

Approved: September 13, 2022

**College of the Desert**  
**Citizens' Bond Oversight Committee**  
**Minutes for Tuesday, May 27, 2022**

8:00 a.m. - Via Zoom Video Conference Call

**Meeting Participants**

**Committee Member(s) Present**

Andrew Harker, Ed.D. (Chair and Member-At-Large, West Valley); Diane M. Rubin (Vice Chair and College Support Organization Representative); Becky Broughton (Business Representative); Margie Eklund (Senior Citizen Group Representative); Ernesto Rios (Member-At-Large, East Valley); Richard D. "Rick" Seeley (Taxpayers' Association Representative); Ariana Muniz (Student Representative); William Diedrich (Atkinson, Andelson, Loya, Ruud & Romo); Donald Field (Orrick, Herrington & Sutcliffe)

**Committee Member(s) Not Present**

All Present

**Others Present**

Aurora Wilson (Trustee); Christina Tafoya (Executive Vice President); John O. White (Executive Director, Bond Program & Facilities Planning); Mac McGinnis (Program Manager, MAAS Companies); Mark Howard (Executive Administrative Assistant; Donald Field (Orrick), William Diedrich (AALRR)

**1. Opening Items**

1.1 Call to Order

Chair Andrew Harker called the committee meeting to order at 8:00 a.m.

1.2 Roll Call

The Committee reached quorum.

**2. Agenda**

2.1 According to Government Code Section 54954.2 (b)(2), the Committee may act on items of business not appearing on the posted agenda upon a determination by a 2/3 vote of the Committee or (if less than 2/3 of the members are present, a unanimous vote of those Present), and when there is a need to take immediate action and that the need for action came to the attention of the local agency after the agenda being posted as specified.

2.2 Confirmation of the Agenda for May 27, 2022.

It was confirmed without objection.

**3.0 Public Comment**

3.1 Under Assembly Bill 361 and guidance from the California Department of Public Health on gatherings, remote public participation is allowed and will be accepted by email to

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[jowhite@collegeofthedesert.edu](mailto:jowhite@collegeofthedesert.edu) during the meeting at the close of public comment on an item and read into the record during public comment.

3.2 Members of the public may comment on any item of interest within this Committee's subject matter jurisdiction or on items of the agenda. There is a time limit of three (3) minutes per person, with twenty (20) minutes maximum time allotment for any one subject. At the discretion of the Chair of the Committee, the time may be extended.

There were no requests for public comment.

#### **4. Presentations**

##### 4.1 Brown Act Training by William Diedrich, Partner, AALRR

The presenter covered the following topics

- The intent of the Brown Act
- General Rules and Terms Defined
- Brown Act rules for Social Media
- Public Meeting Procedures
- Closed Session – Safe Harbor Agendas

The purposes of the Brown Act are to facilitate public participation in local government and to curb the misuse of the democratic process by secret legislation by public bodies.

"Meeting" means any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or act on any item that is within the subject matter jurisdiction of the legislative body per Gov. Code, § 54952.2(a).

#### Regular Meetings

An agenda must be conspicuously posted at least 72 hours prior to the time of regular meetings in a location freely accessible to members of the public. Gov. Code, § 54954.2(a)

Agenda descriptions must reasonably inform the public of the matters to be considered in sufficient detail for members of the public to determine whether to participate in the meeting.

An online posting of an agenda shall be posted on the primary Internet Web site homepage, which is accessible through a prominent, direct link to the current agenda.

#### Meeting Material – Public Records

Suppose a public record that relates to an agenda item for an open session of a regular meeting of the legislative body of a local agency is distributed less than 72-hours prior to that meeting. In that case, the writing shall be made available for public inspection according to Section 54957.5(b)(2) at the time the writing is distributed to all, or a majority of all, of the members of the body: Gov. Code, § 54957.5(b)(1).

The District must make any writing described above available for public inspection at a public office or location the agency designates for this purpose.

