

RESOLUTION NO. 2019-121

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOSTER CITY CREATING THE INDEPENDENT CITIZENS' BOND OVERSIGHT COMMITTEE FOR MEASURE P

CITY OF FOSTER CITY

WHEREAS, on June 5, 2018, 80.6% of participating voters in Foster City voted in favor of Measure P, which subsequently passed; and

WHEREAS, Measure P called for Foster City to issue \$90,000,000 in bonds to fund levee improvements to the Foster City levee system; and

WHEREAS, Section 2 of City Resolution No. 2018-15 requires the City to establish an Independent Citizens' Bond Oversight Committee ("Committee") to review all expenditures of bond proceeds, requires the City Council to appoint Committee members, and requires the Committee to submit bi-annual written reports; and

WHEREAS, City staff drafted the attached Committee Bylaws for the City Council's approval, which shall govern the Committee's responsibilities, composition, and procedures; and

WHEREAS, Section 5.1 of the proposed bylaws calls for a five (5) member Committee, requires all applicants to the Committee to submit a written application, and requires that three (3) members are residents of Foster City, and two (2) members represent businesses located in Foster City.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Foster City, does hereby establish the Independent Citizen's Bond Oversight Committee, adopts the attached Bylaws for the Committee, and directs the City Clerk to start recruitment for the five (5) positions on the newly created Committee in accordance with the attached Bylaws and return to the City Council with applications for the Council to review and appoint members to the Committee.

PASSED AND ADOPTED as a resolution of the City Council of the City of Foster City at the regular meeting held on the 16th day of December, 2019, by the following vote:

AYES: Councilmembers Awasthi, Gehani, Hindi, Perez, and Mayor Mahanpour

NOES: None

ABSENT: None

ABSTAIN: None

DocuSigned by:
Catherine Mahanpour
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CATHERINE MAHANPOUR, MAYOR

ATTEST:

DocuSigned by:
Priscilla Schaus
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PRISCILLA SCHAUS, CITY CLERK

INDEPENDENT CITIZENS' BOND OVERSIGHT COMMITTEE BYLAWS

Section 1. Committee Established. The City of Foster City (the "City") voters passed Measure P on the June 5, 2018 ballot (the "Measure P Election"), which authorizes the City to issue \$90,000,000 aggregate principal amount of general obligation bonds ("Measure P") to fund improvements to the City's Levee system ("Levee"). The Measure P Election was conducted under California Government Code Section 53411. Pursuant to Section 2 of City Resolution No. 2018-15 of the City Council of the City of Foster City (the "City Council"), the City is obligated to establish a citizens' oversight committee to review all expenditures of bond proceeds. The City Council has established the Independent Citizens' Bond Oversight Committee (the "Committee") which shall have the duties and rights set forth in these Bylaws. The Committee does not have independent legal capacity from the City.

Section 2. Purposes. The Committee shall inform the public concerning expenditure of bond revenues and actively review and report on the proper expenditure of taxpayers' money for Levee construction, ensuring proceeds from the bond sales go only to the purposes specified in Measure P. The Committee shall be subject to the *Ralph M. Brown Public Meetings Act* of the State of California and shall conduct its meetings in accordance with the provisions thereof. The City staff shall provide necessary administrative support to the Committee as shall be consistent with the Committee's purposes.

The proceeds of general obligation bonds issued pursuant to Measure P are hereinafter referred to as "bond proceeds." The Committee shall confine itself specifically to bond proceeds generated under Measure P. Regular and deferred maintenance projects and all monies generated from other sources shall fall outside the scope of the Committee's review. However, to the extent that Levee improvements are financed with a combination Measure P monies and other non-bond funds, the financing of such projects shall be subject to Committee oversight and review.

Section 3. Duties. To carry out its stated purposes, the Committee shall perform the duties set forth in Sections 3.1, 3.2, and 3.3 and shall refrain from those activities set forth in Sections 3.4 and 3.5:

3.1 **Inform the Public.** The Committee shall inform the public concerning the City's expenditure of bond proceeds. In fulfilling this duty, all official communications to either the City Council or the public shall come from the Chair acting on behalf of the Committee. The Chair shall only release information that reflects the majority view of the Committee.

3.2 **Review Expenditures.** The Committee shall review expenditure reports produced by the City to ensure that bond proceeds were expended only for the purposes set forth in Measure P.

3.3 **Bi-Annual Reports.** The Committee may, from time to time and on an as-needed basis, submit written reports to the City Council, which the Council shall review in public session. Additionally, the Committee shall present to the City Council, in public session, at least two written reports annually which shall include the following:

(a) A statement indicating whether the City is in compliance with the requirements of Measure P; and

(b) A summary of the Committee's proceedings and activities since its last report to the Council.

