

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

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**WEDNESDAY, AUGUST 21, 2019, 1:00 PM**

**CANYON VIEW COMMUNITY CENTER  
471 MAIDU DRIVE, 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 in the District's Office at 471 Maidu Drive, Auburn, CA 95603. In compliance with the Americans with Disabilities Act, if you need assistance to participate in this meeting, please contact the District Clerk at (530) 537-2187. Notification 48 hours prior to the meeting will enable the District to make reasonable arrangements to ensure accessibility to this 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 July 17, 2019 Program, Personnel, Policy, Fee & Legal Review Committee Meeting**

**Recommendation:** Review and approve minutes.

**4.2 Board Director Compensation and Reimbursement for Expenses - Modifications**

Shall the Auburn Area Recreation and Park District (ARD) Board of Directors modify its policy on Board Member stipends based on amendments to the California Public Resource Code?

**4.3 Approval of Legal Bills from July, 2019**

**Recommendation:** Review and approve legal bills.

**Discussion Item:**

1. New MOU Between ARD and the City of Auburn.
2. Drug and alcohol policy review.

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

5.1 PENDING ITEMS REQUIRING MORE DETAILED RESEARCH

**ADJOURNMENT**

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

8-16-19  
Date

10:15 A.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, July 17, 2019 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 1:07 p.m.

**ROLL CALL**

Directors Holbrook and Ainsleigh were present.

**2.0 ANNOUNCEMENTS, AGENDA REVIEW, CHANGES AND APPROVAL**

The agenda was approved by the Committee.

**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 June 19, 2019 Program, Personnel, Policy, Fee & Legal Review Committee Meeting**

The minutes from the June 19, 2019 Program, Personnel, Policy, Fee & Legal Review Committee meeting were reviewed and approved by the Committee.

**4.2 Fee Waivers Policy Review**

The Committee reviewed the proposed changes to the fee waivers policy and forwarded them to the Board along with recommending a Resolution supporting the established fee schedule and fee waiver policy of the District be adopted by the Board.

**4.3 Process for Selecting ARD Friend of Recreation**

The Committee reviewed and approved the proposed policy for the ARD Friend of Recreation and forwarded it to the Board for review and approval.

**4.4 Approval of Legal Bills from June, 2019**

The Committee approved the legal bills from June, 2019.

**Discussion Item:**

1. Drug and alcohol policy review - research will be done regarding CBD use and the findings will be brought back to next month's Policy meeting.

**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 2:00 p.m.

\_\_\_\_\_  
Board Secretary

\_\_\_\_\_  
Date

## **Item 4.2 Cover sheet – Board Director Compensation and Reimbursement for Expenses - Modifications**

Auburn Area Recreation and Park District Policy Committee August, 2019

### **The Issue**

Shall the Auburn Area Recreation and Park District (ARD) Board of Directors modify its policy on Board Member stipends based on amendments to the California Public Resource Code? Director Gray has asked for this item to be considered.

### **Background**

ARD's current policy on Board Member compensation reads in part as follows (from Section IV of the Board Procedures and Responsibilities Manual):

Board Member Compensation Board Members are eligible for compensation and reimbursement for necessary and actual District related activities in accordance with California Public Resource Code 5784.15 and as supplemented by Chapter 2 (commencing with Section 20200) of Division 10 of the California Water Code:

1. The Board of Directors may provide, by ordinance or resolution, that each of its members may receive compensation in an amount not to exceed two hundred fifty dollars (\$250) for attending each meeting of the Board.
2. The maximum compensation in any calendar month shall be five hundred dollars (\$500).
3. In addition, members of the Board of Directors may receive their actual and necessary traveling and incidental expenses incurred while on official business.
4. A member of the Board may waive or designate to another entity, any and/or all compensation and/or reimbursement.
5. For the purposes of this section, a meeting of the Board of Directors includes but is not limited to, regular meetings, special meetings, closed session, emergency meetings, Board field trips, district public hearings, or meetings of a committee of the Board. It may also include any appearance and/or participation of a Board Member acting in a capacity as a representative of the Board of Directors, purposes benefiting District business, attendance or participation at meetings or gatherings of other agencies or organizations that have a relationship with the Auburn Recreation District, and training or educational seminars or classes that relate to the position of a Director.

A copy of the pertinent sections of the CA Water Code is attached.

Beginning January 1, 2019, AB 2329 amended CA PRC 5784.15, allowing compensation for up to six meetings at \$100/meeting. The amended code states that the Board of Directors must

annually adopt a written policy, based on findings supported by substantial evidence, why more than five meetings per month are necessary. A copy of the text of AB 2329 is attached.

**Recommendation**

Review and provide direction. Send a recommendation to the Board.

**Fiscal Impact**

Increasing stipends to \$600/month would have a \$500/month fiscal impact.

**Attachments**

Chart displaying how AB 2329 amends certain codes  
Text from AB 2329  
Excerpts from the CA Water Code

The following chart summarizes the changes and available authority for each type of district:

District Type/ Enabling Legislation	Previous Maximum Compensation	New Maximum Compensation	Increasing Per Meeting Compensation
Public Cemetery District  Health & Safety Code § 9031	Four meetings per month at up to \$100 per meeting	\$100 per meeting for up to six meetings per month; special findings required for more than four meetings	Annual increases of up to 5% (no change; existing authority)
Fire Protection District  Health & Safety Code § 13857	Four meetings per month at up to \$100 per meeting	\$100 per meeting for up to six meetings per month; special findings required for more than four meetings	Annual increases of up to 5% (no change; existing authority)
Healthcare District  Health & Safety Code § 32103	Five meetings per month at up to \$100 per meeting	\$100 per meeting for up to six meetings per month; special findings required for more than five meetings	Annual increases of up to 5% (new statutory authority)
Regional Park Districts, Open- Space Districts, Regional Open- Space Districts  Public Resources Code § 5536	Up to \$100 per day of meeting attendance, not to exceed \$500 per month	\$100 per day of meeting attendance for up to six meetings per month; special findings required for more than five meetings	Annual increases of up to 5% (new statutory authority)
Recreation and Park Districts  Public Resources Code § 5784.15	Up to \$100 per meeting, not to exceed \$500 per month	\$100 per meeting for up to six meetings per month; special findings required for more than five meetings	Annual increases of up to 5% (new statutory authority)
Airport Districts  Public Utilities Code § 22407	Four meetings per month at up to \$100 per meeting	\$100 per meeting for up to six meetings per month; special findings required for more than four meetings	Annual increases of up to 5% (new statutory authority)

