

**METROPOLITAN TRANSPORTATION COMMISSION/  
BAY AREA HOUSING FINANCE COMMISSION  
BAY AREA RM4 \$20 BILLION HOUSING BOND BALLOT MEASURE  
MTC MUST NOT BE ALLOWED TO CREATE A MEANINGLESS  
CITIZENS' BOND OVERSIGHT COMMITTEE**

**SUMMARY**

As part of its effort to encourage the Bay Area electorate to approve its Regional Measure 4, a \$20 billion bond for affordable housing to be repaid by \$48.3 billion in property taxes, the Metropolitan Transportation Commission is including a citizens' bond oversight committee (CBOC) in the ballot measure.

However, the actual scope, duties, responsibilities, and powers of the RM 4 CBOC are so limited as to render the actual oversight performed essentially meaningless. Worse, the voters are being led to believe that there will be effective oversight where, in fact, there will be no meaningful oversight.

This paper presents the history of CBOCs in California, discusses statutory requirement for a RM4 CBOC, discusses how the RM4 CBOC will be without meaningful power or purpose, presents examples of how California governments have disrupted effective oversight in the past, and, in the Appendix, provides the charter for an effective RM4 CBOC.

**INTRODUCTION**

The Metropolitan Transportation Commission (hereinafter, "MTC") of the San Francisco Bay Area, though its *alter ego* component organization, the Bay Area Housing Finance Authority (BAHFA), under the authority established to the BAHFA by its enabling legislation, Assembly Bill 1487 (Chiu, 2019)<sup>1</sup>, has placed a \$20,000,000,000 bond ballot issue for affordable housing, plus the *ad valorem* tax authorization to pay the costs of bond debt service on the bond, on the November 2024 ballot of all nine Bay Area counties (Alameda, Contra Costa, Marin, Napa, San Mateo, San Francisco, Santa Clara, Solano, and Sonoma). MTC projects that the *ad valorem* (property) taxes required to pay the debt service on the \$20,000,000,000 borrowed will total \$48,281,750,400 over 53 years through fiscal year 2077/78<sup>2</sup>.

This bond/tax measure has been designated as Regional Measure 4 (RM4).

Hereinafter, "MTC" should be understood to comprehend MTC as a separate entity and, collectively, and all of its *alter ego* component and associated units, including but not limited to BAHFA and the Association of Bay Area Governments (ABAG)<sup>3</sup>.

20 BILLION Reasons to Vote No on the Bay Area Housing Tax ("20 BILLION Reasons") was formed to oppose this ballot measure, which will be on the ballot in all nine counties as RM4<sup>1</sup>. We have multiple objections to RM4, as described in a variety of detailed papers now on, and being added to, our web site<sup>4</sup>. This paper will focus on one of these elements – why MTC should not be

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<sup>1</sup> Regional Measure 4 is variously shortened to "RM 4" and "RM4;" for the sake of consistency, "RM4" will be utilized in this paper.

allowed to create a meaningless pseudo-citizen oversight committee to prevent true oversight on the huge taxpayer funds that will be derived from this ballot bond/tax issue.

**AUTHOR AND NARRATIVE POINT OF VIEW**

This paper is primarily the work of Thomas A. Rubin, CPA, CMA, CMC, CIA, CGFM, CFM, who has over two decades of direct experience with California citizens’ bond oversight committees and over four decades in major government construction programs and projects.

This paper is written in the first person due to my direct involvement in so many important aspects of how Citizens’ Bond Oversight Committees (hereinafter, “CBOC”) have developed and been implemented and, in particular, how the governmental units that CBOC were established to oversee have acted to render their CBOCs near or totally useless. This paper includes a description of how the actions of a very large percentage of these governmental units and the elected and appointed officials that govern and administer these districts have accomplished this – bypassing meaningful audits and controls – and how MTC has already ensured it is positioned to render meaningless the CBOC for RM4.

I am also a member of the 20 BILLION Reasons Steering Committee.

In my professional career, and acting *pro bono*, I have been closely associated with several California bond oversight committees and organizations for over two decades.

I was the consultant to the Los Angeles Unified School District (LAUSD) Bond Oversight Committee (BOC) for seventeen years (2001-2018). LUASD is the largest kindergarten through 12<sup>th</sup> grade (K-12) school district in California and the second largest in the U.S. While the BOC was overseeing the largest school construction program in the history of California schools, then valued at \$27 billion and producing over 130 newly constructed schools and major rehabilitations of hundreds of others, I was extensively involved in all aspects of the facilities construction program and the structuring and negotiation of the Memorandum of Understanding (MOU) between LAUSD and the BOC, a legally enforceable contract governing how oversight worked, and the BOC Bylaws.

I am currently the taxpayer organization representative and Parliamentarian on the Fresno Unified School District (FUSD) Measure E Citizens’ Bond Oversight Committee, was on the Bylaws revision committee, and am leading the negotiations with the FUSD Board regarding a MOU.

I am the representative of the Alameda County Taxpayers’ Association (ACTA), which I serve as Vice President, on the Alameda County Transportation Commission (ACTC)’s Independent Watchdog Committee, which oversees the expenditures of ACTC funding from two county transportation sales taxes enacted by the Alameda County electorate, Measure B in 2000 and Measure BB in 2014<sup>5</sup>.

I am also a Board Member and a member of the Executive Committee of the California Association of Bond Oversight Committees<sup>6</sup> (CABOC), Chair of the Legal Committee, and serve as Vice Chair of the Educational Materials Committee. I Chaired the CABOC 2022 Annual Conference, have prepared and presented dozens of CABOC training videos for CBOC members, wrote templates for CBOC MOUs and Bylaws for CBOCs to adapt for their own use, and assisted several CBOCs

with their organization, training, and the relationships with the districts that they are charged to oversee. I have made presentations to several CBOCs and K-14 governing boards.

**WHY MTC IS DISCUSSING A BOND OVERSIGHT COMMITTEE FOR RM4?**

RM4 is currently polling very poorly, slightly over or under approximately 55%<sup>7</sup>, against the Proposition 13 requirement of a two-thirds majority for passage of most California tax increase measures<sup>8</sup>.

