brown Act violation can still occur when a constituent is involved in orchestrating a collective concurrence among committee members.

F. Common scenarios that ARE likely meetings:

1. **Group Texts.** Text messages in which a majority of the Board/Committee is copied;

2. **Hub of a Wheel.** One member acts as the “hub” of communication to/from other individual members to poll or determine course of action through a series of consecutive conversations;

3. **Daisy Chain.** Consecutive conversations from one person to another to poll the Board/Committee;

4. **Internet Based Social Media Platform.** Pages, Groups or Posts in which a majority of the Board/Committee may post comments and responses such that deliberations, discussions or opining can be viewed as a path to a “concurrence.”

a) **Twitter.** Can re-tweeting by a majority constitute a meeting?

b) **Facebook.** Can “liking” post by a majority constitute a meeting?

c) **Instagram.** Could liking a picture with a brief note/comment conveying support or opposition, liked by a majority constitute a meeting?

d) Gov’t Code §54952.2(b)(3)(A): “A member shall not respond directly to any communication on an internet-based social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted or shared by another other member of the legislative body.”

G. Common scenarios that are likely NOT meetings: The following scenarios are specifically identified in Government Code section 54952.2(c) as not being meetings, “*provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.*”

[No Quorum] (1) *Individual contacts or conversations between a committee member and any other person... (Bylaws §5.4 Quorum is one half plus one)*

[General Meetings] (2) *The attendance of a majority of committee members at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body...*

[Community Meetings] (3) *The attendance of a majority of committee members at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency...*

[Public Entity Meetings] (4) *The attendance of a majority of committee members at an open and noticed meeting of another body of the local agency, or at an open and noticed meeting of a legislative body of another local agency...*

[Parties] (5) *The attendance of a majority of committee members at a purely social or ceremonial occasion...*

[District Meetings] (6) *The attendance of a majority of committee members at an open and noticed meeting of a standing committee of that body, provided that the members of the legislative body who are not members of the standing committee attend only as observers.*

H. Meetings – conduct

1. Regular meetings at least monthly with fixed time and place (**Not** applicable to an Oversight Committee) **But PTOC Bylaws: Meeting shall be at least three times per calendar year.**
2. Meeting place must be within District boundaries, with limited exceptions (Government Code § 54954)
3. Meeting place must be accessible to public (nondiscriminatory, accessible to disabled, no payment or purchase required)
4. Teleconferencing: must be from publicly accessible location; at least quorum must be within the District boundaries
5. Any person attending may videotape, unless disruptive

V. Agenda Requirements (handled by District staff)

- A. 72 hours before regular meeting; 24 hours before special meeting

- B. Sufficient detail to allow public to determine whether to participate (“brief general description”)
- C. Exceptions to standard agenda requirements
 1. Emergency (majority vote);
 2. Need to take immediate action that arose after agenda posted (2/3 vote, unanimous if less than 2/3rds of Board/Committee present);
 3. Responding to questions;
 4. Asking for clarification;
 5. Making a brief announcement or brief report of activity.

VI. Closed Session – Likely Not Applicable to Oversight Committees

- A. Real Property Transactions
- B. Pending and Anticipated Litigation
- C. Tort Claims
- D. Threat to Public
- E. Personnel Actions – Appointment, Employment, Evaluation, Discipline/Dismissal/Release
- F. Hearing “Complaints or Charges” against employees require 24-hour notice of right to open session
- G. Negotiations with Represented Employees/Discussions with Unrepresented Employees
- H. Student Expulsion hearings

VII. Violations of the Brown Act

- A. Misdemeanor liability exists if there is “intent to deprive public”
- B. Public can sue to stop violation of Brown Act
- C. Require taping of closed session possible remedy
- D. Agency must be given opportunity to cure
- E. Nullification of action taken in violation

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Roles and Responsibilities of Board, Staff and PTOC

I. DISTRICT GOVERNING BOARD

A. Responsibilities.

1. School boards are composed of locally elected officials entrusted with governing a community's school. The role of the board is to ensure that school districts are responsive to the values, beliefs, and priorities of their communities. Boards fulfill this role by performing five major responsibilities:
 - a) Setting direction
 - b) Establishing an effective and efficient structure
 - c) Providing support
 - d) Ensuring accountability
 - e) Providing community leadership as advocates for children, the school district, and public schools

B. General Powers.

1. **Permissive Code.** The District's Board of Education may initiate and carry on any program, activity, or act in any manner which is not in conflict with, inconsistent with, or preempted by any law and which is not in conflict with the purposes for which school districts are established. (Ed. Code § 35160.)
2. **Delegation.** The Board may execute any powers delegated by law to it or to the District and shall discharge any duty imposed by law upon it or upon the District and may delegate to an officer or employee of the District any of those powers or duties. The Board, however, retains ultimate responsibility over the performance of those powers or duties so delegated. (Ed. Code § 35161.)