*This article was written by Jerett Yan of Hanson Bridgett LLP as part of CSDA's New Laws Series, where experts explain legislation passed in 2018 and how it will impact special districts moving forward. This*



AB-2329 Special districts: board of directors: compensation. (2017-2018)

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Date Published: 08/20/2018 09:00 PM

## Assembly Bill No. 2329

### CHAPTER 170

An act to amend Sections 9031, 13857, and 32103 of the Health and Safety Code, to amend Sections 5536 and 5784.15 of the Public Resources Code, and to amend Section 22407 of the Public Utilities Code, relating to special districts.

[ Approved by Governor August 20, 2018. Filed with Secretary of State August 20, 2018. ]

### LEGISLATIVE COUNSEL'S DIGEST

AB 2329, Obernolte. Special districts: board of directors: compensation.

(1) Existing law authorizes the board of trustees of a public cemetery district to approve an ordinance or resolution to compensate its members no more than \$100 to attend a board meeting, for no more than 4 meetings per month, and authorizes a public cemetery district board of trustees to increase that compensation by no more than 5% annually.

This bill would authorize a public cemetery district board of trustees to compensate its members for no more than 6 meetings in a calendar month. The bill would require the board of trustees, commencing January 1, 2019, if the district compensates its members for more than 4 meetings in a calendar month, to annually adopt a written policy describing, based on a finding supported by substantial evidence, why more than 4 meetings per calendar month are necessary for the effective operation of the district.

(2) Under the Fire Protection District Law of 1987, each member of the board of directors of a fire protection district may receive compensation in an amount set by the board not to exceed \$100 for attending each meeting of the board, not to exceed 4 meetings in any calendar month.

This bill would authorize a fire protection district board of directors to compensate its members for no more than 6 meetings in any calendar month. The bill would require the board of directors, commencing January 1, 2019, if the district compensates its members for more than 4 meetings in a calendar month, to annually adopt a written policy describing, based on a finding supported by substantial evidence, why more than 4 meetings per calendar month are necessary for the effective operation of the district.

(3) Existing law authorizes the board of directors of a hospital district to approve a resolution to compensate its members no more than \$100 to attend a board meeting for no more than 5 meetings per month.

This bill would authorize a hospital district board of directors to compensate its members for no more than 6 meetings in a calendar month and to increase that compensation by no more than 5% annually. The bill would require the board of directors, commencing January 1, 2019, if the district compensates its members for more than 5 meetings in a calendar month, to annually adopt a written policy describing, based on a finding supported by substantial evidence, why more than 5 meetings per calendar month are necessary for the effective operation of the district.



(4) Existing law authorizes the board of directors of a regional park district, regional park and open-space district, or regional open-space district to provide, by ordinance or resolution, that each of its members may receive an amount not to exceed \$100 per day for each attendance at a meeting of the board, and prohibits board members from receiving any other compensation for meetings, or from receiving more than \$500 compensation in any one calendar month.

This bill would provide that board members shall not receive compensation for more than 6 meetings of the board in a calendar month and would authorize the board of directors, by specified ordinance, to increase the amount of compensation received for attending meetings of the board. The bill would require the board of directors, commencing January 1, 2019, if the district compensates its members for more than 5 meetings in a calendar month, to annually adopt a written policy describing, based on a finding supported by substantial evidence, why more than 5 meetings per calendar month are necessary for the effective operation of the district.

(5) Existing law, the Recreation and Park District Law, provides that each member of the board of directors of a recreation and park district may receive compensation in an amount not to exceed \$100 for attending each meeting of the board, and requires the maximum compensation in any calendar month to be \$500.

This bill would provide that board members shall not receive compensation for more than 6 meetings of the board in a calendar month. The bill would require the board of directors, commencing January 1, 2019, if the district compensates its members for more than 5 meetings in a calendar month, to annually adopt a written policy describing, based on a finding supported by substantial evidence, why more than 5 meetings per calendar month are necessary for the effective operation of the district.

(6) Existing law requires each member of the board of directors of an airport district to receive compensation in an amount not to exceed \$100 for each attendance at the meeting of the board held within the district, which amount is fixed by the board. Existing law prohibits a director from receiving pay for more than 4 meetings in any calendar month.

This bill would authorize an airport district board of directors to compensate its members for no more than 6 meetings in a calendar month and to increase that compensation by no more than 5% annually. The bill would require the board of directors, commencing January 1, 2019, if the district compensates its members for more than 4 meetings in a calendar month, to annually adopt a written policy describing, based on a finding supported by substantial evidence, why more than 4 meetings per calendar month are necessary for the effective operation of the district.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 9031 of the Health and Safety Code is amended to read:

**9031.** (a) The board of trustees may provide, by ordinance or resolution, that each of its members may receive compensation in an amount not to exceed one hundred dollars (\$100) for attending each meeting of the board. A member of the board of trustees shall not receive compensation for more than six meetings of the board in a calendar month. Commencing January 1, 2019, if the district compensates its members for more than four meetings in a calendar month, the board of trustees shall annually adopt a written policy describing, based on a finding supported by substantial evidence, why more than four meetings per calendar month are necessary for the effective operation of the district.

(b) The board of trustees, by ordinance adopted pursuant to Chapter 2 (commencing with Section 20200) of Division 10 of the Water Code, may increase the amount of compensation received for attending meetings of the board.

(c) In addition, members of the board of trustees may receive their actual and necessary traveling and incidental expenses incurred while on official business other than a meeting of the board.

(d) A member of the board of trustees may waive any or all of the payments permitted by this section.

(e) For the purposes of this section, a meeting of the board of trustees includes, but is not limited to, regular meetings, special meetings, closed sessions, emergency meetings, board field trips, district public hearings, or meetings of a committee of the board.