However, because the State of California and virtually every other governmental unit in the State are facing significant budgetary shortfalls, the State Legislature has been attempting to reduce the majority required to increase taxes.

The Legislature originally acted to place a ballot measure on the November 2024 ballot to, among other things, allow the approval of infrastructure bonds and the accompanying new taxes to cover the debt service on facilities bonds (such as RM4) with a lower, 55% majority, through Assembly Constitutional Amendment 1 (ACA1, Aguiar-Curry, 2023)<sup>9</sup>. Moreover, ACA1 provided that any ballot measure that passed at the same election that ACA1 was presented to the voters would be deemed to pass if they met the lower 55% majority threshold.

ACA1 was itself polling poorly, so it was replaced by ACA10 (Aguiar-Curry, 2024)<sup>10</sup>, which removed some of the least popular provisions of ACA1 with the expectation of making it less unpopular with the voters (the ACA1 provisions being discussed herein were retained).

ACA 10 has the following provision (which is a minor modification of what was previously in ACA1):

(4) (A) Bonded indebtedness incurred by a city, county, city and county, or special district for the construction, reconstruction, rehabilitation, or replacement of public infrastructure or affordable housing, or the acquisition or lease of real property for public infrastructure or affordable housing, approved by 55 percent of the voters of the city, county, city and county, or special district, as appropriate, voting on the proposition submitted at the same election as the measure adding this paragraph or at a later election held after the effective date of the measure adding this paragraph. This paragraph shall apply only if the proposition approved by the voters and resulting in the bonded indebtedness includes all of the following accountability requirements: ...

(viii) (I) A requirement that the city, county, city and county, or special district appoint a citizens’ oversight committee to ensure that bond proceeds are expended only for the purposes described in the measure approved by the voters.

(II) Members appointed to an oversight committee established pursuant to subclause (I) shall receive educational training about bonds and fiscal oversight.

(ACA10 has since been certified for the November ballot as “Proposition 5” by the California Secretary of State<sup>11</sup>.)

At recent BAHFA meetings, following the presentation of the results of polls that MTC contracted for, the MTC Commissioners (sitting as members of the BAHFA governing board) were clear that what is now RM4 would have little chance of passage if it had to satisfy the Prop. 39 two-thirds majority requirement.

Therefore, RM4’s only realistic chance of passage was if what is now known as Proposition 5 were to also pass. For RM4 to be covered by the lower 55% majority requirement, it must satisfy the citizens’ oversight committee requirement. (Hereinafter, the Proposition 5 and RM4 “citizens’ oversight committee” requirements will be referred to as “CBOC” – adding the “B” for “bond” -- in order to maintain consistency of terminology.)

However, until very recently, MTC has done very little to flesh out the specifics of the powers of this CBOC and how it would work.

The League of Women Voters of the Bay Area (LWVBA) has been consistently advocating that MTC include a meaningful CBOC for the housing bond, including making a public comment presentation at the June 26, 2024 BAHFA meeting when what we now know as RM4 was placed on the ballot. Commissioners responded that this was something that would have to be developed further, including through consultation with LWVBA)<sup>12</sup>,

LWVBA originally took a fairly strong position on the CBOC as a make-or-break for its support:

LWVBA supports the BAHFA bond measure “in concept” and commends MTC and ABAG members and staff for the work done to date. However, **we are delaying the decision on whether to support, oppose or remain neutral on the final ballot measure (emphasis in the original)**. We are concerned that there has been no robust discussion regarding an independent, citizens’ oversight committee. It appears that the only oversight mentioned in the many BAHFA documents describes the minimum required of all general obligation bonds<sup>13</sup>.

“Roma Dawon, Co-President, League of Women Voters,” was the first signer for the “Ballot Measure Argument IN FAVOR of RM4” that will appear in the Voters’ Pamphlets.

We have no knowledge of what was discussed between MTC and LWV in discussion of citizens’ oversight of RM4. However, we would not be surprised to learn that a LWV representative would be appointed to service on the RM4 citizens’ oversight committee.

However, after MTC’s outreach to LWVBA, LWVBA was appeared to be less confrontational in its oral presentation and in a letter dated the day before the June 26<sup>th</sup> BAHFA decision meeting:

League of Women Voters of the Bay Area asks that members of the BAHFA Board affirm the need for a robust, independent citizens’ oversight committee that far exceeds the minimum legal requirements for GO bonds. It is critical for successful passage and implementation of the proposed Measure<sup>14</sup>.

However, as will be discussed further below, I find this this MTC action something substantially less than totally satisfactory – as of now, besides the extremely limited CBOC statutory (actually, Constitutional) CBOC requirement above, the only other legal requirement is that in the RM4 ballot measure<sup>15</sup>:

**B. Oversight**

The following accountability measures are required pursuant to Government Code Section 53410 and other applicable provisions of state law:

1. **Citizens’ Oversight Committee:** The Citizens’ Oversight Committee shall annually review the expenditure of the proceeds of the bonds for the prior year and shall report to the BAHFA Board whether the proceeds of the bonds were spent in accordance with the purposes set forth in this bond authorization. Members of the oversight committee shall receive any and all training about bonds and fiscal oversight as required by law. The BAHFA Board shall appoint members to the committee. Membership and work of the committee shall be governed by bylaws created by the BAHFA Board.

The above is, in my opinion, a very weak charter for a CBOC that will result in very little, if any, effective oversight being performed. My principal objections are detailed in the following section.

In fairness, I cannot charge MTC for legal non-compliance with the (proposed) California Constitutional requirements for Proposition 5 CBOCs – this mandate is very weak and MTC appears to be matching the minimal requirements for compliance.

Interestingly, there is actually Constitutional/statutory precedent in California for CBOCs having stronger statutory requirements, powers, and protections; specifically, the enabling statutory provisions for implementing Proposition 39 School Construction Bond CBOC in California Education Code §§ 15278-82. Ed Code §15284.(a) even provides that “An action to obtain an order restraining and preventing any expenditure of funds received by a school district or community college district through the sale of bonds (for non-compliance with the statutory CBOC requirements) ... shall take special precedence over all civil matters on the calendar of the court except those matters granted equal precedence by law.”