C. Approving Quality Educational Programs- Supporting Student Success.

1. Adopt and enforce courses of study that sufficiently prepares students for secondary course of study; and a course of study that prepares students, upon

graduation from high school, to meet the requirements and prerequisites for admission to California public colleges and universities and/or attain entry-level employment skills in business or industry upon graduation from high school.

2. Provide every student with equitable access to educational programs designed to strengthen technological skills, mathematics, science, visual and performing arts and other prescribed areas of study.
3. Provide educational alternatives that afford students with disabilities full educational opportunities.
4. Expend funds for programs and activities which, in the determination of the Board, are necessary or desirable in meeting their needs.

D. **Special Tax- Measure B.**

1. **Authority for Tax.** Article XIII A, Section 4 of the California Constitution and Government Code section 50075 authorize the District, upon approval of 2/3rds of the electorate, to levy qualified special taxes on real property in the District for the purposes of providing quality educational programs in the District and other lawful purposes of the District.
2. **Measure B.** Election held in 2017 general election for the purpose of voting on Measure B containing the question of whether the District should impose a special tax for the educational purposes stated therein. The special tax to be imposed on all non-exempt parcels in the amount of \$191 per parcel, for 8 years and generating \$2,800,000 annually. The funds collected shall be to continue local school funding to:
 - a) Support struggling students;
 - b) Offer competitive compensation to attract and retain qualified teachers;
 - c) Maintain small class sizes;
 - d) Enhance hands-on science, technology, math, and engineering programs;
 - e) Maintain outstanding music and art education; and
 - f) Support core academics.
3. **Exemptions from Parcel Tax.** Parcel owners can apply for an exemption from the parcel tax when:
 - a) Owner receives Supplemental Security Income for a disability, regardless of age;
 - b) Will attain 65 years of age prior to July 1 of the tax year; or

- c) Are receiving Social Security Disability Insurance benefits, regardless of age, and whose yearly income does not exceed 250 percent of the 2012 federal poverty guidelines.

For any such exemption to apply, the owner of the parcel must occupy the parcel as their primary residence.

4. **Accountability Measures.**

- a) **Specific Purposes.** The proceeds of the special tax shall be applied only to the specific purposes identified in Measure B.
- b) **Annual Reports.** The proceeds of the special tax shall be deposited into a fund, which shall be kept separate and apart from other funds of the District.
 - (1) No later than December 31st of each year while the parcel tax is in effect, Board shall receive a report detailing the amount of funds collected and expended.

5. **Appoint Independent Oversight Committee (PTOC).**

- a) **Text of Measure B & Resolution No. 1633.1/17.** The Board shall establish and appoint members to an independent Oversight Committee to ensure that the parcel tax proceeds are spent for their authorized purposes and to report to the Board and the public regarding the expenditures of such funds.
 - (1) The Board has sole discretion to select and appoint Committee members. (Bylaws, §3.)
- b) **Ineligible Persons/Conflict of Interest.** The Board may not appoint any:
 - (1) Employee or official of the District to the PTOC. (Bylaws, §3.2.1.)
 - (2) Vendor, contractor, or consultant of the District to the PTOC. (Bylaws, §3.2.2.)
 - (3) Persons who have a conflict of interest:
 - With a contractual interest related to the District or PTOC (Gov. Code § 1090 et seq.)
 - Who hold an office incompatible with service on the PTOC (Gov. Code § 1125 et seq.) (Bylaws, §3.2.3.)
- c) **Bylaws/Policies.** The Board may establish policies and regulations for the PTOC. These are within the District’s Board-approved PTOC Bylaw.