(f) For purposes of this section, the determination of whether a trustee's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code.

(g) Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

**SEC. 2.** Section 13857 of the Health and Safety Code is amended to read:

**13857.** (a) Subject to subdivision (b), each member of the district board may receive compensation in an amount set by the district board not to exceed one hundred dollars (\$100) for attending each meeting of the district board. The number of meetings for which a member of the board of directors may receive compensation shall not exceed six meetings in any calendar month. Commencing January 1, 2019, if the district compensates its members for more than four meetings in a calendar month, the district board shall annually adopt a written policy describing, based on a finding supported by substantial evidence, why more than four meetings per month are necessary for the effective operation of the district.

(b) The district board, by ordinance adopted pursuant to Chapter 2 (commencing with Section 20200) of Division 10 of the Water Code, may increase the compensation received by the district board members above the amount prescribed by subdivision (a).

(c) For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code.

**SEC. 3.** Section 32103 of the Health and Safety Code is amended to read:

**32103.** (a) The board of directors shall serve without compensation except that the board of directors, by a resolution adopted by a majority vote of the members of the board, may authorize the payment of not to exceed one hundred dollars (\$100) per meeting not to exceed six meetings a calendar month as compensation to each member of the board of directors. Commencing January 1, 2019, if the district compensates its members for more than five meetings in a calendar month, the board of directors shall annually adopt a written policy describing, based on a finding supported by substantial evidence, why more than five meetings per month are necessary for the effective operation of the district.

(b) The board of directors, by ordinance adopted pursuant to Chapter 2 (commencing with Section 20200) of Division 10 of the Water Code, may increase the amount of compensation received for attending meetings of the board by no more than 5 percent annually.

(c) Each member of the board of directors shall be allowed his or her actual necessary traveling and incidental expenses incurred in the performance of official business of the district as approved by the board. For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code. Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

**SEC. 4.** Section 5536 of the Public Resources Code is amended to read:

**5536.** (a) The board shall establish rules for its proceedings.

(b) The board may provide, by ordinance or resolution, that each of its members may receive an amount not to exceed one hundred dollars (\$100) per day for each attendance at a meeting of the board. For purposes of this section, a meeting of the board includes, but is not limited to, closed sessions of the board, board field trips, district public hearings, or meetings of a committee of the board. The maximum compensation allowable to a board member on any given day shall be one hundred dollars (\$100). Board members shall not receive compensation for more than six meetings of the board in a calendar month, except that board members of the East Bay Regional Park District may receive compensation for not more than 10 days in any one calendar month. A board member may elect to waive the per diem. In addition, the board may provide, by ordinance or resolution, that each of its members not otherwise eligible for an employer-paid or partially employer-paid group medical or group dental plan, or both, may participate in any of those plans available to permanent employees of the district on the same terms available to those district employees or on terms and conditions as the board may determine. A board member who elects to participate in any plan may also elect to have the premium for the

plan charged against his or her per diem and may further elect to waive the balance of the per diem. Commencing January 1, 2019, if the district compensates its members for more than five meetings in a calendar month, the board shall annually adopt a written policy describing, based on a finding supported by substantial evidence, why more than five meetings per month are necessary for the effective operation of the district.

(c) The board of directors, by ordinance adopted pursuant to Chapter 2 (commencing with Section 20200) of Division 10 of the Water Code, may increase the amount of compensation received for attending meetings of the board.

(d) All vacancies on the board shall be filled in accordance with the requirements of Section 1780 of the Government Code, except that, in the case of vacancies caused by the creation of new wards or subdistricts, the directors shall, prior to the vacancies being filled, determine by lot, for the purpose of fixing the terms of the first directors to be elected to the wards or subdistricts, which ward or subdistrict shall have a four-year term and which ward or subdistrict shall have a two-year term. The persons who fill the vacancies caused by the establishment of new wards or subdistricts shall hold office until the next general election and until their successors are elected and qualified for the terms previously determined by lot.

(e) For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code.

**SEC. 5.** Section 5784.15 of the Public Resources Code is amended to read:

**5784.15.** (a) The board of directors may provide, by ordinance or resolution, that each of its members may receive compensation in an amount not to exceed one hundred dollars (\$100) for attending each meeting of the board. The board of directors, by ordinance adopted pursuant to Chapter 2 (commencing with Section 20200) of Division 10 of the Water Code, may increase the amount of compensation received for attending meetings of the board.

(b) Board members shall not receive compensation for more than six meetings of the board in a calendar month. The board of directors shall, commencing January 1, 2019, if the district compensates its members for more than five meetings in a calendar month, annually adopt a written policy, based on a finding supported by substantial evidence, why more than five meetings per month are necessary for the effective operation of the district.

(c) In addition, members of the board of directors may receive their actual and necessary traveling and incidental expenses incurred while on official business.

(d) A member of the board of directors may waive the compensation.

(e) For the purposes of this section, a meeting of the board of directors includes, but is not limited to, regular meetings, special meetings, closed sessions, emergency meetings, board field trips, district public hearings, or meetings of a committee of the board.

(f) For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code.

(g) Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

**SEC. 6.** Section 22407 of the Public Utilities Code is amended to read:

**22407.** (a) Each member of the board of directors shall receive compensation in an amount not to exceed one hundred dollars (\$100) for each attendance at the meeting of the board held within the district, which amount shall be fixed from time to time by the board. A director shall not receive pay for more than six meetings in any calendar month. The board of directors shall, commencing January 1, 2019, if the district compensates its members for more than four meetings per calendar month, adopt a written policy, based on a finding supported by substantial evidence, why more than four meetings per month are necessary for the effective operation of the district. The board of directors, by ordinance adopted pursuant to Chapter 2 (commencing with Section 20200) of Division 10 of the Water Code, may increase the amount of compensation received for attending meetings of the board by no more than 5 percent annually.

## CA Water Code

Section 20201. (Amended by Stats. 2005, Ch. 700, Sec. 27.)

Cite as: Cal. Water Code §20201.