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### Public Participation

Every regular meeting agenda shall provide an opportunity for public members to address the board on any item of interest to the public within the board's jurisdiction.

The board may adopt reasonable rules and regulations to ensure the proper functioning of the meeting. These include time limitations.

### Responses to the Public

The Brown Act limits trustees' responses to public comments at any public meeting. Trustees and staff may only:

- Briefly respond to statements made or questions posed by persons making public comments;
- Ask clarifying questions or make brief announcements;
- Provide a reference to staff or other resources for factual information; and/or
- Request staff to report back or place a matter on the agenda for a future meeting.

Gov. Code, § 54954.2(a)

### Meeting Practices

Minutes shall be taken recording all actions taken by the governing board. The minutes are public records. - Ed. Code, § 72000(d)

No action may be taken by secret ballot. - Gov. Code, § 54953(c)(1)

The board shall publicly report any action is taken and the vote or abstention on that action of each trustee present for the action. - Gov. Code, § 54953(c)(2)

Any person attending a public meeting has the right to record the meeting by still or Motion picture camera, or by video or audio tape, absent a finding of persistent disruption. - Gov. Code, § 54953.5(a)

### "Safe Harbor" Agenda Descriptions

The Act requires a brief, general description of each item of business to be transacted, including items to be discussed in closed sessions. - Gov. Code, § 54954.2

### Discussion after Presentation

Question regarding Agenda Items and Committee Member Comments. Reports: Committee Member Comments (non-action item) is allowed. Board of Trustees members would need to comment under Public Comment.

CBOC Meetings should be recorded, but there is no need to post recordings.

#### 4.2 Capital Projects Report by Mac McGinnis, Vice President MAAS Companies

Project maps with project locations were indicated for District sites for projects in design or construction: Palm Desert, Indio Center, Palm Springs, Cathedral City – Roadrunner Motors, and Coachella Chelsea Property on Sixth Street.

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The site, project description, scope of work, budget, schedule, and other project data were shared for active major capital improvement projects:

- Athletics Stadium and Fields in Palm Desert – In design. Occupancy planned for Summer 2024.
- Coachella Chelsea Property Tenant Improvement - occupancy planned for Fall 2022. In construction.
- Indio Expansion – occupancy planned for Fall 2023
- Indio Renovations – occupancy expected Summer 2024. In construction.
- Indio Child Development Center – occupancy planned for Summer 2023. In construction.
- Palm Springs Development Project – occupancy planned for Fall 2027. Programming Phase.
- Roadrunner Motors in Cathedral City – occupancy planned for Spring 2026. In design.
- Science Building Renovation Project in Palm Desert– occupancy Fall 2024. In construction.

A bond expenses chart was presented as part of the power-point presentation.

- Active bond-funded projects and costs are listed.
- Completed bond-funded projects cost listed.
- Future projects are listed.
- The summary table provided budget figures according to Bond B and Bond CC.

Discussion: project costs to include inflation adjustments and inflation has been increasing. Material availability and prices are monitored constantly, and various procurement strategies are explored to control costs and speed up delivery.

A bylaw responsibility is cost containment and cost control. Efforts for individual project long lead items reviewed and considered. Engineering New Records provides the construction community with the latest information on construction material costs and other factors influencing prices to reduce costs and estimate costs as accurately as possible.

Contracts are also evaluated for completion, responsiveness, and feasibility. Bid results are carefully measured against budgeted funds, and if a project bid results are substantially higher than budget, there are options for the District to cancel bids and reconsider ways to move forward.

Programming during Covid, facilities design has been slowed down in special cases such as the Palm Springs Development Project to ensure program and facilities function and response in the era of the pandemic.

Integrated planning also helps to assure coordination of project management and responsiveness to long-range space and facility needs as outlined in the District long-range construction plan and facilities master plan.

The pandemic has driven many construction prices upward.

