

**AUBURN AREA RECREATION AND PARK DISTRICT MEETING OF THE
PROGRAM, PERSONNEL, POLICY, FEE & LEGAL REVIEW COMMITTEE AGENDA**

WEDNESDAY, OCTOBER 21, 2020, 1:00 PM.
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**CANYON VIEW COMMUNITY CENTER, FOOTHILL ROOM
AUBURN, CA 95603**

Materials related to an item on this Agenda submitted to the District after distribution of the agenda packet are available for public inspection by contacting the District Administrator at kmuscott@auburnrec.com or by calling (530) 537-2186 (M-F).

The public may participate in the meeting through Zoom. The link for this meeting is <https://zoom.us/j/91099741900> The public can use this link and/or call 1 669 900 6833 Webinar ID: 910 9974 1900 to participate.

People using the Zoom website will be able to see and hear the Committee, and the Committee will be able to hear the public. The Committee will not receive any visual/video from the public. This is done to avoid inappropriate visual content at the meeting.

Questions and comments can be sent via email to the District Administrator no later than one hour before the meeting. These emails will be read aloud at the meeting and responded to accordingly. Emails can be sent during the meeting, and staff will work to ensure that all are read, however the best way to have your comment heard is through the Zoom meeting or the associated phone number.

The Auburn Area Recreation and Park District appreciates your patience and understanding as we work through this new method of holding a public meeting.

1.0 CALL TO ORDER

Holbrook _____ Ainsleigh _____

2.0 ANNOUNCEMENTS, AGENDA REVIEW, CHANGES AND APPROVAL

3.0 PUBLIC COMMENT – This is the time wherein any person may comment on any item not on the agenda within the subject matter jurisdiction of the Committee Chairperson, please state your name and address for the record (optional). There is a time limitation of three minutes.

4.0 BUSINESS

- 4.1 Approval of Minutes from the September 16, 2020 Program, Personnel, Policy, Fee & Legal Review Committee Meeting (Pages 3 – 4)**

Recommendation: Review and approve minutes.

**4.2 Rock Creek Mobile Home Park Encroachments at Regional Park
(Pages 5 – 11)**

A review of the DRAFT agreement between ARD and the Rock Creek Mobile Home Park re: encroachment on to Regional Park property.

4.3 ARD Encroachment Policy (Pages 12 – 16)

Shall the Auburn Area Recreation and Park District (ARD) create a policy that addresses residents encroaching on District property?

4.4 Approval of Legal Bills

Recommendation: Review and approval of legal bills.

Discussion item:

1. Proposed Board and Committee Meeting Schedule for November and December, 2020 – see attachment. **(Pages 17 – 18)**

**5.0 ITEMS TO BE CONSIDERED AT FUTURE PROGRAM,
PERSONNEL, POLICY & FEE COMMITTEE MEETINGS**

None.

5.1 PENDING ITEMS REQUIRING MORE DETAILED RESEARCH

None.

ADJOURNMENT

AUBURN AREA RECREATION AND PARK DISTRICT
This agenda is hereby certified to have been posted as follows:

10-15-20
Date

3:10 p.m.
Time

P. Larson
Secretary to the Board

**Auburn Area Recreation and Park District
Minutes
of the Program, Personnel, Policy, Fee & Legal Review Committee Meeting
Wednesday, September 16, 2020 at 1:00 PM
Canyon View Community Center
471 Maidu Drive
Auburn, CA 95603**

1.0 CALL TO ORDER

The meeting of the Program, Personnel, Policy, Fee & Legal Review Committee was called to order at 1:01 p.m.

ROLL CALL

Director Ainsleigh was present, Director Holbrook was absent.

2.0 ANNOUNCEMENTS, AGENDA REVIEW, CHANGES AND APPROVAL

The agenda was approved by Director Ainsleigh.

3.0 PUBLIC COMMENT- This is the time wherein any person may comment on Any item not on the agenda within the subject matter jurisdiction of the Committee. After you are recognized by the Committee Chairperson, please state your name and address for the record (optional). There is a time limit of three minutes.

None.