Notwithstanding any other provision of law, the governing board of any water district may, by ordinance adopted pursuant to this chapter, provide compensation to members of the governing board, unless any compensation is prohibited by its principal act, in an amount not to exceed one hundred dollars (\$100) per day for each day's attendance at meetings of the board, or for each day's service rendered as a member of the board by request of the board, and may, by ordinance adopted pursuant to this chapter, in accordance with Section 20202, increase the compensation received by members of the governing board above the amount of one hundred dollars (\$100) per day.

It is the intent of the Legislature that any future increase in compensation received by members of the governing board of a water district be authorized by an ordinance adopted pursuant to this chapter and not by an act of the Legislature.

For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code

Section 20202: In any ordinance adopted pursuant to this chapter to increase the amount of compensation which may be received by members of the governing board of a water district above the amount of one hundred dollars (\$100) per day, the increase may not exceed an amount equal to 5 percent, for each calendar year following the operative date of the last adjustment, of the compensation which is received when the ordinance is adopted.

No ordinance adopted pursuant to this chapter shall authorize compensation for more than a total of 10 days in any calendar month.

# **Discussion Item #1. Cover sheet – New MOU between ARD and the City of Auburn**

Auburn Area Recreation and Park District Policy Committee August, 2019

## **The Issue**

A review of the preliminary DRAFT of the Memorandum of Understanding (MOU) between the City of Auburn and the Auburn Area Recreation and Park District (ARD).

## **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. One of the major changes being sought by the City Council is to create a method by which the City would have a chance to review any ARD projects funded by City Park Impact Fees. This review would look at the impacts of the project on the City of Auburn and City service impacts, as well as other project details.

The proposed new MOU will also feature:

- 1) A better description of the rehabilitation and maintenance services provided by ARD for the four pocket parks.
- 2) Details on the City enforcement of applicable laws and ARD ordinances.

## **Recommendation for the Policy Committee**

Review and provide input of the preliminary DRAFT of the new MOU between the City and ARD.

Please note that ARD and City staff are currently negotiating the terms of the details associated with the rehabilitation and maintenance of the pocket parks, specifically section 3(a) of the new MOU.

## **Fiscal Impact**

Unknown at this time.

## **Attachments**

- Proposed new DRAFT MOU between the City of Auburn and ARD
- Existing MOU between the City and ARD

**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE CITY OF AUBURN AND THE AUBURN AREA  
RECREATION AND PARK DISTRICT REGARDING USE  
OF PARK IMPACT MITIGATION FEES AND  
ENFORCEMENT OF APPLICABLE LAWS,  
ORDINANCES, RULES, AND REGULATIONS IN  
PARKS**

This MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into effective \_\_\_\_\_ of 2019 (the “Effective Date”) by and between the City of Auburn, a California municipal corporation and general law city (hereinafter “City”) and the Auburn Area Recreation and Park District, a California special district organized and operating under California Public Resources Code section 5780 et seq. (hereinafter “ARD”) (collectively, the “Parties”) with respect to the following Recitals:

**RECITALS**

WHEREAS, the City and ARD desire to enter into this MOU: (1) regarding the use of Park Impact Mitigation Fees, (2) to ensure the rehabilitation and maintenance of all parks within the City’s sphere of influence in a suitable and timely manner, and (3) to authorize the City’s peace officers and other authorized staff to enforce laws, ordinances, rules, and regulations in parks owned and operated by ARD and lying within the incorporated areas of the City; and

WHEREAS, California Public Resources Code section 5786.17 makes a violation of any ARD rule, regulation, or ordinance unlawful and authorizes citations for violations of state law, city or county ordinances, or district rules, regulations, or ordinances, when the violation occurs in a recreational facility, as defined; and

WHEREAS, Public Resources Code section 5786.11 authorizes ARD to enter into a cooperative agreement with the City to do all things necessary or convenient in carrying out the purposes and intent of Public Resources Code section 5780 et seq. including, but not limited to, an agreement regarding use of Park Impact Mitigation Fees, rehabilitation and maintenance of parks, and enforcement of laws, ordinances, rules and regulations.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises hereinafter provided, the City and ARD hereby agree as follows:

1. The Recitals above are true and correct and hereby fully incorporate herein.

DRAFT

2. Use of Park Impact Mitigation Fees and Rehabilitation and Maintenance of Parks.

- a. Starting September 30 of each year, at the end of each quarter, the City shall convey to ARD Park Impact Mitigation Fees collected by the City.
- b. The City and ARD agree that Park Impact Mitigation Fees collected by the City will be spent and used within the City Sphere of Influence, with a minimum of fifty percent (50%) of said fees being spent within the City limits.
- c. ARD agrees that it shall provide to the City, by August 31 of each year, the following reports:
  - i. A report which details the expenditure of Park Impact Mitigation Fees forwarded to ARD in the preceding fiscal year. The report shall detail projects and costs expended for each project; and
  - ii. A report which details the proposed expenditures of Park Impact Mitigation Fees to be conveyed to ARD in the current fiscal year. The report shall detail the projects and costs to be expended for each project.
- d. ARD shall be responsible for ensuring the spending and use of Park Impact Mitigation Fees under this MOU complies with the requirements of applicable state law and the Auburn Municipal Code, as those laws and the code may change from time to time.
- e. The City and ARD agree individually to assume rehabilitation and maintenance responsibility for the following specific tasks for those city parks listed in Paragraph 1(f), below. The City and ARD also agree to work together if needed in performing these tasks by sharing equipment and labor when appropriate or if tasks not specified arise during the term of this agreement. Such shall be agreed to in writing by the City Manager and District Manager of the City and ARD, respectively. Vandalism and graffiti shall be repaired by agency responsible for items/tasks vandalized.

DRAFT

3. A standing ARD/City Project Review Committee will be created to review all ARD projects which are wholly or partially City funded through City Mitigation Fees and are in, or within ½ mile of, the Auburn City limits. The Committee will consist of one ARD Board Member, ARD Executive Director, one City Council Member and Auburn City Manager. The Committee will meet once on any project that reaches the preliminary plan phase to review the impacts of the project on the City of Auburn and City service impacts. After that meeting, either ARD or City may request additional meetings which will be held within 30 days of the request, in order to provide additional input.
  - a.

