



NAPA VALLEY TRANSPORTATION AUTHORITY-TAX AGENCY ITOC Agenda Memo

TO: Independent Taxpayer Oversight Committee
FROM: Kate Miller, Executive Director
REPORT BY: DeeAnne Gillick, NVTA Legal Counsel
SUBJECT: Legal Opinion on and Process for Canceling an Independent Tax Oversight Committee (ITOC) Meeting

RECOMMENDATION

Information only

EXECUTIVE SUMMARY

On August 25, 2020 Napa Valley Transportation Authority (NVTA) staff canceled the September 2, 2020 Independent Tax Oversight Committee (ITOC) meeting due to circumstances surrounding the COVID-19 pandemic and the Lighting Napa Unit (LNU) Complex Fire. Both emergencies pulled jurisdiction staff away from their regular work assignments. Specifically, key members of the County Public Works department were diverted to the LNU fire response, and consequently were unable to provide NVTA staff with materials needed for the September 2nd ITOC meeting.

At the request of Chair Kindig, NVTA staff sought legal opinion on whether ITOC meetings can be canceled and the proper approach for doing so. Additional clarification about holding special meetings was also sought.

FISCAL IMPACT

Is there a Fiscal Impact? Yes, the cost of legal counsel will be deducted from the ITOC's Measure T budget. NVTA legal counsel charges \$280 per hour. The total cost of seeking legal opinion for this issue is \$644.

BACKGROUND INFORMATION

Upon review, NVTA's legal counsel deemed the meeting was canceled properly and consistent with public agency procedures, the ITOC Bylaws and the Brown Act.

Section IV.A. of the Bylaws allows the Committee members to adjust the meeting schedule for the Committee by taking action at a prior Committee meeting when scheduling conflicts are known or anticipated on the date set for a regular meeting or if the meeting is not warranted. The Bylaws do not specifically address situations when a meeting agenda is not set or noticed for an otherwise regularly scheduled meeting due to unanticipated circumstances. Sometimes public agency bylaws specify who prepares the agenda and sets the agenda items. Sometimes that is the Executive Officer or the Chair or others. It is also acceptable for the bylaws or procedures to not address who prepares a meeting agenda and that responsibility would fall on the Executive Officer as the administrator for the agency. In this situation, due to the current events related to the pandemic and fires the meeting was cancelled by staff with the concurrence of the Chair. Staff was not in a situation to reasonably prepare and set the required meeting notice, agenda, and material. A proper public agency meeting cannot occur without those items. The cancellation of the regular meeting was reasonable and consistent with typical public agency practices and did not violate the Committee bylaws or the Brown Act requirements. The sales tax information that would typically be reviewed by the Committee can be presented and considered by the Committee during its next regularly scheduled meeting.

As to the question related to special meetings, the Brown Act allows for a special meeting to occur with at least 24 hours advance notice and posting of a special meeting agenda. Gov. Code § 54956. This section provides that a special meeting may be called “by the presiding officer.” A special meeting may also be set by a majority of the members of the legislative body which allows for a special meeting to be set and scheduled by the legislative body when it is otherwise meeting. Section IV.E. of the bylaws related to special meetings states, “no other business shall be considered at such meetings” and is consistent with the language of section 54956 of the Brown Act related to special meetings, and the other provisions of the Brown Act related to all meetings, which prohibits the legislative body from deliberating or taking action on items which are not listed on the prior, noticed agenda. A special meeting can be called by the Chair at any time if there is business of the Committee to address. The Special meeting must be held pursuant to a written agenda which is noticed and posted at least 24 hours prior the meeting time.

The provision of the bylaws providing for Committee member compensation states that the members may “receive a stipend of \$250 per quarterly meeting attended.” Section.D.2. of the Measure T ordinance states, “The ITOC members shall receive a stipend of \$250 per quarterly meeting and no other payment shall be made for any purpose” to the Committee. Therefore, the ITOC Committee can be paid for one meeting a quarter which is considered the “quarterly meeting.” If a special meeting is called to address ITOC business and there is a desire to pay the ITOC Committee members the stipend payment for the “quarter,” legal recommends there is an action at the special meeting to make it clear that the meeting is serving as the quarterly Committee meeting that was previously cancelled due to the fires and that the special meeting meets the

requirements of the “quarterly meeting” for proper stipend payment purposes. The members cannot be paid more than once each quarter.