4.0 BUSINESS

4.1 Approval of Minutes from the August 19, 2020 Program, Personnel, Policy, Fee & Legal Review Committee Meeting

The minutes from the August 19, 2020 Program, Personnel, Policy, Fee & Legal Review Committee meeting were reviewed and approved by Director Ainsleigh.

4.2 Change \$1,000 Asset Threshold to \$5,000

Director Ainsleigh reviewed this item and forwarded it to the Board of Directors with the recommendation that the \$1,000 asset threshold be changed to \$3,000 instead of \$5,000.

4.3 Resolution Number 2020-27: Changes to Conflict of Interest Code

Director Ainsleigh reviewed and approved this item and forwarded it to the Consent Calendar for the Board of Directors to adopt.

4.4 Rock Creek Mobile Home Park Encroachments at Regional Park

Director Ainsleigh reviewed this item and forwarded it to the Board of Directors for review and discussion requesting it be sent back to the October 2020 Program, Personnel, Policy, Fee Legal Committee with any changes from the Board of Directors and further consideration.

4.5 ARD Encroachment Policy

Director Ainsleigh reviewed this item and forwarded it to the Board of Directors for review and discussion requesting it be sent back to the October 2020 Program, Personnel, Policy, Fee Legal Committee with any changes from the Board of Directors and further consideration.

4.6 Approval of Legal Bills – The legal bills were approved by Director Ainsleigh.

4.7 Discussion Items:

None.

5.0 ITEMS TO BE CONSIDERED AT FUTURE PROGRAM, PERSONNEL, POLICY, FEE & LEGAL REVIEW COMMITTEE MEETINGS

None.

5.1 PENDING ITEMS REQUIRING MORE DETAILED RESEARCH

None.

ADJOURNED

As there was no further business, the meeting was adjourned at 1:16 p.m.

Board Secretary

Date

Item 4.2 Cover sheet – Rock Creek Mobile Home Park Encroachments at Regional Park

Auburn Area Recreation and Park District Policy Committee meeting May, 2020; June, 2020; July, 2020; Board of Directors meeting July, 2020; Policy Committee August, 2020; Board of Directors meeting August, 2020; September, 2020; **October, 2020**

The Issue

A review of the DRAFT agreement between ARD and the Rock Creek Mobile Home Park re: encroachment on to Regional Park property.

Background

Rock Creek Mobile Home Park borders Regional Park to the east. 29 of the 296 lots abut the park. Approximately 12 - 20 of these lots have encroached upon Regional Park's property. The encroachments are a variety of improvements.

While residents of the Mobile Home Park have claimed in the past that an agreement exists between ARD and the Mobile Home Park, no one has been able to produce a copy.

The Committee and staff walked to subject property in May. It was recommended to contact the management at the Rock Creek Mobile Home Park and invite them to a future meeting to discuss the situation and possible options.

At the June Committee meeting, the committee recommended that staff speak with ARD's attorney about this issue. Staff spoke with Derek Cole at Cota Cole. Derek got background information from staff and is looking in to ways to develop an agreement/waiver. Derek said that the cost to put together an agreement that would indemnify ARD is approximately \$2,000.

At the July 2020 Board meeting, staff was directed to move forward with attorney Derek Cole to put together an agreement/waiver.

The Policy Committee reviewed the DRAFT agreement drawn up by Derek Cole. The Committee provided feedback and possible changes (highlighted in the DRAFT agreement) and sent the agreement to the Board for further review and comment.

The Board reviewed the document at the August Board of Directors meeting and sent it back to Policy with some additions. The City of Auburn also provided information on how they handle encroachments for fuel load reduction. A companion encroachment policy is being proposed for the Board to consider.

The Board of Directors reviewed the document at the September Board of Directors Meeting. The Board was asked to send any proposed changes to the District Administrator for consideration at the October Policy Committee meeting. Director Ainsleigh provided some additions. These additions, plus all previous additions, were reviewed by attorney Derek Cole. Derek made some minor changes and sent back a final DRAFT, which is presented as part of this agenda item.

Recommendation for the Policy Committee

A final DRAFT, reviewed by attorney Derek Cole is attached. This final DRAFT should be reviewed and either:

- 1) Sent back to the Board for final review. Director Ainsleigh's comments have not been reviewed by the entire Board.
- 2) Sent to the owners of the Rock Creek Mobile Home Park.