### ARD

- a. Garbage collection and clean up within the park.
- b. Landscape maintenance – includes mowing, leaf blowing, trimming and weed eating. Also includes graffiti removal.
- c. Electrical and water infrastructure. Including lighting fixture maintenance, irrigation piping, drip irrigation, sprinkler heads, valves and wiring. Also includes backflows and water fountains if applicable.
- d. Minor repairs to bridges, decks and walkway structures.

### City of Auburn

- a. Fencing.
  - b. Major repairs or replacements of bridges, decks and walkway structures.
  - c. Large tree maintenance.
- b. The obligations in Paragraph 1(e) of this MOU only apply to the following City parks:
    - i. Bicentennial Park.
    - ii. Chana Park.
    - iii. Herschel Young Park.
    - iv. Auburn Ravine Trail.
  - c. The following pocket parks are specifically excluded from the obligations on Paragraph 1(e) of this MOU, and shall be the sole responsibility of the City:
    - i. Clock Tower Park.

DRAFT



- ii. Tennis Way Park.
- iii. Livingston Building Park.
- iv. Court View Park.
- v. East Placer Park.
- vi. Maple Street Park.
- vii. Magnolia Street Park.
- viii. Train Depot Park.
- ix. The Art Park

d. ARD agrees to provide the services in Paragraph 1(e) in accordance with current ARD facilities maintenance policy.

4. **City Enforcement of Applicable Laws.**

- a. ARD hereby authorizes and consents to the City enforcing ARD rules, regulations and ordinances and other applicable laws, including, but not limited to, the Auburn Municipal Code, when necessary and appropriate within properties owned, operated, or controlled by the ARD lying within incorporated areas of the City.
- b. The City has sole discretion to make enforcement decisions and determine the level of service provided under this section of the MOU. In the event of a conflict between laws, codes, rules, and/or regulations, the City may in its sole discretion choose which to enforce. The City alone shall control and determine the performance of personnel providing the services under this section of this MOU, including, but not limited to the standards of personnel performance and discipline.
- 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 legal and/or hearing officer services necessary to implement this section of this MOU, including costs the City's Police Department incurs in administrative enforcement under chapter 10.80 et seq. of the Auburn Municipal Code, from the initial investigation, administrative hearing, and up to and including appearances in court(s).

DRAFT

5. **Indemnification, Term, and Termination**

- a. ARD shall indemnify, defend, and hold the City, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damage arising out of the performance of this section of the MOU, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent, intentional, or wrongful acts or omissions of ARD, its officers, agents, or employees.
- b. The City shall indemnify, defend, and hold ARD, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damage arising out of the performance of this section of the MOU, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent, intentional, or wrongful acts or omissions of City, its officers, agents, or employees.
- c. The term of this MOU shall be one year, with an automatic renewal at the end of each year unless terminated by written notice to the other party at least 30 days before the end of the year. This MOU may be terminated by either party for any reason and at any time by giving the other party 120 days written notice. This MOU may be amended at any time with concurrence of the parties.

DRAFT

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed on the date listed below.

**City of Auburn**

**Auburn Recreation District**

\_\_\_\_\_  
Robert Richardson  
City Manager

\_\_\_\_\_  
Kahl Muscott  
District Administrator

Date

Date

Attest:

---

Amy Lind  
City Clerk

---

Date

DRAFT

**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE CITY OF AUBURN AND AUBURN RECREATION DISTRICT  
PARK IMPACT MITIGATION FEES AND  
PARK REHABILITATION AND MAINTENANCE**

WHEREAS, the City of Auburn (herein "City"), and the Auburn Recreation District (herein "ARD"), are desirous of establishing an agreed joint policy for the handling and use of Park Impact Mitigation fees; and

WHEREAS, the City and ARD are desirous of ensuring that the rehabilitation and maintenance of all parks within the limits of the City are performed in a suitable and timely manner; and

WHEREAS, the City and ARD have conferred on these matters and are now desirous of entering into this memorandum of understanding (MOU). The City and ARD hereby agree that:

1. Starting September 30 of each year, at the end of each quarter, the City shall convey to ARD Park Impact Mitigation Fees collected by the City.
2. City and ARD agree that City Park Impact Mitigation Fees will be spent within the City Sphere of Influence, with a minimum of fifty percent (50%) of said fees being spent within the city limits.
3. ARD agrees that it shall provide to the City, by August 31 of each year, the following reports:
  - a) A report which details the expenditure of Park Impact Mitigation Fees forwarded to ARD in the preceding fiscal year. The report shall detail the projects and costs expended for each project; and
  - b) A report which details the proposed expenditures of Park Impact Mitigation Fees to be conveyed to ARD in the current fiscal year. The report shall detail the projects and costs to be expended for each project.
4. City and ARD agree individually to assume rehabilitation and maintenance responsibility for the following specific tasks for those city parks listed in Paragraph 5, below. The City and ARD also agree to work together in performing these tasks by sharing of equipment and labor when appropriate:

**Auburn Recreation District**

- a. Garbage collection and clean up within the park.
- b. Electrical and water infrastructure.
- c. Large tree maintenance.
- d. Minor repairs to bridges, decks and walkway structures.

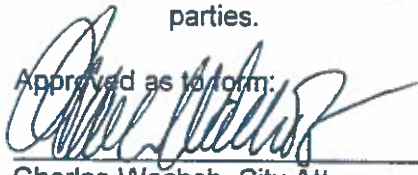
**City of Auburn**

- a. Landscape maintenance.
- b. Fencing.
- c. Major repairs or replacement of bridges, decks and walkway structures.

*Existing*

5. The following City parks, only, are covered by this MOU, said parks being shown on Exhibit "A" of this Agreement:
  - a. Bicentennial Park.
  - b. Chana Park.
  - c. Herschel Young Park.
  - d. Auburn Ravine Trail
  
6. Specifically excluded from this MOU are the following pocket parks within the City, which shall be the sole responsibility of the City:
  - a. Clock Tower Park.
  - b. Tennis Way Park.
  - c. Livingston Building Park.
  - d. Court View Park.
  - e. East Placer Park.
  - f. Maple Street Park.
  - g. Magnolia Street Park.
  - h. Train Depot Park.
  
