



July 30, 2015

The Honorable Winifred Y. Smith
Presiding Judge
Alameda County Superior Court
1225 Fallon Street, Department One
Oakland, California 94612

John Rubio, Ed.D.
Superintendent

BOARD OF TRUSTEES

John Affeldt
President

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Donn Lee Merriam
County Representative

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Board Member

Re: 2014-2015 Grand Jury Final Report Regarding
Emery Unified School District Parcel Tax Measure

Dear Judge Smith:

The Emery Unified School District ("District") received the 2014-2015 Grand Jury Final Report entitled "Emery Unified School District Parcel Tax Measure" ("Report"). The Report makes several observations and conclusions, but does not make any express findings or recommendations. California law requires the District to respond to the Report by September 28, 2015. (Pen. Code, § 933, subd. (c).) Please accept this letter as the District's response to the Report.

Summary of Response to Grand Jury Report

The District appreciates and agrees with the Grand Jury's conclusions that the District has a citizen's oversight committee, has expended its funds consistent with its parcel tax Measure K, and is otherwise in compliance with Measure K. The District recognizes the importance of sound financial decision-making and spending of public resources, and takes these objectives very seriously. We are pleased that the Grand Jury acknowledges the propriety of the steps taken by the District in relation to the committee and the parcel tax.

The District disagrees with the Grand Jury's statement in relation to the alleged lack of transparency in the actions of the District's Parcel Tax Citizen's Oversight Committee ("Parcel Tax COC"). We believe this statement is based on a misunderstanding of the facts regarding how the District has posted the Parcel Tax COC's meeting agendas. Although convened by the District's governing board, the Parcel Tax COC is an independent body with limited staff. Accordingly, although not legally required to do so, District staff assists the Parcel Tax COC in the observation of its obligations under the Ralph M. Brown Act ("Brown Act") (Gov. Code, §§ 54950, *et seq.*). During the Grand Jury's investigation, the District provided the Grand Jury with ample evidence of the Parcel Tax COC's compliance with the Brown Act's requirements.

The District's responses to the Grand Jury's specific observations are addressed in detail below. The District appreciates the opportunity to provide this response in order to confirm the Parcel Tax COC's compliance with the Brown Act.

SCHOOL SITES

Anna Yates Elementary School
Diane Lang, Principal
1070 41st Street
Emeryville, CA 94608

Emery Secondary School
Douglas Ferber, Principal
Interim Address
915 - 54th Street
Oakland, CA 94608

Response to Specific Statements in the Grand Jury Report

Pursuant to Penal Code 933.05(a), the District responds to the statements in the Report as follows. For convenience, we have numbered each statement to which a response is being provided.

Statement 1:

“EUSD is in compliance in its spending of parcel tax revenue as intended by Measure K . . .”

Response:

The District **agrees** with this statement. The District further emphasizes that it has a long standing practice of implementing and following internal procedures to ensure accountability in its use of public monies. The District has, consistently, expended all parcel tax proceeds in accordance with all of the requirements outlined in Measure K as approved by Emeryville voters.

Statement 2:

“ . . . a citizen’s oversight committee does exist . . .”

Response:

The District **agrees** with this statement. A citizen’s oversight committee (the Parcel Tax COC) was promptly convened, and meets twice a year, once in the spring and once in the fall.

Statement 3:

The citizens’ oversight committee “has not followed the Brown Act and its transparency guidelines.”

Response:

The District **disagrees** with this statement. The Parcel Tax COC has not only complied with but exceeded the requirements of the Brown Act regarding posting of agendas. As discussed in detail above, the District assists the Parcel Tax COC with its agenda posting requirements. As evidence of the Parcel Tax COC’s compliance with the Brown Act, attached to this letter as **Exhibit 1** are copies of the Parcel Tax COC meeting agendas that were properly posted from Fall 2011 through the present. The attached agendas were all posted at the site of the Parcel Tax COC’s meetings at least 72 hours in advance of such meetings, pursuant to Government Code section 54954.2(a). Additionally, although not required (see discussion below), the agendas were also posted at the District’s school sites as

well as on the District's website. These facts are attested to in the Declaration of Lisa Taymuree, which is attached hereto as **Exhibit 2**.