Fiscal Impact

Unknown at this time

Attachments

Final DRAFT agreement between ARD and the Rock Creek Mobile Home Park

**MEMORANDUM OF UNDERSTANDING
REGARDING PERMISSIVE CONTINUATION OF
ENCROACHMENT ON DISTRICT PROPERTY**

This Memorandum of Understanding ("Agreement") is made between the Auburn Recreation and Park District ("District") and the [name of corporate entity/land owner], a [state and type of business] ("Owner"), who are sometimes referred to within individually as a "Party" or collectively as "Parties." This agreement is effective as of October, 2020 ("Effective Date").

Deleted: September

WHEREAS, The District is a California recreation and park district that owns in fee the property on which it operates and maintains Regional Park in Auburn, California.

WHEREAS, Owner owns in fee the land immediately to the east of Regional Park more particularly described as Assessor Parcel No. [insert] ("Mobilehome Park Property").

WHEREAS, the Property is improved as a mobilehome park and 29 of its 296 lots back up to the District's Regional Park property ("Regional Park Property");

WHEREAS, the Parties recognize that **some** of the backyards behind these 29 lots ("Encroaching Lots") have landscaping, structures, concrete, and improvements that partially encroach into the Regional Park Property, as more particularly depicted in Exhibit A, which is attached and incorporated by reference;

WHEREAS, the Parties desire to memorialize the terms and conditions under which the ARD-adjacent Lots will be allowed to maintain or modify their existing encroachments with the express permission of the District;

WHEREAS, the Parties enter into this Agreement for the purposes of avoiding litigation, and reserving their respective rights, concerning the encroachment by the ARD-adjacent Lots on the Regional Park Property.

NOW THEREFORE, in consideration of mutual covenants contained herein, the parties to this Agreement mutually agree as follows:

1. Continued Encroachment Expressly Permitted

The District expressly consents to the continued encroachment by the Encroaching Lots of the Mobilehome Park Property, as depicted in Exhibit A, so long as such encroachments at all times remains in full compliance with the terms and conditions of this Agreement.

2. Permissive Use

The Parties expressly recognize that the right of the Encroaching Lots to continue encroaching on Regional Park Property conferred by this Agreement is permissive in

nature and nothing in this Agreement shall be deemed to confer, create, or establish any agreed boundary between the Regional Park Property and Mobilehome Park Property, and nothing in this Agreement is intended to confer or create any prescriptive right or claim of adverse possession by any party or person.

The Parties expressly recognize that the District will be accessing these encroachments as part of the Regional Park property for a variety of reasons, including but not limited to maintenance and future improvements such as trails, disc golf course expansion, or any other expansion of Park use.

The Parties further expressly recognize that the public may continue to use the area of the Regional Park Property in which the adjacent Lots encroach into Park property. Neither Owner nor any of its residents, tenants, or occupants may install or maintain any fencing, barrier, or other device to prevent the public from using such area or any portion of such area.

3. Modification of Encroachment

No tenant, resident, or occupant of any District-adjacent lot shall establish, increase, or modify the area of an encroachment of his, her, or its lot into Regional Park Property without the express written permission of the District. Nor shall any such tenant, resident, or occupant add any new or additional landscaping, structure, concrete, earthen feature, rock, or other improvement in the encroachment area without written permission of the District. Upon notification by District that the resident or tenant of lot has violated this Section, Owner shall promptly take such actions as are necessary to cause and supervise the elimination of the additional encroachment or the removal of the unauthorized landscaping, structure, concrete, rock, earthen feature, or any other improvement.

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4 No transfer of encroachment

Permission for encroachment on Regional Park property does not transfer to new residents. All encroachments and/or improvements must be reviewed by the District for any new residents with lots that border Regional Park property. The District may require abandonment, removal, or modification at that time. Residents may be required to create, modify, plant, or maintain landscaping features for wildlife, viewshed, safety, and access issues at that time or any other time.