7. The levels of maintenance provided by ARD in Paragraph 4 is agreed to be in keeping with present ARD facilities maintenance policy.
  
8. The term of this MOU shall be one year, with an automatic renewal at the end of each year unless terminated or amended. This MOU may be terminated by either party for any reason at any time by either party giving the other party 120 days written notice. This MOU may be amended at any time with concurrence of the parties.

Approved as to form:



Charles Wachob, City Attorney

Dated: 9-21-01

City of Auburn

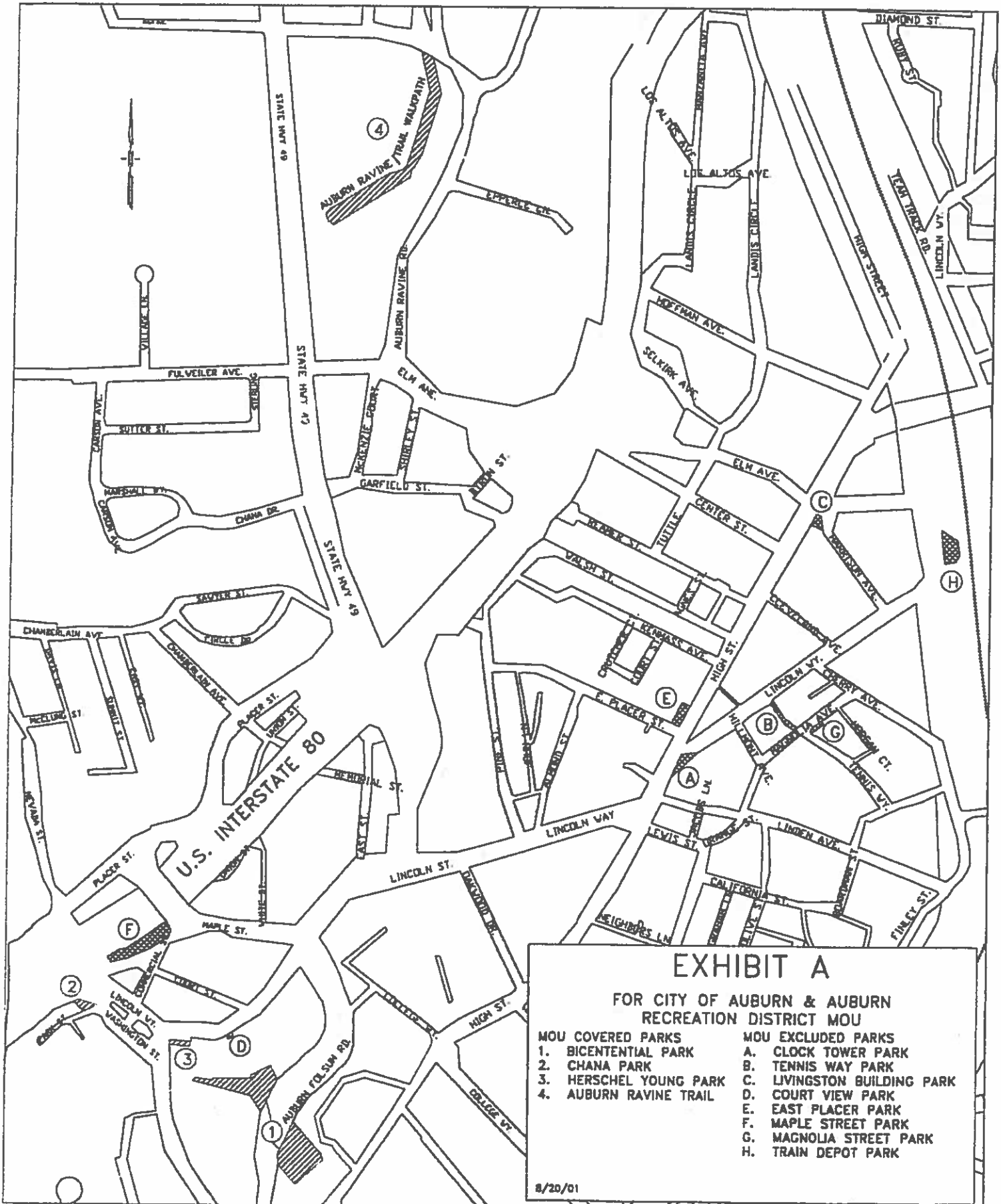
By:   
Alice Dowdin Singh, Mayor

Dated: 8-23-01

Auburn Recreation District

By:   
Scott Holbrook, Chair

*Existing*



- EXHIBIT A**
- FOR CITY OF AUBURN & AUBURN RECREATION DISTRICT MOU**
- |                          |                             |
|--------------------------|-----------------------------|
| <b>MOU COVERED PARKS</b> | <b>MOU EXCLUDED PARKS</b>   |
| 1. BICENTENNIAL PARK     | A. CLOCK TOWER PARK         |
| 2. CHANA PARK            | B. TENNIS WAY PARK          |
| 3. HERSCHEL YOUNG PARK   | C. LIVINGSTON BUILDING PARK |
| 4. AUBURN RAVINE TRAIL   | D. COURT VIEW PARK          |
|                          | E. EAST PLACER PARK         |
|                          | F. MAPLE STREET PARK        |
|                          | G. MAGNOLIA STREET PARK     |
|                          | H. TRAIN DEPOT PARK         |

8/20/01

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RESOLUTION NO. 01- 106

RESOLUTION APPROVING MEMORANDUM OF UNDERSTANDING  
WITH AUBURN RECREATION DISTRICT

THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:


That the City Council of the City of Auburn does hereby authorize and approve the Memorandum of Understanding between the Auburn Recreation District and the City regarding Park Impact Mitigation Fees and park rehabilitation and maintenance with the City of Auburn. A true and correct copy of the Memorandum of Understanding is attached hereto as Exhibit "A" and incorporated herein by this reference.

The City Manager of the City of Auburn is authorized and directed to execute this Memorandum of Understanding on behalf of the City of Auburn.