ATTACHMENTS

(1) Resolution No. 18-02-TA ITOC Bylaws



RESOLUTION No. 18-02-TA

**A RESOLUTION OF THE
NAPA VALLEY TRANSPORTATION AUTHORITY- TAX AGENCY (NVTA-TA)
ADOPTING THE BYLAWS OF THE
INDEPENDENT TAXPAYER OVERSIGHT COMMITTEE (ITOC)**

WHEREAS, the voters of Napa County approved Ordinance No. 2012-01 - the Napa Countywide Road Maintenance Act (known as Measure T) at the General Election held on November 6, 2012, thereby authorizing NVTA-TA to administer the proceeds from a one-half cent transaction and use tax; and

WHEREAS, Measure T Ordinance establishes an Independent Taxpayer Oversight Committee (ITOC) that shall remain in existence until the tax expires or is amended by the voters; and

WHEREAS, the role of the ITOC is to make a finding on the consistency of Measure T proposed projects with the eligibility guidelines outlined in the Measure T Ordinance, and to oversee project performance and the NVTA-TA financial audits in coordination with NVTA-TA staff; and

WHEREAS, Measure T will become operative on July 1, 2018 and in accordance with the Ordinance, the ITOC must be appointed within 180 days prior to that date;

NOW THEREFORE BE IT RESOLVED that the Napa Valley Transportation Authority-Tax Agency hereby adopts the bylaws for the Independent Taxpayers Oversight Committee to read in full as set forth in Exhibit "A" attached hereto and incorporated by reference herein and the attached provisions of Exhibit "A" shall become effective immediately.

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THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED
by the Board of Directors of the Napa Valley Transportation Authority-Tax Agency, at a
regular meeting held on January 17, 2018, by the following vote:



Peter White, NVTA-TA Chair

Ayes: Garcia(1), Joseph(1),
Barnes(1), Canning(1),
Techel(1), Pedroza(1),
Ramos(1), Galbraith(1),
White(1), Dorman(1),
Dunbar(1)

Nays: None

Absent: Gentry(1)

ATTEST:



Karalyn E. Sanderlin, NVTA Board Secretary

APPROVED:



Vicky A. Clayton, NVTA-TA General Counsel

EXHIBIT "A"

**BYLAWS OF THE
NAPA VALLEY TRANSPORTATION AUTHORITY-TAX AGENCY (NVTA-TA)
INDEPENDENT TAXPAYER OVERSIGHT COMMITTEE (ITOC)**

I. THE INDEPENDENT TAXPAYER OVERSIGHT COMMITTEE

A. NAME. The official name of the Independent Taxpayer Oversight Committee shall be the Napa Valley Transportation Authority – Tax Agency Independent Taxpayer Oversight Committee, hereinafter referred to as "Committee" or "ITOC".

B. COMPENSATION. Committee members may receive a stipend of \$250 per quarterly meeting attended, which may be adjusted by \$50 per quarterly meeting every five years.

C. PURPOSE.

1. Review the fiscal and program performance of the retail transactions and use tax transportation program through a biennial performance audit to ensure that all transportation retail transactions and use tax revenues are spent by the Napa Valley Transportation Authority-Tax Agency (NVTA-TA) in accordance with all provisions of Measure T.

2. Provide positive, constructive advice to the NVTA-TA on how to improve program implementation over the life of Measure T, including consideration by the Committee of the biennial project lists submitted by the Napa Valley jurisdictions (hereinafter referred as the Agencies) pursuant to the terms of Measure T.

II. TERMS OF OFFICE

At the initial meeting, by drawing lots, voting members shall serve for two, three and four year terms. Thereafter, all members shall serve four year terms.

III OFFICERS

The officers of the Committee shall be the Chair, Vice-Chair and Secretary chosen as follows:

A. Time of Election of the Chair and Vice-Chair. At the first organizational meeting and thereafter at the Committee's annual organizational meeting, the members of the Committee shall elect the Chair and Vice-Chair from among themselves.