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5. Notification to Tenants, Residents, and Occupants

Owner shall take such steps as are reasonably necessary to notify residents, tenants, and occupants of the Encroaching, and other District-adjacent Lots on Regional Park Property of the terms and conditions of this Agreement and to notify new residents or tenants of such lots of such terms and conditions before the effective date any lease, tenancy, or occupancy commences. Parties acknowledge that, the District

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is permitting these encroachments because they are useful to Regional Park operations and maintenance.

6. Effect and Term of Agreement; Termination

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The Parties expressly recognize that they have entered into this Agreement to avoid litigation concerning any claims, defenses, rights, or obligations they may have concerning encroachment by the District-adjacent Lots on Regional Park property. For so long as this Agreement is in effect, no Party may commence any lawsuit, legal action, or proceeding concerning such encroachment. The Parties reserve the right upon termination of this Agreement, as provided in this section below, to assert any claims, defenses, cross-claims, rights, or interests that existed on the Effective Date. Notwithstanding the foregoing, the Parties agree that the running of any statute of limitations as to any claim they may have shall be suspended, stayed, and tolled for the duration of this Agreement.

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Any Party may withdraw from this Agreement by giving the other Party 90 days' notice in writing, as provided below in Section 13. This Agreement shall remain effective until such time as Any Party exercises its right to terminate this Agreement under this Section or the Parties mutually agree in writing to such termination. If this agreement is terminated, the District remains as owners of the Regional Park property and all Mobile Home park residents must remove their additions/material/improvements at their expense.

7. Indemnification by Owner

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For the duration of this Agreement, Owner shall indemnify, defend, and hold harmless the District from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees arising out of, resulting from any negligent or wrongful act or omission of the Owner; or of Owner's agents, officers, or employees; or of any tenant, resident, occupant, guest, or invitee of the Mobilehome Park Property, that occurs on or involves or relates to the area of encroachment on Regional Park Property by any of the Encroaching Lots.

8. Entire Agreement

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This Agreement, including the attached exhibit, constitutes the entire agreement and understanding between the parties regarding its subject matter and supersedes all prior or contemporaneous negotiations, representations, understandings, correspondence, documentation and agreements (written or oral).

9. Written Amendment

Deleted: 8

This Agreement may only be changed by written amendment signed by the duly appointed representatives of the Parties to this Agreement on the effective date of the

amendment. Any oral representations or modifications concerning this Agreement shall be of no force or effect.

10. Severability

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If any provision in this Agreement is held by any court of competent jurisdiction to be invalid, illegal, void, or unenforceable, such portion shall be deemed severed from this Agreement, and the remaining provisions shall nevertheless continue in full force and effect as fully as though such invalid, illegal, or unenforceable portion had never been part of this Agreement.

11. Choice of Forum

Deleted: 0

The Parties agree that this Agreement is to be enforced in accordance with the laws of the State of California, is entered into and is performed in the County of Placer, that all claims or controversies arising out of or related to performance under this Agreement shall be submitted to and resolved in a forum within the County of Placer at a place to be determined by the rules of the forum.

12. Attorney Fees

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The prevailing party in any litigation brought to enforce or interpret this Agreement shall be entitled to recover its attorneys' fees and all costs of litigation including, but not limited to, expert witness fees, in addition to any other relief to which it may be entitled. Fees and costs not included within those allowed by Code of Civil Procedure § 1033.5 shall be set forth in the Parties' pleadings and shall be proved in a bifurcated trial before the trial judge alone, the right to trial by jury being hereby waived, after the conclusion of the trial on all other issues.

13. Agreement Jointly Drafted

Deleted: 2

The Parties agree that this Agreement has been jointly drafted and that each Party has had the opportunity to have its legal counsel review, comment upon, and suggest amendments to the Agreement prior to its execution. The Parties recognize that in any legal action or proceeding concerning the interpretation of this Agreement, the trier of fact shall not be authorized to employ any presumption against the drafter of this Agreement to resolve any dispute.

14. Notices

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If any Party is required to give notice to the other Parties under this Agreement, the notice shall be sent by United States Mail, postage prepaid, as follows:

To District

Auburn Recreation and Park District

Attention: District Administrator
123 Recreation Drive
Auburn, CA 95603

To Owner

[Insert]

15. Heirs and Successors

Deleted: 4

This Agreement shall be binding on all heirs, assigns, successors, and transferees of the Parties.

