

Item 7.1 Cover sheet – New MOU between ARD and the City of Auburn

Auburn Area Recreation and Park District Policy Committee August, 2019; Board of Directors Meeting September 26, 2019; Policy Committee October 23, 2019; Board of Directors Meeting October 30, 2019; Supplemental 10/28/19

The Issue

Shall the Auburn Area Recreation and Park District (ARD) agree to an updated Memorandum of Understanding (MOU) with the City of Auburn?

Background

ARD and the City of Auburn entered into an MOU in 2001. This MOU provided direction for the distribution of Park Impact Mitigation Fees collected by the City. As part of the MOU, ARD agreed to take on certain maintenance tasks at four of the pocket parks owned by the City. A copy of the existing MOU is attached.

The Auburn City Council has asked City staff to develop a new MOU with ARD. The proposed amended MOU has several updates, and adds sections related to the City's enforcement of ARD Ordinances.

Highlights of the new MOU include:

- Sect. 2(b) clarifies that the Impact Fees need to be used within a 2 mile radius of the City, and that a minimum of 75% of the fees are used within City limits (the previous number was 50%).
- Sect. 2(e) creates a Project Review Committee to provide an opportunity for the City to review all projects that will rely on Impact Fees.
- Sect. 2(f) further clarifies which responsibilities belong to which agency. The previous MOU was somewhat vague.
- Sect. 3 is the new section that deals with City enforcement of ARD rules, regulations and ordinances. Please take note of subsections (c) and (d)

The ARD Board reviewed this item at the September Policy meeting. After discussion, the item was sent back to the Policy Committee (for policy implications) and the Finance Committee (for financial implications) specific to Section 3.

- **ARD Ordinance #1**: ARD Ordinance #1 states (in part) the following:

SECTION 1. Authority and purpose. California Public Resources Code section 5786.1 empowers the District's Board to adopt and enforce ordinances necessary for the administration, government and protection of all property, improvements and facilities under its management or belonging to the District. The purpose of this ordinance is to establish a body of law denoting prohibited and required conduct on District property and provide for the enforcement and punishment for violations.

SECTION 7. Violations; penalties. Violation of a District ordinance is a misdemeanor unless the park ranger, Auburn City Police, Placer County Sheriff or duly authorized law enforcement officer issuing the citation specifies on the citation that the violation is an infraction.

SECTION 8. Enforcement. The Board of Directors of the District may, by resolution, designate that class of District employees as park rangers, who shall be empowered to exercise such arrest and citation authority in accordance with state law for infraction and misdemeanor violations of District or county ordinances, or state law, committed within a District park or facility. The District Administrator shall cause to be administered a special enforcement training program designated to instruct each employee who will exercise such arrest and citation authority regarding the provisions of the statutes and ordinances to be enforced, the evidentiary prerequisites to proper procedures for making arrest, or otherwise prudently exercising such arrest and citation authority and the legal and practical ramifications and limitations attendant thereto.

The District Administrator shall have the primary responsibility for the enforcement of this ordinance and other ordinances of the District unless otherwise specifically stated therein. Each District park ranger, Auburn City Police, Placer County Sheriff or duly authorized law enforcement officer is hereby granted permission to enter upon both public and restricted areas of all park and park facilities within their respective jurisdictions to maintain public order or to prevent, remedy, or take other appropriate action with respect to violations of the provisions of this ordinance or of other applicable laws or regulations.

- **CAPRI coverage:** staff spoke with Matt Duarte, Executive Director with CAPRI.