- B. Term of the Chair and Vice-Chair.** The Chair and Vice-Chair shall serve until their successors are elected and assume office. If the office of Chair becomes vacant during the term, the Vice-Chair shall become Chair. Vacancy in the office of Vice-Chair during the term shall be filled by election to serve the remainder of the term.
- C. Duties of the Chair and Vice-Chair.** The Chair, or the Vice Chair in the absence of the Chair, shall act as the presiding officer of Committee and in that capacity shall preserve order and decorum, decide questions of order subject to being overruled by a two-thirds vote and perform such other duties as are required by the Committee. The Chair shall have all the rights and duties enjoyed by any other member of Committee, including the right to make and second motions.
- D. Secretary.** A designee of the Executive Director of the NVTA-TA shall be appointed as the Secretary who shall continue to serve until he or she resigns or is replaced by the Executive Director.
- E. Authority to Bind Committee.** No member of the Committee, acting individually, shall have any power or authority to bind the Committee by any contract, to pledge its credit, or to render it liable for any purpose in any amount. All such actions shall occur only through collective action of the Committee.

IV. MEETINGS

- A. Date of Regular Meetings.** All dates of regular meetings of the Committee shall be shown on a calendar, which the NVTA-TA shall adopt at its first meeting each calendar year, whether that meeting is a regular meeting or a special meeting. Notwithstanding the foregoing, any regularly scheduled meeting of the Committee may be canceled by majority vote or, if there is not a quorum, be adjourned by the Chair or Secretary in the manner set forth in Section IV(H) of these By-laws.
- B. Time of Regular Meetings.** Regular meetings shall commence at 2:00 p.m. and continue until all agenda business is concluded unless adjourned earlier by vote of the Committee for any reason or by the Secretary for lack of a quorum.
- C. Location of Regular Meetings.** Unless specially noticed otherwise, regular meetings shall be held at the Socol Gateway Transit Center, Conference and Board room, 625 Burnell, Napa, California.
- D. Emergency Meetings.** Emergency meetings shall be called in conformance with Section 54956.5 of the California Government Code.

- E. Special Meetings.** A special meeting may be called at any time by the Chair or upon request by a majority of the currently-appointed members of the Committee by delivering written notice to each member and to each person or entity entitled by law to receive such notices in the manner required by Government Code Section 54956 at least 24 hours before the time of the meeting specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted or discussed and shall be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public. No other business shall be considered at such meetings by the Committee. Such written notice may be dispensed with as to any Committee member who at or prior to the time the meeting convenes files with the Secretary of the Committee a written waiver of notice. Such waiver may be given by telegram, fax or email. Such written notice may also be dispensed with as to any member who is actually present at the time the meeting convenes.
- F. Agendas Involving Regular Meetings.** At least 72 hours before a regular meeting, an agenda containing a brief general description of each item of business to be transacted or discussed shall be posted at a location freely accessible to members of the public. All agendas shall include a time period for public comment and shall specify the time and location of the regular meeting. No discussion shall occur, or action be taken, on any item not appearing on the posted agenda except as permitted by law. Questions or comments regarding items not included on the agenda shall be limited to the scope permitted for "public comment". Supplemental agendas posted later than 72 hours prior to a regular meeting may be considered by the Committee only under the following conditions:
- 1. Emergencies.** Upon a determination by the Committee that an emergency situation exists, as defined in Section 54956.5 of the Government Code.
 - 2. Need Arising after Posting.** Upon a determination by a two-thirds vote of the Committee, or if less than two-thirds of the potential votes are present, a unanimous vote of the Committee members present, that there is a need to take immediate action and the need to take action came to the attention of the Committee or Committee staff subsequent to the regular agenda being posted.
 - 3. Recently Continued Item.** The item was properly posted for a prior meeting of the Committee occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

- G. Public Hearings.** All public hearings conducted by the Committee shall be held during regular or special meetings of the Committee.
- H. Adjourning Meetings and Continuing Public Hearings to Other Times or Places.** The Committee may adjourn any meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all Committee members are absent from any regular meeting or adjourned regular meeting the Secretary or Acting Secretary of the Committee may declare the meeting adjourned to the next regular meeting of the Committee. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings.
- I. Meetings to be Open and Public.** All meetings of the Committee to take action or to deliberate concerning the Committee business and its conduct shall be open and public. All persons shall be permitted to attend any such meetings.