(While the statutory powers, duties, and responsibilities of K-14 CBOCs are orders of magnitude stronger than those for other California CBOCs, from going on a quarter-century working with educational CBOCs, I can opine that there is still much work that needs to be done to enhance them.)

**WHAT AM I SCARED OF?**

First, to be clear, it is not so much that I am afraid of what WILL happen; it is that I am afraid of what WON’T happen – to be specific, based on the contents of “B.1.” above, I’m afraid of what WON’T happen will be effective oversight.

Particularly since minimal compliance with a weak statutory requirement can then be used by MTC to say that the CBOC didn’t report anything, so, therefore, there are no problems.

Let’s examine the ways that effective oversight that won’t happen because of the definition/description of oversight above:

1. “The ... Committee shall annually review ...” For a \$20 billion spending program, a committee meeting annually just isn’t anywhere near enough. I’d argue for monthly and on an on-going basis.
2. “... review the expenditure of the proceeds of the bonds for the prior year ...” By the time that the books are closed and the reports generated, and then audited, it is way too late. No way that the CBOC members will be able to do their own detailed review and audit work, particularly since the vast majority of the spending will be done at the cities and the counties and most of that will be for costs of contractors. So, by the time the audit reports are submitted, say by about January 1, year 2, for the year ended June 30, year 1, the expenditures are, on average, over twelve months old, and the oldest 18 months past. So, more than a year of spending goes by before the CBOC even sees a report on these expenditures.
3. “... review the expenditures ...” This is absolutely the only thing that the CBOC is authorized to do – look at money already out the door several months to well over a year past. Speaking as someone who has been doing this type of major construction program/project management for decades, this, at best, encompasses perhaps 15% of the work that needs to be done. Besides reducing the delay in reviewing expenditures, what the CBOC should be doing includes:

- a. Looking at the Program as a whole to see if it makes sense, if it can work, if it is based on proper analysis and assumptions, etc.
- b. Looking at the policies, procedures, and systems to see if they are proper and adequate for a program of this type – ***before there are substantial expenditures of public funds***. This is made more important because the funds will be flowing from MTC through more than 100 cities and counties to even more not-for-profit organizations, contractors, consultants, etc. Not only does MTC have to have proper procedures in place, and working, and tested to see if they are being followed and they are working, but the same must be done for each city, county, contractor, and other downstream recipients.

When I am advising K-14 CBOCs for newly passed first-time Prop. 39 bond programs, I advise that this time of procedural/staff competency performance audit should be one of the first activities before such program begin major operations. Trying to gauge performance by looking solely at long-past expenditures has only a small fraction of the value of looking at the adequacy of systems and staff before major programs commence. It is ***always*** preferable and more valuable to try to stop problems before they occur, and, if that is not possible, to catch problems as early as possible when the losses are still small and there is maximum potential to implement effective improvements before future mistakes are made.

- c. Same with staff – in the real world, the first cause of a Navy is not ships. – it is sailors. Without sailors, in the right numbers, with the right skills, and the right training, and experienced in working together, it will likely be very difficult to impossible to even get the ship underway – indeed, it is difficult to even have a suitable ship in the first place. Without qualified sailors, even if the ship does get underway, the first problem or unexpected event is very possible to produce catastrophic outcomes. If you don’t believe this, I’ll be happy to show you many examples of rookie agencies that have never had a major construction program/project before try to get going too quickly and wound-up way over budget, way

over schedule, with lots of technical problems, and not producing the promised outcomes. There are many such examples of Bay Area transit and highway projects – that were MTC’s responsibility and largely done by many of the same local governments that will be in charge of these housing programs. (We are preparing a companion paper with details of such stories.)

- d. Are laws, regulations, policies, procedures, and contractual provisions being complied with?
  - e. How well is the program being managed? Are things being run economically, cost-effectively, and productively? Are the stakeholders (taxpayers, voters, residents, and, particularly, those who need affordable housing and the homeless) getting the best outcomes for the taxpayer dollars expended?
  - f. Is the program fairly run on a geographic and other bases – are funds and approved projects being distributed fairly around the Bay Area based on resources generated by city and county and by needs and protected groups (race, gender/preference, age, income level, U.S. residency status, etc.)?
  - g. Are decisions made for political reasons? (Spoiler Alert: What do you think?)
  - h. The above is just a sampler of all the things that could go wrong that the CBOC will never be allowed to come near.
4. “... shall report to the BAHFA Board ...” The CBOC has no charter or responsibility – indeed, is prohibited from – reporting to the voters, the taxpayers, the residents ... and the residents that need affordable housing.

Sure, why would anyone *else* be interested in what the CBOC may be reporting?

Note that the CBOC requirements of Proposition 5 do *not* stipulate that the CBOC report solely to the MTC Commissioners (in their role as the members of the BAHFA governing board), this is something that MTC has deliberately added to further diminish the responsibilities of the CBOC.

5. “The BAHFA Board shall appoint the members to the Committee.” OK, so the people who will serve as the members of the CBOC charged with reporting to the Bay Area voters, taxpayers, residents, and those in need of affordable housing how the Board that is making the decisions as to what to do with the money and how well the money is being used will be selected and appointed to the CBOC by the BAHFA Board members that they are charged with overseeing.

Sure – what could possibly go wrong with that?

Note that there is no requirement, not even any mention, of stakeholder group representation and balance in the members of the CBOC, such as:

- a. Geographic distribution of CBOC members
- b. Those needing and/or current residents of affordable housing and/or members of the homeless community
- c. Affordable housing and homelessness advocacy organizations and experts
- d. Experts in urban and residential planning and construction, such as representatives from professional, trade, and civic organizations who have expertise in the matters that must be properly performed
- e. Experts in planning and execution of large-scale government programs, including program planning, program management, program/project control systems, procurement and contracting, financial management, grant management, and financial and performance auditing

Since the BAHFA Board shall appoint the members, does that mean that if one, or more than one, CBOC members wants to look at things that the BAHFA Board or staff, or local government governing board members of staff, doesn’t want them to look at, will the BAHFA just give that overachieving member a nice plaque commemorating their service and appoint a successor member? After all, there is nothing about minimum term of service or causes, or not, for termination?

What happens if a CBOC member is appointed ... and simply never comes to meetings, or doesn’t participate in the CBOC activities in a meaningful manner? If they are a Commissioner’s friend, will they just stay in place?