From Matt Duarte

Hi Kahl,

Thanks for calling back and for clarifying the District's question as to coverage. To confirm, the District is entering into an agreement in which the District will provide certain maintenance services to the City in exchange for the ability to collect and spend Park Impact Mitigation Fees. Part of the consideration of that agreement also includes the City's police enforcing ARD ordinances provided ARD reimburses the city for certain administrative expenses associated with any enforcement officer proceedings. The question, then, is whether those administrative expenses incurred pursuant to contract with the City are covered under the CAPRI Memorandum of Coverage ("MOC"). Unfortunately, as I expected, these costs are outside the scope of coverage. CAPRI incorporates by reference the CSAC excess policy with a few certain exceptions. The scope of coverage is one of the provisions that is specifically incorporated and it provides for payment of damages imposed by law or liability assumed by contract under the following circumstances:

Coverage A. Bodily injury and property damage to which this Memorandum applies, caused by an occurrence;

Coverage B. Personal injury to which this Memorandum applies, caused by an offense;

Coverage C. Public officials errors and omissions liability or

Coverage D. Employment practices liability to which this Memorandum applies, caused by a wrongful act.

Further exclusions are provided in the MOC, but it should be noted that for the situation described above there is no coverage. I think another way to think of this issue is that enforcement of the administrative code is no different than work that District staff provides to the District. It is for the benefit of the District and, as a result, are paid by the District. No insurance is applicable. Outsourcing enforcement duties to another entity, as the District intends to do by way of the MOU, does not alter the character of the work or impact their coverage under the policy.

Reply From Kahl Muscott

Thanks Matt. So, to confirm in different words:

An officer involved shooting, excessive force issue, civil rights violation, etc. would be covered as would any claim.

The costs for the administrative parts of a person fighting a “dog off leash” violation, things like City of Auburn attorney time, officer in court time, would not be covered as it is (more or less) the cost of doing of business.

Is my summation correct?

Reply From Matt Duarte

Correct. If the District were named as a Defendant in a claim like the one described below, CAPRI’s MOC would apply and the District would be covered.

- **MOU with the Placer County Sheriff Office (PCSO)**: The existing MOU with the PCSO does not have any language regarding compensation or reimbursement for possible costs.

At the October 23, 2019 Policy Committee meeting, the following suggested amendments were discussed:

Section 3 (c): adding language to clarify that ARD will reimburse the City for citations that are appealed and adding language that costs for arrests will be borne by the City.

Due to short turn-around time between the Policy meeting and the creation of this staff report, confirmation of these changes from the City have not been received. Supplemental information will be sent as it is received.

10/28/19 Supplemental information: per the discussions at the Policy meeting on 10/23/19, the following changes were made to Section 3 (c):

- c. The City will not charge ARD for services rendered under this section of this MOU; provided, however, that ARD will reimburse the City for any costs associated with administrative enforcement under chapter 10.80 et seq. of the Auburn Municipal Code. Nothing in this section of this MOU requires ARD to reimburse the City for any costs associated with civil or criminal enforcement under the Auburn Municipal Code or other law.

In summary, this new language clarifies that ARD will only be charged for citations that are appealed. ARD would not be charged for any arrests.

A copy of chapter 10.80 et seq. of the Auburn Municipal Code is attached.

Recommendation for the Board of Directors

The Policy Committee forwarded this item to the Board with a split recommendation.

Director Holbrook approved the item with the modifications noted above.

Director Ainsleigh would like two items added to the MOU:

- 1) That a new committee, similar to the one described in Section 2 (e), be created to review enforcement of ARD ordinances and rules.
- 2) That a clause be added stating that the proceeds from the sale of any ARD property in the City of Auburn be only spent within the City of Auburn.

Director Holbrook did not agree with adding these two items.

Fiscal Impact

If a citation was appealed, the costs would range from \$1,500 – \$2,000. If that ruling was appealed, the costs could be more than \$10,000. It should be noted that ARD would not be able to rescind a citation once the appeal process has started.

In the past year, the following citations were written in ARD Parks:

- 1 – Alcoholic beverage
- 4 – Breaking general rules (after hours parks use, etc.)
- 1 – Parking violation
- 3 – Camping in the park

(It was noted that most, if not all of the above citations were for homeless individuals)

Citations are rarely appealed (the District Administrator is aware of none in his 13+ years).

Attachments

- Proposed new MOU between the City of Auburn and ARD (amended 10/28/19)
- Existing MOU between the City and ARD
- Chapter 10.80 et seq. of the Auburn Municipal Code