DATED: August 27, 2001

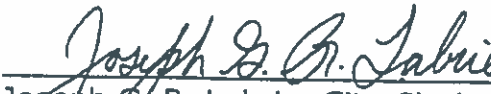
  
ALICE DOWDIN SINGH, Mayor

ATTEST:

  
Joseph G. R. Labrie, City Clerk

I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify that the foregoing resolution was duly passed at a regular meeting of the City Council of the City of Auburn held on the 27th day of August 2001 by the following vote on roll call:

Ayes: Hale, Maki, Sands, Dowdin Singh, Taylor  
Noes: None  
Absent: None

  
Joseph G. R. Labrie, City Clerk

*Existing*

## Discussion Item #2. Cover sheet – Drug and Alcohol Policy Review

Auburn Area Recreation and Park District (ARD) Policy Committee July, 2019; August, 2019

### The Issue

A review of ARD's Drug and Alcohol Policy. Director Holbrook requested that this item be considered.

### Background

ARD has policies as they relate to Drug and Alcohol use. These policies are similar to the policies included in the Agreement between ARD and Local 39. A copy of a memo sent to employees in January, 2018 containing the policies is attached. This memo was reviewed by legal counsel.

At the July Policy Committee meeting, staff was asked to research questions specific to marijuana and CBD use. Staff sent these questions to attorney Patti Eyres. Here are the responses:

- *What we want to avoid is losing a good employee/candidate because of their marijuana use while off the clock. A person could smoke marijuana on Monday and be tested positive on Friday. I understand this concern, but there is really no way to distinguish between someone who smoked or ingested it several days earlier and now tests positive from someone who used it recreationally the night before. And, the medical community suggests that many people have different levels of tolerance for marijuana or even CBD in their system, so that levels of "impairment" are not dependent on the passage of time between last inhalation/ingestion and the date of the test. From an employment law perspective, it is best practice to have an objectively measurable policy – so that everyone who is similarly situated is treated uniformly.*
- *The same thing applies to those who use CBD. I am not sure if CBD shows up in testing, but I am told it does. Yes, it does. See attached my most recent PowerPoint presentation on DFWP Act. There are several slides toward the latter part of the program on CBD.*
- *We are also concerned that, should we make some changes allowing the use of off the clock marijuana, that an employee could be high at work and we would have no way to prove it. If we were to test that employee, he/she could simply say that he/she smoked two days ago. Obviously, you do not have control of what they do "off the clock" and because they are public employees you cannot penalize them for off duty conduct. However, it is my recommendation that a positive test be treated for all purposes as a disciplinary action, without regard to whether they were objectively impaired, or whether they claim they last used it a week or more earlier than the test.*
- *Also, what are your thoughts on automatically testing anyone who gets in to an accident at work? Currently, our policy and agreement with the union reads that we can test under reasonable suspicion. CAL OSHA discourages this practice now – based on the fact that it "chills" employees from reporting a workplace injury if they are concerned about a drug test. The best practice is to limit post-accident testing to situations with either (a) a serious injury involving EMT*



*or hospitalization; or (b) reasonable suspicion that the individual who caused or contributed to the accident was objectively intoxicated or under the influence.*

Related to these questions and discussions, staff has attached an article from the New York Times that discusses changes to drug testing being incorporated by some states (not California) and private businesses.

**Recommendation**

Review and provide direction. A sample Drug Free Work Place (DFWP) shared by Patti Eyres is attached.

**Fiscal Impact**

N/A

**Attachments**

January 3, 2018 memo: Marijuana use and related policies  
Sample Drug Free Work Place policy from attorney Patti Eyres  
New York Times article: “When the law says using marijuana is ok, but the boss disagrees”

January 3, 2018

# MEMO

**To: All ARD employees, volunteers, work release and community service  
From: Kahl Muscott, District Administrator**

**Re: Marijuana use and employment at the Auburn Area Recreation and Park District  
(ARD)**

As you may be aware, there has been a change in California law with respect to possession and use of recreational marijuana. Regardless of California law, marijuana remains illegal under federal law.

The purpose of this memo is to refresh everyone with ARD policy and agreement with the Local 39 Operating Engineers regarding the possession and/or use of marijuana or any controlled substance. A copy of these policies are set forth below. Please review them carefully.

Bottom line: Marijuana is a controlled substance. Possession, use or being under the influence of any controlled substance, including marijuana, while on the job violates ARD Policy and the agreement between ARD and Local 39. This also applies to ARD volunteers, work release and community service individuals. A violation of this policy could lead to the imposition of discipline, up to, and including termination.

Please read and familiarize yourself with these policies. Please feel free to contact myself or your manager/supervisor with any questions.

## **From the Auburn Area Recreation and Park District Personnel Manual:**

### **3.3 Drug and Alcohol Abuse**

The District is concerned about the use of alcohol, illegal drugs, or controlled substances as they affect the workplace. Use of these substances, whether on or off the job, can detract from an employee's work performance, efficiency, safety, and health, and therefore seriously impair the employee's value to the District. In addition, the use or possession of these substances on the job constitute a potential danger to the welfare and safety of other employees and expose the District to the risks of property loss or damage, or injury to other persons. Inappropriate use of prescription drugs and/or over-the-counter drugs may do the same.

The following rules and standards of conduct apply to all employees either on District property or during the workday (including meals and rest periods). Behavior that violates District policy includes:

- A. Possession or use of an illegal or controlled substance, or being under the influence of an illegal or controlled substance while on the job;
- B. Driving a District vehicle while under the influence of alcohol or an illegal or controlled substance;
- C. Distribution, sale, or purchase of an illegal or controlled substance while on duty or in the workplace.
- D. Reporting to work under the influence of alcohol, illegal drugs or any other controlled substance.
- E. Use of alcohol, illegal drugs or any other controlled substance while on duty or in the workplace.
- F. Misuse of prescription drugs or over the counter drugs while on duty or in the workplace.

Violation of these rules and standards of conduct will not be tolerated. The District also may bring the matter to the attention of appropriate law enforcement authorities.

In order to enforce this policy, the District reserves the right to conduct searches of any and all District property, including desks and lockers, and to implement other measures necessary to detect and deter abuse of this policy. No employee should assume that any area on District property is private. The District reserves the right to enter and search any desk or locker in the workplace.