What do you think are the chances that a true expert and advocate for the affordable housing and homeless communities, who has high motivation to make sure that the spending of RM4 funds is expended properly for the greatest good for the greatest number, and plans to work very hard to make MTC thusly accountable, will ever be appointed to the CBOC – and, if appointed, will be able to effectively achieve those intentions?

Also, there is absolutely no requirement for technical competence in any area. Wouldn’t having people with extensive prior applicable experience in fields such as affordable housing construction and management; program/project planning/design/construction, program/project control policies, procedures, and systems; grant management and progress reporting; financial planning and management, legal compliance with complex requirements; inter-governmental relations; and many other subjects be useful? If the only knowledge that CBOC members have is what they get from MTC staff during meetings; that would be supremely sub-optimal bordering on defeating the entire purpose of requiring oversight.

6. “Membership and work of the Committee shall be governed by the Bylaws created by the BAHFA Board.” First, this shows that whomever wrote this doesn’t even understand the meaning of “Bylaws,” which refers to the INTERNAL management and operations of an entity. Bylaws specifically exclude, and should not include, matters outside of the power of the entity to perform. Since the members of the CBOC will be appointed by the BAHFA Board, the CBOC has no control over how its members are selected, so the appointment of members should not be included in the CBOC Bylaws.

What has likely happened here is that whomever prepared this is improperly using the term, Bylaws, to also refer to the legal organization and the elements of operations that are externally created or mandated, such as by the BAHFA Board. These matters should be in separate documents.

Bylaws properly comprehend matters such as entity name; recognition of the authority for its creation; legal address; purpose; officer duties, powers, terms, and methodology for selection; frequency, timing, and location of meetings; process and responsibility for establishment of meeting agendas; establishment of committees; etc.

By not allowing the CBOC to even create its own Bylaws, taking these basic elements away from the ability of the members of the CBOC to establish, the Board could, for example, only allow a single annual meeting for the sole purpose of reviewing long-past expenditures. The Board could forbid the CBOC from accessing and talking to MTC staff, or from obtaining records it wanted to examine, or from the MTC staff to perform any work for the CBOC that the Board does not specifically approve. The Board could even direct that meetings would be chaired by MTC staff.

(For those that would claim that things like this would never happen; keep reading – there are multiple examples of these types of things – and worse.)

Finally, the only way that effective oversight could be enforced is if the specific protections and requirements were stipulated *in the actual ballot measure* – but, the above is taken directly from the ballot measure and it is now virtually impossible to include the necessary additions, even if MTC was so inclined – which is hardly likely.

The above should be considered a sampler of games people play to prevent effective oversight from happening – and nothing remotely close to a complete, comprehensive list of such actions.

## THE RECENT HISTORY OF CBOC IN CALIFORNIA RUNS THROUGH THE LAUSD

As is discussed in this section, the Los Angeles Unified School District (LAUSD) is a major player in the history of how citizens’ bond oversight committees have developed in the State of California over the last quarter-century – and I was fortunate enough to be present for most of this genesis process.

I also did most of the work preparing the CABOC web site materials on CBOC Bylaws and MOUs. In addition to examples, and templates to use as initial drafts for negotiations with districts being overseen, I prepared as a starting point paper, “School Construction Bond Citizens Oversight Committee (CBOC) Memorandums of Understanding (MOU) and Bylaws Introduction,” which contains a detailed write-up, “Important Lessons That Other CBOCs Can Learn From The LAUSD BOC Experience<sup>16</sup>.”

The highlights and play-by-play, for our instant purposes, are:

- After decades of rapid growth in enrollment and minimal investment in facilities, LAUSD had been facing huge facilities construction and rehabilitation requirements for many years – so the LAUSD Board of Education placed a \$2.4 billion school construction bond issue on the November 1996 election ballot
- At the time, such bond issues had to be approved by the Prop. 13 two-thirds majority; the measure failed with only 65% “yes”
- After this failure at the ballot box, LAUSD’s political advisors contracted for extensive polling, which indicated that, if two provisions were included in the next bond ballot issue, the measure would likely pass:
  - Sentiment against the “Anthill” – the LAUSD headquarters building and its occupants – was very strong; therefore, “... no money for administrators’ salaries ...” was added to the “75 word” summary and the detail ballot measure
  - Inclusion of an independent citizen’s bond oversight committee *alone* was projected to add approximately five percentage points to the “yes” vote (3-5% additional “yes” for a CBOC is common in such polls)
- Proposition BB was approved at the April 1997 election with a 71% “yes” vote
- The then-members of the Board of Education and the top administrator of LAUSD had little experience with major construction and made the unfortunate decision to press ahead with a high-visibility major signature project – then known as Belmont Learning Center. This was to be a new high school in a high need area just West of the I-110 Freeway

bordering the City of Los Angeles central business district. It was to get underway with all possible speed to demonstrate that LAUSD would be using the funds the voters had entrusted it with to quickly produce results. (This is, unfortunately, a very common mistake for “rookie” agencies that have never previously had a major construction program/project.)

Unfortunately, the work was handled by inexperienced personnel, the necessary systems and controls did not exist, and major mistakes were made. Ultimately, the project was totally shutdown after it was learned that LAUSD staff had deliberately ignored the requirement to do extensive searches for hazardous gases escaping from a former oil field – and shutdown was forced after well over one hundred million dollars had been spent to half-construct the buildings, which were left open to the elements in full view of passers-by for years.