- (1) Policies and regulations can address the PTOC’s purpose, duties, the extent of its authority, member selection and composition, and vacancies, including the time period and process for filling vacancies.
 - BP/AR 3120: The Governing Board sets forth process for administering the parcel tax, including, considering and granting exemptions, administering and accounting for the expenditure of parcel tax funds and establishing an oversight committee to monitor the expenditure of funds consistent with the intent of Measure B.
 - (2) **Attendance.** The Board can specify that regular attendance at meetings is expected and can address removal and replacement of PTOC members who fail either to attend a specified number of meetings or to submit a written resignation. (Bylaws, §5.10.)
 - (3) **Number of Meetings.** The Board can require a minimum number of meetings per year. The current Bylaws state that *“The Committee shall meet at least three times per calendar year.”* (Bylaws, §5.1.2.)
6. **Receive PTOC Reports.** Review District annual report detailing the amount of Measure B funds collected and expended.

II. **DISTRICT STAFF**

- A. **General Powers / Delegated Authority.** The Board may delegate its power to contract to the superintendent or designee. No contract made pursuant to a delegation shall be valid or constitute an enforceable obligation of the District unless and until the contract has been approved or ratified by the Board. (Ed. Code § 17604.)
- B. **Implement Educational Programs.**
 1. **Solicit/Procure Educational Programs to be Funded by Measure B.** Under Board direction, select consultants/programs for recommendation to the Board (e.g., special services for Music & Arts, camps, enrichment programs, afterschool programs.)
 2. **Recommend Use of Measure B Funds.** Recommend to the Board the budget, scope, schedule and locations of educational programs or materials.
 3. **Respond to Requests for Exemptions.** Evaluate and determine eligibility for exemptions.
- C. **Report to the Board and PTOC.** District staff shall prepare and file with the Board, a report detailing the amount of Measure B funds collected and expended, and the status

of any project authorized to be funded by the measure. (AR 3120) District staff to provide financial reports to PTOC concerning the receipt and use of Measure B funds.

- D. **Provide Administrative Support to PTOC.** Provide secretarial support to assist the PTOC in preparation, distribution and posting of minutes for all PTOC meetings. (Bylaws, §5.9.)

III. PARCEL TAX OVERSIGHT COMMITTEE

- A. **Purpose.** Committee is an independent oversight committee established by the District to monitor the expenditure of Measure B proceeds and to report annually to the board and the public regarding those expenditures.
- B. **Oversight Duties.** Committee will receive and review the accounting and budgeting process of the District to ensure that Measure B funds:
1. Are actually received;
 2. Are deposited into a segregated account and kept separate and apart from other District funds;
 3. Only used for the specific purposes set forth in Measure B, which includes:
 - a) Sustaining high academic achievement by maintaining school libraries, small class sizes, outdoor education, music and arts programs, student leadership classes, after-school programs and by supporting English language learners;
 - b) Expanding class size reduction;
 - c) Increasing instructional time by providing intervention professionals at each school site, programming during school breaks and enrichment programming and staff development;
 - d) Increasing instructional time by providing after-school intervention professionals at each school site, programming during school breaks and enrichment programming and staff development;
 - e) Attracting and retaining highly qualified teachers; and
 - f) Providing program support for extra-curricular/co-curricular activities.
- C. **Duties.** Committee will:
1. Advise the Board regarding results of its review, any discrepancies found and request necessary corrections.
 2. Report to the Board annually, summarizing the work of the Committee. The Report includes a statement indicating whether Measure B expenditures were in accordance with the stated purposes.
 3. Report to the Public annually, summarizing the work of the Committee.
- D. **Documents.** The PTOC may receive documents which shall be placed, along with minutes of PTOC proceedings, on the District's website.

- E. **Bylaws**. The PTOC has adopted operational bylaws to assist it in carrying out its functions. However, the bylaws should not contradict or provide more authority than the applicable state statutes or the District’s policies and regulations and Board-approved Bylaws.
- F. **Oversight**. The PTOC has an oversight role and shall not take part in recommending use of Measure B funds. For example:
1. The PTOC does not have the authority to determine how Measure B funds should be/are spent.
 2. The PTOC does not have authority to prioritize use of Measure B funds.
 3. The PTOC cannot make decisions related to tax exemptions, classifications, refunds, or disputes.
 4. The PTOC may not require the District prepare reports that are different or more frequent than those required by law or at the District or Board discretion.
 5. The PTOC may not contact school district programs, school site, teachers, parcel tax consultants etc., without prior permission of the superintendent.