3.4 Duties of the City Council. The City Council shall have the following powers reserved to it, and the Committee shall have no jurisdiction over the following types of activities:

- (i) Approval of Levee contracts,
- (ii) Approval of Levee contract change orders,
- (iii) Expenditures of bond funds,
- (iv) Handling of all legal matters related to the Levee improvement project,
- (v) Approval of Levee project plans and schedules,
- (vi) Approval of Levee deferred maintenance plans, and
- (vii) Approval of the sale of Measure P bonds.

3.5 Measure P Projects Only. In recognition of the fact that the Committee is charged with overseeing the expenditure of Measure P bond proceeds, the City Council has not charged the Committee with responsibility for:

(a) Projects financed through the State of California, developer fees, redevelopment tax increment, certificates of participation, lease/revenue bonds, the general fund or the sale of surplus property without bond proceeds.

(b) Establishing priorities and order of construction for the Levee improvement project.

(c) The selection of architects, engineers, soils engineers, construction managers, project managers, CEQA consultants and such other professional service firms as are required to complete the Levee improvement project based on City criteria established by the City Council in its sole discretion.

(d) The approval of the design for each project including exterior materials, paint color, interior finishes, site plan, and construction methods (modular vs. permanent), which shall be determined by the City Council in its sole discretion.

(e) The selection of independent audit firm(s), performance audit consultants, and such other consultants as are necessary to support the activities of the Committee.

(f) The approval of an annual budget for the Committee that is sufficient to carry out the activities set forth in Measure P and included herein.

(g) The adoption of a plan for publicizing the activities of the Committee and the determination as to whether a mailer, a newspaper notice, or website materials would best suit the distribution of the Committee's written reports.

(h) The amendment or modification of the Bylaws for the Committee as provided herein.

(i) The appointment or reappointment of applicants to serve on the Committee.

Section 4. Authorized Activities.

4.1 In order to perform the duties set forth in Section 3, the Committee may engage in the following authorized activities:

(a) Receive copies of the City's annual independent performance audit and annual independent financial audit ("Audits"), at the same time said Audits are submitted to the City and review the Audits.

(b) Inspect City facilities and property where bond proceeds have been or will be expended, in accordance with any access procedure established by the City's Public Works Director or designee.

(c) Review efforts by the City to maximize bond proceeds by implementing various cost-saving measures, as applicable.

Section 5. Membership.

5.1 Number.

The Committee shall consist of a minimum of five (5) members comprised of three (3) residents of the City and 2 (two) representatives of businesses located in the City, appointed by the City Council from a list of candidates who have submitted written applications.

5.2 Qualification Standards.

(a) To be a qualified person, he or she must be at least 18 years of age.

(b) A resident of Foster City.

(c) The Committee may not include any City employee, official of the City, or any vendor, contractor, or consultant of the City.

5.3 Ethics: Conflicts of Interest.

(a) Members of the Committee are not subject to the Political Reform Act (Gov. Code §§ 81000 *et seq.*) and are not required to complete Form 700s; but each member shall comply with the Committee Ethics Policy attached as "Attachment A" to these Bylaws.

(b) Pursuant to these Bylaws and the prohibitions contained in Article 4 (commencing with Section 1090) of Division 4 of Title 1 of the Government Code ("Article 4") and Article 4.7 (commencing with Section 1125) of Division 4 of Title 1 of the Government Code ("Article 4.7") are applicable to members of the Committee. Accordingly:

(i) Members of the Committee shall not engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to duties as a member of the Committee or with the duties, functions, or responsibilities of the Committee or the City. A member of the Committee shall not perform any work, service, or counsel for compensation where any part of his or her efforts will be subject to approval by any other officer, employee, board, committee, or commission of the City, except as permitted under Article 4.7.

5.4 Term. Except as otherwise provided herein, each member shall serve a term of three (3) years, beginning on the date of the member's appointment by the City Council. No member may serve more than three (3) consecutive terms. To stagger the terms of the Committee members, the City Council will select two of the first members appointed to the Committee to serve initial two (2)-year terms and the remaining members for three (3)-year terms. All appointments thereafter shall be for three (3)-year terms. Members whose terms have expired may continue to serve on the Committee until a successor has been appointed.

5.5 Appointment. Members of the Committee shall be appointed by the City Council through the following process: (a) the City will advertise in a local newspaper, on its website, and in other customary forums, as well as solicit appropriate local groups for applications; (b) the City Council or a designee will review the applications; and (c) if the City Council appoints a designee, the designee will make recommendations to the City Council.