- The stipulated oversight committee, then known as the Blue Ribbon Bond Oversight Committee (BBOC) was quickly formed and members named, but the infrastructure and support to make it work, particularly in the form of information on what was happening, were very inadequate.
- Various audits and criminal investigations of Belmont resulted in damning public reports and public outcries and calls for change
- The LAUSD teachers union, United Teachers of Los Angeles (UTLA) brought a legal action, *Day Higuchi v LAUSD*, which ultimately produced a preliminary injunction that **required** that the BBOC must have the opportunity to review major expenditures of bond funds **prior to** such projects being approved by the Board of Education<sup>17</sup>
- The BBOC had so many problems attempting to fulfill its responsibilities that the member from the Howard Jarvis Taxpayers Association resigned in frustration, making a public statement that he would not allow his presence on the BBOC to make appear that oversight was being performed when the lack of information was not making that possible
- The Board of Education, with the strong encouragement of the then-Mayor of Los Angeles, engaged a new Superintendent, Roy Romer, the former three-term (12-year) Governor of the State of Colorado, former General Chair of the Democrat National Committee, and a self-made multi-millionaire as a farmer and as owner/operator of two major heavy construction equipment dealerships. In addition to his strong personal leadership and large government agency management and construction experience, he possessed an additional extremely important qualification for the LAUSD Superintendent position – he didn’t need the job.
- Superintendent Romer then hired an extremely well qualified Navy Civil Engineer Corps (CEC – Seabee, among other assignments) Captain, Jim McConnell, as Chief Facilities Officer. McConnell, in turn, brought in over a dozen of his best CEC and other professional facilities management colleagues and experienced professionals in support disciplines to transform the LAUSD Facilities Services Division into one of the finest facilities departments in government (in the author’s opinion, based on his own decades of experience in this field with dozens of major government construction organizations)
- Romer and McConnell quickly decided that they needed a strong BOC to carefully review and report on progress on improving the LAUSD FSD process in order to help convince the LAUSD electorate to approve future school construction bonds. Even with the Prop. 39 (2000) reduction of the required majority for passage to 55%, public/taxpayer/voter/

parent/guardian confidence in LAUSD – which has had very major issues over its history besides facilities management – was essential.

- The Chair of the BBOC at that time was a well-known civil rights attorney who, along with another BBOC member, also a well-known civil rights attorney and his professional colleague, had recently settled a multi-billion-dollar civil rights action against another major Los Angeles County government – and I had served as the main technical expert in moving the case to settlement and in monitoring compliance with the resulting consent decree. They determined that for the BBOC to do its job, it would require dedicated staff – which the LAUSD Board and Superintendent agreed to. I was eventually engaged in the position of BBOC consultant. We were also able to hire an administrative assistant and, later, our own independent legal counsel.
- With the active full cooperation of LAUSD FSD, financial, procurement, and other departments, we were able to perform a comprehensive review of the construction program and adopted a report that, although there were numerous significant issues unresolved, tremendous progress had been made in upgrading systems, procedures, and staff and that viable plans were in place and being implemented for future improvements.
- The LAUSD BBOC/BOC was seen as a success and as a significant component of the LAUSD FSD turnaround – and the requirement for CBOCs was made a statutory requirement for Prop. 39 bonds to qualify for the 55% majority passage, with many elements of State statutory language coming from the LAUSD BOC charter, some literally word-for-word
- After the first modern LAUSD School Construction Bond issue, Proposition BB in 1997 for \$2.4 billion, the LAUSD electorate has approved the following additional bond issues:
  - Measure K    November 2002        \$3.300 Billion
  - Measure R    November 2004        \$3.870 Billion
  - Measure Y    November 2005        \$3.985 Billion
  - Measure Q    November 2008        \$7.000 Billion
  - Measure RR   November 2020        \$7.000 Billion

Not only did all of these bond ballot measures pass by more than the Prop. 39 55% majority requirement, all but one also exceeded the Prop. 13 two-thirds majority requirement – one important indication that the voters have been pleased with the conduct of the LAUSD facilities construction program and, hence, the work of the BBOC/BOC.

- After 2002’s Measure K, LAUSD’s first Prop. 39 School Construction Bond ballot measure, was approved, the District and the BBOC negotiated a Memorandum of Understanding<sup>18</sup> (which transformed it into the LAUSD BOC) – which we believe was the first ever for a CBOC – that permanently gave the renamed Bond Oversight Committee (BOC) great powers of access, funding, and independence, including having thirteen of the fifteen BOC seats nominated by stakeholder associations, such as the American Association of Retired Persons, the American Institute of Architects – Los Angeles Chapter, the Associated General Contractors of California, the Greater Los Angeles Chamber of Commerce, the Early Education Coalition, the California Charter School Association, the Los Angeles Mayor, the Los Angeles/Orange County Building & Trades Council, both of LAUSD’s two Parent-Teacher Association districts, and others.

- The BOC has adopted its own Bylaws – for which it has sole responsibility and power to change<sup>19</sup>.

The LAUSD BOC has remained a powerful force to protect the interests of the taxpayers, voters, residents, student parent/guardians. Among other specifics, it recommended changes in debt management that allowed the District to continue to sell debt to maintain its construction program during the economic turndown and strongly recommended against the large-scale procurement program of a particular personal computational devices for all students that ultimately saved well into nine figures and produced a more balanced selection of computational products that was better suited to student needs and abilities.

### **GAMES DISTRICTS HAVE PLAYED TO INTERFERE WITH THE ABILITY OF CBOCS TO PERFORM EFFECTIVE OVERSIGHT**

The limitations described above on effective oversight that could result from the ineffective description of the RM4 CBOC committee, its responsibilities, and powers were not created out of whole cloth; the following are actual examples of what has actually occurred (the names are omitted to protect the guilty):

- One of the top ten largest K-12 school districts in California, with major construction bond programs underway, simply shut down its statutorily mandated CBOC for two years – during which several high-visibility issues occurred, which eventually forced the district to restart its CBOC
- A K-12 district with one of the worst performance records in the State fired a CBOC member who had gone to great lengths to document and report numerous issues
- A county transportation agency oversight body found a major problem with the collection and reporting of mandated performance measures, which the oversight body highlighted in its annual report. When the agency prepared a press release that highlighted that it had received another approved oversight report, the oversight body insisted that the press release mention the main deviancy finding – and the staff replied that, while the report was the oversight body’s, the press release was the agency’s – and the agency was happy with not mentioning the finding in the press release.
- A community college district fired CBOC members who had been making inquiries about actions they found needed investigation – and then attempted to disestablish the entire CBOC and start over with one with entirely new members. The top administrator has frequently involved himself in oversight matters to, evidently, be able to able to control its work and reports
- Despite the statutory requirement for a seven-member minimum CBOC, a K-12 school district was so deficient in replacing CBOC members when their terms expired that the number of members dropped to three. The remaining members could only address district matters at scheduled CBOC meetings because any time two of the remaining CBOC members would converse, make a phone call, or e-mail, that would constitute a violation of the Brown Act because two members constituted of quorum of the remining three active members
- A rural K-12 school district passed a Prop. 39 ballot bond issue and sold bonds, but never established the stipulated CBOC

- A large K-12 school district CBOC pointed out, and clearly documented, a significant violation of an important requirement included in two Prop. 39 bond ballot measures; the district refused to even formally respond to the notice

**THE *RIGHT* WAY TO STRUCTURE AN EFFECTIVE CBOC FOR THE MTC \$20 BILLION AFFORDABLE HOUSING BOND**

In the Appendix, I present a full set of requirements for the charter of an effective Citizens’ Bond Oversight Committee for the Measure RM4 \$20,000,000,000 affordable housing bond and tax.