The Grand Jury was factually mistaken in its conclusion that the Parcel Tax COC's agendas were not posted online. In response to questions from the Grand Jury, the District confirmed that Parcel Tax COC agendas are not posted through the "Agenda Online" system, which is a subscription-based online database through which the District's Governing Board ("Board") posts agendas. The Parcel Tax COC agendas are not posted through this particular database, nor are they required to be, but they still are posted online through the District's website at least 72 hours before each Parcel Tax COC meeting. Copies of the foregoing agendas were also provided to the Grand Jury during its investigation.

To clarify the point made above that the Parcel Tax COC was not required to post its agendas online, Government Code section 54954.2, subd. (a)(1), states in part that the agenda must be posted "on the local agency's Internet Web site, if the local agency has one." Putting aside that the Parcel Tax COC does not have a dedicated website of its own, which in itself excuses any requirement to post the agenda on line, the Brown Act does not require committees of this type to put agendas online whether or not the committee has a website.

The posting is required "on the local agency's" site. The Brown Act defines the "local agency" as "a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board commission or agency thereof, or other local public agency." The Parcel Tax COC, as a Board appointed committee, is none of those. For example, it is not a school district, it is not a political subdivision, and it is not a public agency. Any argument that the committee is a "commission" of some sort can be dismissed by reference to section 54952, subdivision (b), which separately defines "legislative body," and lists "commission" and "committee" as two distinct bodies. Thus, the Parcel Tax COC is a "legislative body" within the meaning of the Brown Act, but not a "local agency." Had the Legislature intended for the online agenda posting requirement of section 54954.2 to apply to such a "legislative body," rather than to the narrower class of "local agencies," it would have used the defined term "legislative body."

Despite the fact that the Parcel Tax COC was therefore not required to post its agendas online, the District placed those agendas on its website at least 72 hours before meetings to maximize public awareness, participation and input. There was thus compliance not only with the letter of the Brown Act, but also with the intent of the Act.

Statement 4:

“However, the Grand Jury learned that notices and minutes of the oversight committee were not provided to the public. These meetings are open to the public, but without notice the public does not have the opportunity to attend. There are therefore limited opportunities for the public to have knowledge of and input on how the parcel tax monies are spent. The Grand Jury believes this creates a lack of transparency.”

Response:

The District **disagrees** with this statement. The Report states that the Parcel Tax COC failed to post agendas and provide meeting minutes in accordance with the requirements of the Brown Act. However, the Report cites no specific facts in support of this statement. As noted previously, the District assists the Parcel Tax COC with its agenda posting requirements and all Parcel Tax COC meeting agendas were properly posted. The Parcel Tax COC has always properly noticed its meetings by posting agendas in a location freely accessible to the public. (Gov. Code, § 54954.2, subd. (a)(1).) As discussed above, the Parcel Tax COC complies with and exceeds the requirements of the Brown Act by posting its agendas at the site of each meeting, at District school sites, and on the District’s website at least 72 hours prior to each meeting, as required by the Brown Act. (*Ibid.*) Attached to this letter as **Exhibit 1** are copies of all Parcel Tax COC meeting agendas for the last four years, all of which were properly posted in accordance with the law, as set forth in the Declaration of Lisa Taymuree attached hereto as **Exhibit 2**.

Moreover, the Parcel Tax COC also exceeds its legal obligations with respect to meeting minutes. Although California law does **not** require legislative bodies, other than governing boards, to create or provide meeting minutes to the public, the Parcel Tax COC has regularly kept minutes of each and every meeting. There is no requirement in the Brown Act for keeping minutes of meetings. Further, while the Education Code does contain a requirement that the meeting minutes be made available to the public, that requirement expressly only applies to the governing board of a school district. (Ed. Code, § 35145, subd. (a).) As the Parcel Tax COC is not the District’s governing body, the Parcel Tax COC is not bound by that requirement. Nevertheless, the Parcel Tax COC has kept minutes of all of its past meetings, and included those minutes in the agenda packet for each following meeting. By doing so, the Parcel Tax COC ensures that the minutes are made available to the public. They generally cannot be made publicly available sooner as they are only in draft form until they can be sent to the Parcel Tax COC for review at the next scheduled Parcel Tax COC meeting. The Parcel Tax COC will continue this practice to ensure that its minutes are made available to the public. The Parcel Tax COC has thus not only met applicable legal standards, but has exceeded them.