Adaptation of College to expanded practices based on changes brought about by pandemic includes Palm Springs Development Project with pausing for review of program operation inside new facilities and has what we know now regarding student learning preferences and needs. College staff, instructors, and students inform the process and help create a check and balance with all information that goes before the Board of Trustees for consideration.

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4.3 Annual Bond Attorney Presentation – Committee Roles & Responsibilities by Don Field, Partner at Orrick, Herrington & Sutcliffe

Requirement to Establish

After bonds are approved at an election under Proposition 39 procedures, the College establishes an independent citizens' oversight committee. Statutory provisions related to establishing the citizens' oversight committees are outlined in California Education Code.

Purpose/Role of the Committee: Inform the Public Concerning Expenditure of Bond Funds

The primary role of the Committee is to review college board actions in spending bond funds and report findings to the public.

Essentially, the citizens' oversight committee is established to ensure that bond funds are spent for the authorized purposes outlined in the applicable bond measure approved by the voters.

The Committee may review the annual financial and performance audits required by Proposition 39, make physical inspections of college buildings and grounds, review other materials provided by the board, and request information from the board and its staff.

The college board must provide administrative and any necessary technical assistance to the Committee, including sufficient resources to publicize the Committee's conclusions, all without spending bond funds.

Role of the College Board Compared

The college board is elected and empowered to direct the operations of the College, including, concerning bond measures, which projects are to be funded with bond proceeds, and how such projects are to be completed.

The college board cannot delegate these decisions to any other body, including a citizens' bond oversight committee.

With respect to the college board's bond-related actions, the Committee is to review such actions and report whether the bond proceeds are spent appropriately.

Operation

The Committee's meetings are subject to the Brown Act; they must be noticed and open to the public.

The Committee must issue a report on its activities at least once a year, and its minutes and reports are a matter of public record.

The District must provide a website for posting the reports.

Organization

The Committee must consist of at least seven members and must include the following:

- A member active in a business organization representing the business located within the college district,

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- A member involved in a senior citizen's organization
- A member active in a bona fide tax-payers organization
- A member who is a student who is both currently enrolled in the college district and active in a community college group, such as student government, and
- A member who is active in the support and organization of a community college or the community colleges of the college district, such as a member of an advisory council or foundation

Willful failure to appoint the Committee can subject the board to taxpayer lawsuits and an injunction against spending any bond funds.

#### Independence of Committee; Term of Members

No district employee, official, vendor, contractor, or consultant may serve on the Committee.

Members serve a term of two years without compensation and may serve not more than three consecutive terms.

#### Reference Materials

Links were provided for committee members, including references to California Education Code, Bylaws text, and Bond Measure text.

### **5. Committee Member Reports**

The comment was made that this Citizens' Bond Oversight Committee does not have sub-committees. There was a question if comments by Committee Members could be listed as an Agenda Item.

Counsel confirmed that either member reports or comments could be included on the Committee Agenda, as there is no Action Item.

Becky Broughton thanked the Chair for the opportunities for comments and the training provided.

#### Annual Financial and Performance Audits

Diane Rubin commented following the presentation on the roles and responsibilities of the Committee.

One of this Committee's primary roles is to review the annual financial and performance audits required under Proposition 39. At the last meeting, we were presented with independent audit reports on the financial statements and Internal Control over Financial Reporting and Compliance from Eide Bailly on the Measure B and CC bonds. These annual reports are highly significant because it is where the independent auditors report questioned costs and findings and state their conclusions. Frankly, I don't feel that we stressed strongly enough how important these reports are.

As you recall, the audit reports had clean, unmodified opinions. The auditors identified no deficiencies in internal control deemed material weaknesses, found no questioned costs, and had no findings. I am a CPA and an auditor, but for those unfamiliar with these audits, please know that the auditors are required to perform compliance tests with specific laws, regulations, contracts, and grant agreements and report any findings of noncompliance. There were none—

and that is important. They also stated affirmatively that "the results of our tests indicated that the District expended the Bond funds only for the specific projects approved by the voters...". Their testing was extensive, sampling 82% of total expenditures to determine the expenses were supported by invoices, proper bid documentation, and voter-approved bond project lists. The proceeds were not used for administrators' salaries or other operating expenditures of the District. Again, there were no questioned costs and no findings. They concluded that the District has adequately accounted for the bond fund expenditures and that such expenses were made for authorized Bond projects.