**APPENDIX**

**FRAMEWORK FOR STRUCTURE OF A PROPER  
CITIZENS’ BOND OVERSIGHT COMMITTEE (CBOC)  
FOR THE PROPOSED  
\$20 BILLION SAN FRANCISCO BAY AREA HOUSING BOND**

**FRAMEWORK FOR STRUCTURE OF A  
CITIZENS’ BOND OVERSIGHT COMMITTEE (CBOC)  
FOR THE PROPOSED  
\$20 BILLION SAN FRANCISCO BAY AREA HOUSING BOND**

1. In the following, the terms “Metropolitan Transportation Commission” and “MTC” comprehend all entities associated with MTC, including but not limited to the Association of Bay Area Governments (ABAG), the Bay Area Housing Finance Authority (BAHFA), the Bay Area Headquarters Authority, the Bay Area Infrastructure Financing Authority (BAIFA), the Bay Area Toll Authority (BATA), the Service Authority for Freeways and Expressways (SAFE), and all advisory and oversight committees related to any of the above.
2. In this document, the terms, “Citizens’ Bond Oversight Committee” and “CBOC” shall refer to the CBOC that shall oversee the MTC housing bonds, as stipulated below.
3. All of the points herein must be specified in the bond ballot issue presented to the voters so that they will be more difficult for MTC to modify or eliminate unilaterally. (“Make impossible” is simply not possible when dealing with laws, regulations, contractual provisions, and other requirements that MTC would rather avoid.)
4. The CBOC will have a separate legal identity and existence independent from MTC:
  - a. MTC will have no legal authority over CBOC or its actions and decisions.
  - b. MTC will have no role in the appointment of CBOC members and has no authority to fire or discharge CBOC members.
  - c. Any differences between MTC and the CBOC will be resolved by:
    - i. Discussion by representatives of the two parties.
    - ii. If 4.c.i. fails to resolve the differences, referral to arbitration under the procedures of the American Arbitration Association.
5. Membership of the CBOC – in order to insure the independence of the CBOC:
  - a. The members of the CBOC shall be appointed by independent external organizations such as (this is intended as a list of examples and possibilities, not as comprehensive or final):
    - i. Lower-income Bay Area residents, including both those who are housed to their satisfaction and those who are not.
    - ii. Lower-income housing advocacy organizations.
    - iii. Homeless Bay Area residents (which may include those who were previously homeless but are now housed).
    - iv. Homeless Bay Area resident organizations.
    - v. Homelessness advocacy organizations.
    - vi. Voter organizations.
    - vii. Taxpayer organizations.
    - viii. Business organizations.
    - ix. Real estate development organizations.
    - x. Residential rental organizations.

- x. Construction trades.
- xi. Professional architecture/engineering/contracting organizations.
- xii. Environmental organizations.
- xiii. Mobility disadvantaged/Americans with Disability advocacy organizations.
- xiv. Transportation advocacy organizations.
- xv. Professional audit organizations.
- xvi. Representatives by geographic/political areas, such as counties, large and small cities, North Bay, East Bay, etc.
- xvii. If an appointing organization fails to appoint a member within a reasonable period of time when there is a vacancy, the CBOC shall first notify the organization and ask for an appointment by a reasonable day certain. If the appointing organization fails to so appoint, or if an appointing organization indicates to the CBOC that it no longer desires to be an appointing authority, the CBOC shall select a replacement appointing authority that, to the extent possible, has characteristics similar to that of the organization being replaced. The replacement process will include a public notice process that allows organizations to self-nominate to be nominating authorities and a public hearing process.
- b. CBOC members serve at the pleasure of their appointing authorities; there are no term limits or time-in-office limits.
- c. Independence means that both the organizations and the individual members:
  - i. Have not and are not receiving any funding from MTC.
  - ii. Are not employed by, or be a subcontractor or consultant to MTC or any entity funded by or through MTC.
  - iii. This independence requirement extends to immediate family members (parents, grandparents, spouses and domestic partners for parties included in this list, siblings, children, grandchildren, and great-grandchildren).
  - iv. For appointing authorities, a professional/civic organization shall be considered independent if members of the organization are MTC contractors or subcontractors, as long as the organization itself, and the organization’s appointed representative, meet the independence standard as to not having received or are receiving MTC funding directly and as long as the organization does not advocate for specific entities to receive contracts or funding. MTC contractors paying normal dues or fees to such an appointing organization shall not cause the appointing authority to be considered non-independent.
- d. Elected officials, employees of MTC and all other California governmental entities, and members of MTC governing boards and advisory committee are not eligible to serve as CBOC members. The 4.c.iii. family independence requirement above applies.
- e. All CBOC members must be residents of the nine-county Bay Area
- f. U.S. citizenship or legal residency are not a requirement for CBOC membership.