V. CONDUCT OF MEETINGS

- A. Order of Business.** The regular order of business of the Committee shall be:
1. Call to order.
 2. Approval of the minutes of the previous meeting.
 3. Public comment on unagendized items.
 4. Consideration and Action on Agenda Items.
 5. Adjournment.
- B. Parliamentary Procedure.** Unless otherwise provided by these Bylaws, all proceedings before the Committee shall be conducted in accordance with and pursuant to the parliamentary procedure prescribed in "Sturgis Standard Code of Parliamentary Procedure, current edition."
- C. Recording of Meetings.** Any meeting of the Committee, other than a closed session permitted under the Brown Act, may be recorded by any person, unless the Committee determines that such recording could constitute a disruption of the proceedings.

- D. Presentations to the Committee.** Any person desiring to address the Committee shall be requested, when recognized by the Chair, to give his or her name and address for the record. The Chair may, in the interest of facilitating the business of Committee, set in advance of the presentation of testimony reasonable time limits for oral presentations. Persons may be required to submit written testimony in lieu of oral testimony if the Chair determines that a reasonable opportunity for oral presentations has been provided, and in such a case, the matter may be continued to a later date to allow a reasonable time for such submittals to occur.
- E. Recordation of Committee Actions.** All official actions or decisions by the Committee shall be entered in the minute book of the Committee kept by the Secretary. The vote or votes of each member of the Committee on every question shall be recorded. Only action minutes will be maintained; however, tape recordings will be made of each meeting of the Committee and shall be available to the public through the office of the Committee Secretary.

VI. VOTING AND QUORUM

- A. Roll Call Vote.** A roll call vote may be required in voting upon any motion of the Committee under the discretion of the Chair.
- B. Inaudible Votes.** Any member present who does not vote in an audible voice or abstains for a legally insufficient reason shall be recorded as voting "aye".
- C. Quorum.** A majority of the currently appointed voting members of the Committee shall constitute a quorum for the purpose of conducting its business and exercising its powers and for all other official purposes, except that less than a quorum may adjourn from time to time until a quorum is obtained.
- D. Number of Votes Required for Action.** All actions require a motion and a second. No action or recommendation of the Committee shall be valid and binding unless a quorum is present and the motion is approved by at least a majority of the members present. Each member shall have one vote. No votes may be cast by proxy. Tie votes shall be considered as denial of the motion.
- E. Voting Affected by Conflict of Interest.** As a general rule, no member shall participate as a member in any discussion or voting if to do so would constitute a conflict of interest. However, if a quorum cannot be achieved or the required number of affirmative votes for action obtained because conflicts of interest exist that prevent members having such conflicts from discussing or voting on the matter, and the conflicts are such that the

members with conflicts will be unable to vote at a later date even if the matter is continued, the matter shall not be continued and a sufficient number of members having conflicts of interest, selected by lot, shall be allowed to participate to provide enough votes for the Committee to form a quorum and take affirmative action.

- F. Motion to Reconsider.** The Committee may reconsider a matter during the meeting at which the vote was taken, provided all members who were present when the matter was discussed and voted upon are still present, all persons who addressed the Committee regarding the matter are still present, and the motion to reconsider is made by a member who voted with the prevailing side. A motion for reconsideration shall have precedence over every motion except a motion to adjourn. A final vote on any matter may also be placed on any future agenda for reconsideration by the Committee or any member of the Committee at the meeting at which the actions was taken or at any later time. Any interested person may request that an action be reconsidered, provided that such a request must be in writing and filed with the Secretary of the Committee within ten calendar days of the action of the Committee.

VII. IMPERTINENCE-DISTURBANCE AND MEETING

Any person, including committee members, making personal, impertinent or indecorous remarks while addressing the Committee may be barred by the chairperson from further appearance before the Committee at that meeting, unless permission to continue is granted by an affirmative vote of the Committee. The chairperson may order any person, including committee members, removed from the Committee meeting who causes a disturbance or interferes with the conduct of the meeting, and the chairperson may direct the meeting room cleared when deemed necessary to maintain order.

VII. CHANGES TO BYLAWS

The provisions of these Bylaws may be altered, amended, or repealed at any time, upon approval of the Napa Valley Transportation Authority-Tax Agency.