16. Counterparts

Deleted: 5

This Agreement may be executed in counterpart signatures.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Memorandum of Understanding.

Kahl Muscott
District Administrator
Auburn Recreation and Park District

Date

[Name]
[Title]
[Company]

Date

Item 4.3 Cover sheet – ARD Encroachment Policy

Auburn Recreation District Policy Committee meeting September, 2020; Board of Directors meeting September 2020; Policy Committee October, 2020

The Issue

Shall the Auburn Area Recreation and Park District (ARD) create a policy that addresses residents encroaching on District property?

Background

From the discussions about the existing encroachments at Regional Park came a discussion about creating a policy regarding encroachments on to any ARD property.

A DRAFT policy is attached.

Also attached is the City of Auburn's fuels reduction/modification program and related documents.

The Board discussed this proposed policy at the September Board of Directors meeting and sent it back to the Policy Committee for further review and recommendation.

Recommendation for the Policy Committee

Staff recommends that the Policy Committee review the proposed policy, make any changes and forward to the Board with a positive recommendation.

Fiscal Impact

N/A

Attachments

DRAFT ARD encroachment policy
DRAFT ARD Application for Fuels Reduction
City of Auburn Fuel Load Reduction /Modification Program documents

DRAFT ARD Encroachment Policy

Neighbors on the boundary of District property shall not make or maintain any improvements, structures, landscaping, or leave any unattended personal property on ARD property. For fire prevention purposes, the neighbors may participate in the District Fuels Reduction program to clear undergrowth, trim up tree limbs (up to 8' above the ground), mow, and weed-whack up to a maximum 100' feet from their residence on to District property. No work on District property shall be done except by a ARD Fuels Reduction Program Permit. Without specific written approval of the District, no trees over 4" in diameter may be cut and no clearing or work may be done in waterways.



**Application For:
Fuels Reduction/Modification Program
Auburn Area Recreation and Park District**

This application is used by private property owners who desire to voluntarily perform fuels reduction/modification on Auburn Area Recreation and Park District lands adjacent to their property in an effort to reduce the risk of wildfire damage.

Please complete the application with as much information as possible. Submit completed applications to kmuscott@auburnrec.com or drop off at the Auburn Area Recreation and Park District, 471 Maidu Drive, Ste. 200, Auburn, CA 95603.

Name: First, Last

Date

Address/Physical location of Property

APN: (Assessor's Parcel Number)

Mailing Address

Phone Number

Cell Phone

Type of Work to be Performed:

Defensible Space Shaded Fuel Break Other: _____

Who Will Be Performing Work:

Myself/Family member Hired Contractor Other: _____

Estimated Dates Work Will be Performed: From-To

Brief Description of the Work to Be performed: (Fuel Types, Area Size, Brush Removal, Tree Removal, Etc. Use other side if necessary)

Office Use:

Date Received:

Date Processed:

Date Notified Applicant of Receipt:

In consideration for being permitted by the Auburn Area Recreation and Park District (District) to participate in the above-referenced activity, I hereby waive, release, and discharge any and all claims for damages for personal injury, death, or property damage which I may have, or which may hereafter accrue to me, as a result of

participation in said activity. This release is intended to discharge in advance the District (including its officers, employees, volunteers, and agents) from any and all liability arising out of or connected in any way with my participation in said activity, even though that liability may arise out of active or passive negligence or carelessness on the part of the persons or entities mentioned above.

It is further agreed that this waiver, release and assumption of risk is to be binding on my heirs, administrators, executors, volunteers, contractors (hired or volunteer) and assigns and that I shall indemnify and hold the District (including its officers, employees, volunteers, and agents) free and harmless from any loss, liability, damage, cost, or expense which may arise out of or connected in any way with my participation in said activity.

Additionally, I fully understand that my participation in the above-referenced activity exposes me to the risk of personal injury, death, communicable diseases, illnesses, viruses, and/or property damage. I hereby acknowledge that I am voluntarily participating in this activity and agree to assume any such risks.