- c. For programs and projects that are partially funded by housing bond funds, the CBOC shall be able, at its sole discretion, to review the total program or project and not just those aspects specifically identified as funded by housing bond funds.
      - d. The CBOC, at its sole discretion, may contract for financial and/or performance audits. For performance audits, the CBOC will establish a long-term audit program and schedule that reviews different aspects of the overall program as appropriate. As soon as the CBOC is established, it shall begin the process of an internal control audit to determine if the MTC systems, procedures, objectives, performance metrics, and reporting mechanisms are adequate.
9. The CBOC will be funded for its expenses by the MTC from the proceeds of the housing bond 5% administration allocation and no other RM 4 source, or otherwise as MTC may determine, including but not limited to:
  - a. Staff – If CBOC elects to have employees, all CBOC staff members shall be MTC employees, subject to all MTC employee requirements, but shall work solely for, and be responsible solely to, the CBOC. Existing MTC employees and other California and Bay Area government employees may apply for these positions, but must be able to demonstrate their independence from MTC housing and related policies, practices, and activities to the sole satisfaction of the CBOC.
  - b. At its discretion, the CBOC may choose to use consultants rather than employees for its active and support activities. By definition, such consultants are not and shall not be employees of MTC or the CBOC.
  - c. CBOC shall select its own independent general legal counsel and, as it determines may be required, special legal counsel(s).
  - d. Selection of and contracting provisions for CBOC legal counsel and consultants will be consistent with applicable statutory, regulatory, and case law and MTC’s own requirements and procedures. The administrative requirements of procurements will be performed by MTC procurement personnel in consultation with the CBOC. The CBOC, working with MTC personnel, shall set the scope of work and the selection of contractors will be performed solely by selection panels appointed by CABOC.
  - e. The CBOC will establish a training program for all its members, including both initial and on-going training, and provide for membership in organizations, and attendance at conferences, that will assist the CBOC members increase their knowledge in subject fields, and to help the members understand the types of programs and projects that have worked well – and haven’t worked well – in other metropolitan areas, states, and nations. The CBOC will attempt to maximize the utilization of pre-existing training from commercial, educational institution, and not-for-profit entities to the extent it finds practical.
  - f. The CBOC shall have its own web page, which will have prominent connections from and to the MTC and the BAHFA web pages. At the CBOC’s option, it may utilize the MTC staff to maintain the CBOC web site to the CBOC’s standards.
10. As part of the MTC annual budget preparation process, the CBOC shall submit its annual and longer-term funding requirements and MTC and the CBOC will reach agreement on

the level of funding to be provided. If an impasse results, it shall be resolved by the process described in 4.c. above. The costs of CBOC operation shall be charged to the 5% Administration costs of the bond ballot measure, and to no other RM 4 funding source, or otherwise as MTC may determine.

11. The CBOC shall be solely responsible for adopting its own bylaws and procedures, including meeting schedule, officers, agenda setting, standing and other committees and task forces, and quorum requirements. The most recent version of *Robert’s Rules of Order* will be authoritative for matters not comprehended by the CBOC bylaws and procedures or other applicable standards.
12. The CBOC shall report to the public and other stakeholders on a periodic basis as it may determine, but no less often than annually. It may choose to report more often on items it so chooses. CBOC shall determine the method and media of distribution for different types of reports, but shall, at a minimum, include all such reports on its web site. Other methods may include, but are not limited to, press releases, arranging for posting of reports on web sites of others, e-mail and/or hard copy delivery to elected officials and government administrators, and public meetings, as the CBOC shall determine most useful and appropriate.
13. As the Chair of the CBOC may determine necessary, the MTC, and all of its component units, shall provide the CBOC Chair, or their designee, with a “time certain” at which the CBOC may address the Commissioners or members at any of its meetings the CBOC Chair shall designate.
14. MTC shall prepare a comprehensive program/project status reporting system that shall comprehend all work funded and to be performed under housing bond funding. For projects partially funded by housing bond funding, the entire program/project shall be under the CBOC’s purview. This shall include specific identification, scope, quantification, and schedule, including key checkpoints for long-term programs and projects, and for delivery of outcomes, including:
  - a. Plans at all levels:
    - i. Geographic/political:
      1. County and non-designated prime recipient cities therein.
      2. Designated prime recipient cities (Napa, San Francisco, San Jose, San Rafael).
    - ii. Product:
      1. Planning documents.
      2. New housing units (by level of affordability).
      3. Renovated existing units (by level of affordability).
      4. Other allowed expenditures of public funds, such as rent subsidies and down-payment assistance.
  - b. Specific housing projects.
  - c. Detailed budgets – available and customizable in multiple formats, such as program, project, department, type of housing, grantee, contractor, geographic area, etc.

- d. MTC and the CBOC shall meet to agree on the detailed reporting requirements and the public access thereto.
  - e. These requirements shall be passed down to all levels of grantees, subrecipients, and contractors, and all shall be required to regularly report status to MTC and, as applicable, intermediaries. Continuation of funding will be dependent upon timely reporting of accurate and complete data.
  - f. The web site shall be designed to allow users to self-sort/select the data they are most interested in, such as geographic/political area, type of program/project, time period, etc. and provide for both row/column and graphic reports as of dates and time periods selected. The data and information available to members of the public shall be based on, and identical to, that utilized by program and project managers. (Modern program/project control systems provide for multiple levels of access and control; for example, those responsive for management of specific projects can access data down to the detail of each subcontractor’s work by short time periods of work, but the public will only be allowed access data at a higher level, such as specific project or contractor project totals; also, only specifically-designated individuals will be allowed to enter or change data, as appropriate, and members of the public will never be granted anything but “access to” status. CBOC staff and consultants designed by the CBOC with “need-to-know” shall be granted full detail access to all but privileged information (but *never* enter or change authorization).
15. MTC shall develop standard contractual “boilerplate” and terms for all housing bond fund grants, contracts, loans, and other funding and shall pass these requirements on to all recipients and contractors and require that contractors incorporate these requirements in all agreements with subcontractors and subrecipients. MTC shall rely upon pre-existing State of California, industry-, and standards to the extent practical. Failure to incorporate such requirements in downstream contracts will require that the non-compliance be corrected at the cost of the party that failed to include these requirements.
  16. The CBOC and its representatives shall have access to all MTC documents and employees, and those of MTC grantees, subrecipients and contractors; MTC shall ensure that these access requirements are passed through to all of the above. MTC and the CBOC shall coordinate their work to minimize the costs and impacts and provide for timely completion.
  17. If MTC determines that there are issues of privilege regarding documents or knowledge of individuals, MTC shall so notify CBOC of the specifics and shall provide all documents, or redactions thereof, and access to individuals for what is not subject to the privilege claimed. If there is disagreement between MTC and CBOC of what privilege shall protect, the MTC and CBOC shall utilize the 4.c. process above for resolution.
  18. The CBOC and its representatives shall have access to all offices and construction sites funded by these housing bonds. This requirement shall also be passed down to all funding recipients. The CBOC and its representatives shall comply with all safety requirements for such site visits.
  19. All audits performed on MTC housing programs shall be performed in accordance with the applicable statutory, regulatory, and professional standards, including the most recent applicable U.S. Government Accountability Office *Government Auditing Standards*.