5.6 Removal; Vacancy. The City Council may remove any Committee member for any reason, including failure to attend two consecutive Committee meetings without reasonable excuse or for failure to comply with the Committee Ethics Policy. Upon a member's removal, his or her seat shall be declared vacant. The City Council, in accordance with the established appointment process shall fill any vacancies on the Committee. The City Council shall seek to fill vacancies within 90 days of the date of occurrence of a vacancy.

5.7 Compensation. The Committee members shall not be compensated for their services.

5.8 Authority of Members. (a) Committee members shall not have the authority to direct staff of the City; (b) individual members of the Committee retain the right to address the City Council, either on behalf of the Committee or as an individual; (c) the Committee shall not establish sub-committees for any purpose; and (d) the Committee shall have the right to request and receive copies of any public records relating to the Levee improvement project funded by bond proceeds.

Section 6. Meetings of the Committee.

6.1 Regular Meetings. The Committee is required to meet at least twice per year including an annual organizational meeting but shall not meet more frequently than quarterly.

6.2 Location. All meetings shall be held at the Foster City City Council Chambers Conference Room, 620 Foster City Boulevard, Foster City, CA 94404.

6.3 **Procedures.** All meetings shall be open to the public in accordance with the *Ralph M. Brown Act*, Government Code Section 54950 *et seq.* Meetings shall be conducted according to such additional procedural rules as the Committee may adopt. Three Committee members shall constitute a quorum for the transaction of any business except adjournment.

Section 7. City Support.

7.1 The City shall provide to the Committee necessary technical and administrative assistance as follows:

(a) Preparation of and posting of public notices as required by the *Brown Act*, ensuring that all notices to the public are provided in the same manner as notices regarding meetings of the City Council;

(b) Provision of the meeting room, including any necessary audio/visual equipment;

(c) Preparation, translation, and copies of any documentary meeting materials, such as agendas and reports; and

(d) Retention of all Committee records, and providing public access to such records on an Internet website maintained by the City.

7.2 City staff and/or City consultants shall attend all Committee proceedings in order to report on the status of projects and the expenditure of bond proceeds.

Section 8. Officers. The City Council shall appoint the initial Chair. Thereafter, the Committee shall elect a Chair and a Vice-Chair who shall act as Chair only when the Chair is absent. The Chair and Vice-Chair shall serve in such capacities for a term of one (1) year and may be re-elected by vote of a majority of the members of the Committee.

Section 9. Amendment of Bylaws. Any amendment to these Bylaws shall be approved by a majority vote of the City Council.

Section 10. Termination. The Committee shall automatically terminate and disband concurrently with the Committee's submission of its final Bi-Annual Report which reflects the final accounting of the expenditure of all Bond proceeds.

CITIZENS' BOND OVERSIGHT COMMITTEE ETHICS POLICY STATEMENT

This Ethics Policy Statement provides general guidelines for Committee members to follow in carrying out their roles. Not all ethical issues that Committee members face are covered in this Statement. However, this Statement captures some of the critical areas that help define ethical and professional conduct for Committee members. The provisions of this Statement were developed from existing laws, rules, policies, and procedures as well as from concepts that define generally accepted good ethical practices. Committee members are expected to strictly adhere to the provisions of this Ethics Policy.

POLICY

- CONFLICT OF INTEREST. A Committee member shall not make or influence a City decision related to: (1) any contract funded by Bond proceeds, or (2) any construction project which will benefit the Committee member's outside employment, business, or a personal finance or benefit an immediate family member, such as a spouse, child or parent.

- OUTSIDE EMPLOYMENT. A Committee member shall not use his or her authority over a particular matter to negotiate future employment with any person or organization that relates to any contract funded by Bond proceeds. A Committee member shall not make or influence a City decision related to any construction project involving the interest of a person with whom the member has an agreement concerning current or future employment, or remuneration of any kind. For a period of two (2) years after leaving the Committee, a former Committee member may not represent any person or organization for compensation in connection with any matter pending before the City that, as a Committee member, he or she participated in personally and substantially. Specifically, for a period of two (2) years after leaving the Committee, a former Committee member and the companies and businesses for which the member works shall be prohibited from contracting with the City with respect to bidding on projects funded by the Bond proceeds.

- COMMITMENT TO UPHOLD LAW. A Committee member shall uphold the Federal and California Constitutions, the laws and regulations of the United States and the State of California and all other applicable government entities, and the ordinances, policies, procedures, rules and regulations of the City of Foster City.

- COMMITMENT TO CITY. A Committee member shall place the interests of the City above any personal or business interest of the member.