Statement 5:

“The Grand Jury found that the funds were budgeted for music and that funds were expended for music. The Grand Jury also found that EUSD’s music program was not disrupted because of a misuse of parcel tax funds, but rather the death of a music teacher.”

Response:

The District **agrees** with this statement. The District has expended, and continues to expend, all parcel tax funds *solely* to strengthen and improve academic curriculum and educational programs in mathematics, science, literacy, music, and visual and performing arts as outlined in Measure K.

Statement 6:

“The Grand Jury recognizes that the measure does not specify how its particular parcel tax funds are to be allocated, and the Grand Jury did not find that the Emery Unified School District improperly used those funds. The district is in compliance as described in the measure.”

Response:

The District **agrees** with this statement. As described in more detail above, the District has, at all times, properly expended Measure K parcel tax funds.

Statement 7:

“The Grand Jury strongly suggests that the oversight committee follow the guidelines of the Brown Act for noticing and conducting public meetings, which includes publicizing agendas and reporting to the public the results of meetings.”

Response:

The District **disagrees** with this suggestion to the extent it alleges that the Parcel Tax COC has not been in compliance with the requirements of the Brown Act. However, the District **agrees** that the Parcel Tax COC will continue to comply with the Brown Act’s requirements concerning posting of agendas and reporting of the Parcel Tax COC’s actions. The Parcel Tax COC has and will continue to follow and exceed the requirements of the Brown Act with respect to publicizing agendas.

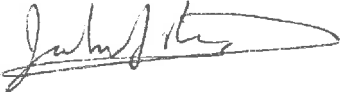
With respect to publicizing Parcel Tax COC meeting agendas, as discussed above and evidenced by **Exhibit 1**, the Parcel Tax COC has always and continues to provide notice of its meetings by posting agendas in multiple locations freely

accessible to the public, including the meeting site, other District school sites, and online on the District's website. (Gov. Code, § 54954.2, subd. (a)(1); *see* Declaration of Lisa Taymuree, **Exhibit 2** hereto.) This will continue to be done even though posting is required only at the site of the meeting, and not online.

Also, as noted above, the Brown Act does not require legislative bodies such as the Parcel Tax COC to create or publicize meeting minutes. Rather, meeting minutes are governed by Education Code section 35145, which only applies to the District's governing body. Nevertheless, the Parcel Tax COC regularly keeps meeting minutes, and will continue to do so. Such minutes are taken at each meeting and then included in the agenda packet for each following meeting.

Although not legally required to do so, to further demonstrate its commitment to transparency and to maximize public accessibility, moving forward, the Parcel Tax COC will post all agendas and meeting minutes, if any are taken, on the District's website.

Thank you,

A handwritten signature in black ink, appearing to read "John Rubio", with a long horizontal flourish extending to the right.

Dr. John Rubio
Superintendent
Emery Unified School District

cc: Cassie Barner, Alameda County Grand Jury

Exhibit 1
Parcel Tax Meeting Agendas
(Attached)



FISCAL OVERSIGHT COMMITTEE

May 22, 2014

6:00 PM

Location: District Office

Guiding Principles
We Hold High Academic, Social, and Professional Expectations
We Create a Sense of Family
We Inspire and Support Innovation to End Racist and Classist Practices

AGENDA

A. OPENING CEREMONY/ROLL CALL (approximately 6:00 p.m.)

Joyce Jacobson
Steve Rasmussen
Sam Foushee
Charles Schuman

Mark Bonnett, CBO
John Sugiyama, Interim Superintendent
Lisa Taymuree, Assistant

B. APPROVAL OF AGENDA

C. ACCPETANCE OF COMMITTEE BYLAWS

D. REVIEW OF 2014-15 PARCEL TAX BUDGET

E. DISCUSSION REGARDING PARCEL TAX RENEWAL

F. ADJOURNMENT



FISCAL OVERSIGHT COMMITTEE

May 16, 2013

6:00 PM

Location: District Office

Guiding Principles
We Hold High Academic, Social, and Professional Expectations
We Create a Sense of Family
We Inspire and Support Innovation to End Racist and Classist Practices