I HAVE CAREFULLY READ THIS AGREEMENT, WAIVER, AND RELEASE AND FULLY UNDERSTAND ITS CONTENTS. I AM AWARE THAT THIS IS A RELEASE OF LIABILITY AND A CONTRACT BETWEEN MYSELF AND THE ABOVE DISTRICT AND I SIGN IT OF MY FREE WILL.

Signature

Name (Printed)

Date

Auburn City Fuels Reduction/Modification Program

The Fuels Reduction/Modification Program

This program allows a process for homeowners whose lands are adjacent to properties managed by the U. S. Bureau of Reclamation to perform fuel reduction/modification work on Reclamation lands in an effort to reduce the risk of wildfire damage to improved property(s). This program consists of an application process, approval process, site inspection prior to and after completed projects under the direction of the Auburn City Fire Department. Components of this program include:

- An application must be submitted to the Auburn City Fire Department for consideration and approval
- All applications must be approved prior to any work being performed
- Approvals will be based on the need to achieve Defensible Space or implement and or maintain the American River Canyon Shaded Fuel Break
- A minimum of 100' feet of Defensible Space must be provided around your home prior to approval of your application (Areas within the 100' on Reclamation land must be included in the application to achieve the full 100' of defensible space as part of the approval process)
- It is recommended that neighboring private property owners join together and submit larger area projects rather than single parcel submittals
- Site visits by the fire department will be conducted to: verify need for work, mark and identify areas of work, discuss methods of treatment/prescriptions, review safety practices, and review all requirements and conditions
- All fuel reduction/modification activities and costs are the responsibility of the applicant; there is no obligation of the City of Auburn or U. S. Bureau of Reclamation for project costs or reimbursement
- The applicant will be responsible for any costs associated with damage to Reclamation lands, violation of conditions of approval, and remediation to any associated damages
- An agreement and release of liability must be signed upon project approval and prior to start of work
- All work performed will follow established fuel reduction/modification prescriptions such as: defensible space; Public Resource Code (PRC) and Auburn Municipal Code (AMC), and the American River Canyon Shaded Fuel Break prescription
- All work must be in compliance with environmental requirements of which may be subject to mitigation measures by the applicant
- All applicants receiving project approval will ensure safe equipment use and fire safety practices at all times
- Additional requirements, conditions, and specifications will be outlined in the approved application, these must be adhered to

Applications will be processed in a timely manner as resource availability permits. There may be limitations placed on work projects during certain periods of the year due to weather, endangered species nesting periods, and recreational events in the Auburn State Recreation Area (ASRA).

For additional information about this program contact:
The Auburn City Fire Department at (530) 823-4211

Discussion Item #1 – Proposed Board and Committee Meeting Schedule for November and December, 2020

The proposed Board and Committee Meeting schedule for November and December, 2020 is listed below as follows:

November, 2020

Acquisition & Development	Thursday, November 12, 2020 at 10:00 a.m.
Program, Personnel, Policy, Fee & Legal Review	Tuesday, November 10, 2020 at 1:00 p.m.
Standing Finance	Tuesday, November 10, 2020 at 2:00 p.m.
Board of Directors Meeting	Thursday, November 19, 2020 at 6:00 p.m.

December, 2020

Acquisition & Development	Wednesday, December 9, 2020 at 10:00 a.m.
Program, Personnel, Policy, Fee & Legal Review	Wednesday, December 9, 2020 at 1:00 p.m.
Standing Finance	Wednesday, December 9, 2020 at 2:00 p.m.
Board of Directors Meeting	Thursday, December 17, 2020 at 6:00 p.m.

November 2020

December 2020

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11 Veterans Day OFF	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26 Thanksg. Day OFF	27 Holiday OFF	28
29	30					

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24 X-Mas Eve OFF	25 X-Mas OFF	26
27	28	29	30	31		

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November 2020

December 2020

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1	2	3	4	5	6	7
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15	16	17	18	19	20	21
22	23	24	25	26 Thanksg. Day OFF	27 Holiday OFF	28
29	30					

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24 X-Mas Eve OFF	25 X-Mas OFF	26
27	28	29	30	31		