There seem to be several different opinions in the paper and elsewhere about the expenditure of these bond funds. Still, I believe in these reports, where documents and information have been tested and verified. I hope that all the other bond oversight members and members listening from the public will take the time to read them as they are on the website.

**6. Action Items**

6.1 To approve the December 14, 2021, Meeting Minutes

Motion: Eklund

Second: Broughton

A rollcall vote was taken, and the Motion was Carried out.

6.2 To approve March 8, 2022, Meeting Minutes

Motion: Seeley

Second: Eklund

Rollcall vote was taken, and the Motion carried.

6.3 2020-2021 Citizens' Bond Oversight Committee Annual Report

Motion: Rubin

Second: Eklund

Discussion: Requested that the spelling of "Roadrunner" be corrected (page 8) and another spell check run.

A rollcall vote was taken, and the Motion was Carried out.

**7. Information/Discussion**

The Chair recognized John White for reporting his research into Public Limit Time Limits. Mr. White confirmed that the currently approved procedures used by the Committee and consistent with the bylaws are 3 minutes per comment and 20 minutes per topic.

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Meeting Frequency – currently meeting as often as allowed by Bylaws, which is quarterly. The next meeting is calendared for September 13, 2022.

There was a question from Member Diane Rubin regarding the scheduling of Special meetings in relationship to Regular Meetings. Current Bylaws do not address this matter in detail. Current bylaws seem to bind the Committee concerning the ability to hold special meetings if needed in between quarterly meetings. There was the support offered to review the bylaws since it has been several years since they were examined.

Andrew Harker mentioned that two members currently serving will be reaching the end of their terms and a maximum number of consecutive terms, creating two vacancies. Expect to hold elections at the next committee meeting.

**8. Future Agenda Topics (Brought forward from Prior Meeting)**

**8.1 Committee Member Appointment and Reappointment Process**

Chair Andrew Harker stated that two members are terming out, and the College is advertising and recruiting interested individuals. The current Chair can serve until the new members are appointed, and new officers identified are expected to be installed during September 2023.

The President/Superintendent reviews applications and recommends appointments and reappointments to the Board of Trustees. There will be two vacancies: 1) Member-at-Large West Valley; and 2) Senior Citizen Group Representative.

**8.2 Election of Officers**

The election of Officers is expected to occur at the September meeting of the Citizens' Bond Oversight Committee, which is typical.

**8.3 Citizens' Bond Oversight Committee Web Site Updates**

Consolidated information in the form of one-stop shopping is available for committee members and the public at:

<https://www.collegeofthedesert.edu/community/facility-plan/citizens-bond-oversight-committee.php>

This includes bond audit reports, annual reports, meeting agendas, minutes and materials, committee membership lists, meeting schedules and bylaws.

**8.4 Facility Tours for Committee Members**

The College will make facility tours available for Members during the coming year, and Members are always invited to request a time by contacting the District.

**8.5 Requests from Committee Members**

It has been clarified that an Agenda Item for Committee Member Comments is appropriate for committee agendas as an information or discussion item.

**9. Questions for the District**



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9.1 Are you aware of any Bond proceeds expended for any teacher or administrative salaries of the College or for operating expenses?

On behalf of the District, Dr. Tafoya and Mr. McGinnis responded, "No."

9.2 Are you aware of any Bond proceeds expended for any teacher or administrative salaries of the College or for operating expenses?

On behalf of the District, Dr. Tafoya and Mr. McGinnis responded, "No."

10. **Adjournment**

Adjournment at 9:41 a.m.

Thank you to Dr. Harker and Margie Eklund for their years of service.

Next Meeting: September 13, 2022 at 3:30 p.m.