AGENDA

A. OPENING CEREMONY/ROLL CALL (approximately 6:00 p.m.)

Joyce Jacobson
Elizabeth Altieri
Charles Schuman
Sam Foushee
Steve Rasmussen

Mark Bonnett, CBO
Debra Lindo, Superintendent
Lisa Taymuree, Assistant

C. APPROVAL OF AGENDA

D. REVIEW OF 2013-14 PARCEL TAX BUDGET

E. ADJOURNMENT



FISCAL OVERSIGHT COMMITTEE

November 18, 2014

1:00 PM

Location: District Office

Guiding Principles
We Hold High Academic, Social, and Professional Expectations
We Create a Sense of Family
We Inspire and Support Innovation to End Racist and Classist Practices

AGENDA

A. OPENING CEREMONY/ROLL CALL (approximately 1:00 p.m.)

Joyce Jacobson
Steve Rasmussen
Sam Foushee

John Rubio, Superintendent
Lisa Taymuree, Assistant

B. APPROVAL OF AGENDA

C. REVIEW OF 2014-15 PROPOSED PARCEL TAX BUDGET

D. DISCUSSION REGARDING COMMITTEE VACANCIES

E. ADJOURNMENT



FISCAL OVERSIGHT COMMITTEE

November 18, 2013

6:00 PM

Location: District Office 1275 – 61st Street

Guiding Principles

We Hold High Academic, Social, and Professional Expectations

We Create a Sense of Family

We Inspire and Support Innovation to End Racist and Classist Practices

AGENDA

A. OPENING CEREMONY/ROLL CALL (approximately 6:00 p.m.)

Joyce Jacobson
Steve Rasmussen
Sam Foushee
Charles Schuman

Mark Bonnett, CBO
Debbra Lindo, Superintendent
Lisa Taymuree, Assistant

B. APPROVAL OF AGENDA

C. REVIEW OF PROPOSED 2012-13 PARCEL TAX EXPENDITURES

D. REVIEW OF PROPOSED BY LAWS

E. ADJOURNMENT

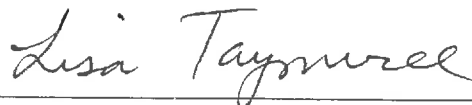
Exhibit 2

Declaration of Lisa Taymuree

I, Lisa Taymuree, am employed by the Emery Unified School District (“District”) as Assistant to Superintendent Dr. John Rubio. As the Assistant to the Superintendent, one of my responsibilities is to post the agendas for all meetings of the District’s Parcel Tax Citizen’s Oversight Committee (“Parcel Tax COC”) meetings, as well as the agendas for meetings of the District’s Board of Trustees (“Board”). I have always ensured that the Parcel Tax COC meetings were publicly noticed and I consistently follow the Brown Act as a guide. For meetings of the Board, the District has used Agenda Online for posting meeting agendas since 2012. For the Parcel Tax COC, I handle and have handled the posting of meeting agendas in the same manner as Board meeting agendas. Generally, I have posted the Parcel Tax COC agendas in all of the following manners: (1) the agendas were posted at all of the District’s sites, (2) an electronic copy of the entire agenda packet was emailed to the committee members and anyone who requested a copy of the packet, and (3) the meetings were announced on the District’s website at least 72 hours before each Parcel Tax COC meeting, with a link to the agenda packet. Additionally, the Chair of the Parcel Tax COC has consistently provided a copy of the annual report to the Board, and the Board meetings were properly noticed, videotaped, and played on local television. The only difference in posting from the manner in which I have posted Board meetings is that the Board meeting agendas, since 2012, have been posted through Agenda Online, a subscription service available only to the Board, and not to committees. Nevertheless, agendas for both the Parcel Tax COC and Board meetings have been available through the District’s website in advance of meetings.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 30th day of July, 2015, in Emeryville, California.



Lisa Taymuree