20. Any amendments to the above must be mutually agreed to by MTC and the CBOC.

<sup>1</sup> [Bill Text - AB-1487 San Francisco Bay area: housing development: financing. \(ca.gov\)](#)

<sup>2</sup> BAHFA, June 26, 2024 Meeting Agenda, item 7c., “Affordable Housing General Obligation Bond, Attachment B, “Tax Rate Statement,” [7c Resolution 0034 Attachment B Tax Rate Statement \(4\).pdf](#)

<sup>3</sup> The others include the Bay Area Headquarters Authority (BAHA), the Bay Area Infrastructure Financing Authority (BAIFA), the Bay Area Toll Authority (BATA), and the Surface Authority for Freeways and Expressways (SAFE). All of these, plus ABAG, share the same governing board members (the MTC Commissioners), and the same chief executive officer and staff (all MTC employees). While ABAG, a voluntary joint powers agreement of the Bay Area city and county governments, has its own separate legal existence, there is considerable cross-over of governing board members between ABAG and MTC and its *alter ego* units.

Besides the MTC units and ABAG, the Bay Area Metro Center Building also house the Bay Area Air Quality Management District (BAAQMD) and its laboratory. BAAQMD is a separate State entity, the regional component of the State Air Resources Board. Its geographic area is the same as MTC’s and ABAG’s, except that it is not responsible for the Eastern portion of Solano or the Northern portion of Sonoma Counties. BAAQMD works closely with the MTC units and ABAG on many matters of joint responsibility, but does not share staff. Its governing board members represent largely the same appointing governments and many members of one governing board have also served on the other’s, sometimes simultaneous.)

<sup>4</sup> <https://20billionreasons.com/>

<sup>5</sup> When I began my service, Measure B, a half-cent sales tax over a 20-year term, was still active and providing new funding. Measure BB was originally a second half-percent sales tax, but was structured to increase to a full one-percent sales tax immediately following the end of Measure B’s term.

<sup>6</sup> California Proposition 39, which was approved by the electorate at the November 2000 election, is a Constitutional amendment that provided that K-12 and community college districts (collectively, K-14) to present general obligation school construction bonds and accompanying *ad valorem* (property) taxes to their electorates for approval by a 55% majority, vice the two-third majority then required by Proposition 13 (1978). In order to qualify for the reduced majority, such bond/tax ballot measures must meet several tests, including the establishment of a BOC meeting the stipulations included in California Education Code §§15278-82.

CABOC was established to assist CBOCs in the education of their members, provision of resources for CBOC members and other stakeholders, and advocacy for improved oversight before the California Legislature, State of California government administrative bodies, and other governmental bodies and not-for-profit entities.

[Home - California Association of Bond Oversight Committees](#)

<sup>7</sup> BAHFA, June 26, 2024 Meeting Agenda, Item 6a., “Poll Results for a Bay Area Affordable Housing Bond Overview of findings from May-June 2024 voter opinion research conducted on the proposed affordable housing general obligation bond,” [Metropolitan Transportation Commission - File #: 24-0797 \(legistar.com\)](#)

<sup>8</sup> California Proposition 13 (1978), popularly known as “Jarvis-Gann” after its primary sponsors, currently chaptered as Article XIII A of the California Constitution. The two-thirds majority for most tax increases is chaptered in Section 3, [California Constitution Article XIII A § 3 - Tax Limitation :: California Constitution :: Justia](#)

<sup>9</sup> [Bill Text: CA ACA1 | 2023-2024 | Regular Session | Amended | LegiScan](#)

<sup>10</sup> [Bill Text - ACA-10 Local government financing: affordable housing and public infrastructure: voter approval.](#)

<sup>11</sup> Shirley N. Weber, Ph.D., California Secretary of State, “November 5, 2024, Statewide Ballot Measures,”

[Qualified Statewide Ballot Measures :: California Secretary of State](#)

<sup>12</sup> Author present at meeting, prior e-mails.

<sup>13</sup> Kathleen Cha, LWVBA President, and Roma Dawson, LWVHA Housing Director, letter to ABAG Executive Board, April 15, 2024, including in BAHFA Agenda Package, June 26, 2024 meeting, [7c PUBLIC COMMENT League of Women Voters.pdf](#)

<sup>14</sup> Rona Dawson letter to Chair Pedroza, Vice Chair Josefowitz and Commissioners, June 25, 2024, *Ibid*.

<sup>15</sup> BAHFA, Ballot Measure, BAHFA Agenda Package, item 7c. Resolution 0034 Attachment A 2024 Housing Bond Language, [7c Resolution 0034 Attachment A 2024 Housing Bond Language 6-18-24 v9 \(2\).pdf](#)

<sup>16</sup> [R1 MOU&ByLaws Intro 07 19 21 final \(bondoversight.org\)](#)

<sup>17</sup> After the preliminary injunction was entered, and the LAUSD Board and Superintendent negotiated other matters with UTLA, the legal action was not pursued further. This raises the legal question, how long does a preliminary injunction persist if the underlying legal action is not pursued? However, since no party ever raised this question, it has, effectively, persisted in force – and now the MOU between LAUSD and the BOC specifically provides that the

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BOC will be given the opportunity to review all actions regarding expenditures against construction bond funds. (LAUSD and the BOC have even negotiated an informal work around for situations where timing a BOC meeting prior to a District Board meeting would be problematic involving prompt notice to BOC staff and Chair with presentation at the next available BOC meeting.)

<sup>18</sup> [charter-and-mou.pdf \(lausd.org\)](#)

<sup>19</sup> [Microsoft Word - DRAFT Bylaws of the Bond Oversight Committee \(10-19-2017\).dh.docx \(lausd.org\)](#)

The document is the current final and active version of the BOC bylaws; the name in the link evidently was not updated after the document was adopted.