An employee's conviction on a charge of illegal sale or possession of any controlled substance while off District property will not be tolerated because such conduct, even though off duty, reflects adversely on the District. In addition, the District must keep people who sell or possess controlled substances off the District's premises in order to keep the controlled substances themselves off the premises.

Any employee who is using prescription or over-the-counter drugs that may impair the employee's ability to safely perform the job, or affect the safety or well-being of others, must notify a supervisor of such use immediately before starting or resuming work.

The District encourages, and may accommodate if reasonable, employees with alcohol or drug dependencies to seek treatment and/or rehabilitation. Employees desiring such assistance should request a treatment or rehabilitation leave. The District is not obligated, however, to continue to employ any person whose performance of essential job duties is impaired because of drug or alcohol use, nor is the District obligated to re-employ any person who has participated in treatment and/or rehabilitation if that person's job performance remains impaired as a result of dependency. Additionally, employees who are given the opportunity to seek treatment and/or rehabilitation, but fail to successfully overcome their dependency will not automatically be given a second opportunity to seek treatment and/or rehabilitation. This policy on treatment and rehabilitation is

not intended to affect the District's treatment of employees who violate the regulations described previously. Rather, rehabilitation is an option for an employee who acknowledges a chemical dependency and voluntarily seeks treatment to end that dependency.

All District employees are subject to drug and alcohol testing under federal and state guidelines allowing for "reasonable suspicion testing" as follows:

Reasonable suspicion testing is authorized when management believes an employee is using illegal drugs or alcohol. It is appropriate to request a reasonable suspicion drug and alcohol test when any of the following conditions exist:

- A. Direct observation of drug use and/or the physical symptoms of being under the influence of drugs or alcohol.
- B. A pattern of abnormal conduct or erratic behavior.
- C. Arrest or conviction for a drug related offense; or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use or trafficking.
- D. Information that is either provided by reliable and credible sources or independently corroborated.
- E. Newly discovered evidence that the employee has tampered with a previous drug test.

**From the agreement between the Auburn Recreation District and Local 39 Operating Engineers, Ratified April, 2017**

**ARTICLE 6**

**DRUGS AND ALCOHOL POLICY**

**6.1 Drug and Alcohol Abuse**

The District is concerned about the use of alcohol, illegal drugs, or controlled substances as they affect the workplace. Use of these substances, whether on or off the job, can detract from an employee's work performance, efficiency, safety, and health, and therefore seriously impair the employee's value to the District. In addition, the use or possession of these substances on the job constitute a potential danger to the welfare and safety of other employees and expose the District to the risks of property loss or damage, or injury to other persons. Inappropriate use of prescription drugs and/or over-the-counter drugs may do the same.

The following rules and standards of conduct apply to all employees either on District property or during the workday (including meals and rest periods). Behavior that violates District policy includes:

1. Possession or use of an illegal or controlled substance, or being under the influence of an illegal or controlled substance while on the job;
2. Driving a District vehicle while under the influence of alcohol or an illegal or controlled substance;
3. Distribution, sale, or purchase of an illegal or controlled substance while on duty or in the workplace.
4. Reporting to work under the influence of alcohol, illegal drugs or any other controlled substance.
5. Use of alcohol, illegal drugs or any other controlled substance while on duty or in the workplace.
6. Misuse of prescription drugs or over the counter drugs while on duty or in the workplace.

Violation of these rules and standards of conduct will not be tolerated. The District also may bring the matter to the attention of appropriate law enforcement authorities.

In order to enforce this policy, the District reserves the right to conduct searches of any and all the District property, including desks and lockers, and to implement other measures necessary to detect and deter abuse of this policy. No employee should assume that any area on District property is private. The District reserves the right to enter and search any desk or locker in the workplace.

An employee's conviction on a charge of illegal sale or possession of any controlled substance while off District property will not be tolerated because such conduct, even though off duty, reflects adversely on the District. In addition, the District must keep people who sell or possess controlled substances off the District's premises in order to keep the controlled substances themselves off the premises.

Any employee who is using prescription or over-the-counter drugs that may impair the employee's ability to safely perform the job, or affect the safety or well being of others, must notify a supervisor of such use immediately before starting or resuming work.

The District will encourage, and reasonably accommodate, employees with alcohol or drug dependencies to seek treatment and/or rehabilitation. Employees desiring such assistance should request a treatment or rehabilitation leave. The District is not obligated, however, to continue to employ any person whose performance of essential job duties is impaired because of drug or alcohol use, nor is the District obligated to re-employ any person who has participated in treatment and/or rehabilitation if that person's job performance remains impaired as a result of dependency. Additionally, employees who are given the opportunity to seek treatment and/or rehabilitation, but fail to successfully overcome their dependency will not automatically be given a second opportunity to seek treatment and/or rehabilitation. This policy on treatment and rehabilitation is not intended to affect the District's treatment of employees who violate the regulations described previously. Rather, rehabilitation is an option for an employee who acknowledges a chemical dependency and voluntarily seeks treatment to end that dependency.

All District employees are subject to drug and alcohol testing under Federal and State guidelines allowing for “reasonable suspicion testing” as follows:

Reasonable suspicion testing is authorized when management believes an employee is using illegal drugs or alcohol. It is appropriate to request a reasonable suspicion drug and alcohol test when any of the following conditions exist:

1. Direct observation of drug use and/or the physical symptoms of being under the influence of drugs or alcohol.
2. A pattern of abnormal conduct or erratic behavior.
3. Arrest or conviction for a drug related offense; or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use or trafficking.
4. Information that is either provided by reliable and credible sources or independently corroborated.
5. Newly discovered evidence that the employee has tampered with a previous drug test.

**SAMPLE DEWP POLICY – must be customized for Special District specific environments**

**PURPOSE**

It is the intention of this policy to eliminate substance abuse and its effects in the workplace. While ([ENTITY]) does not intend to intrude into the private lives of its employees, involvement with drugs and alcohol off the job can take its toll on job performance and employee safety. Our concern is that employees are in a condition to perform their duties safely and efficiently, in the interests of their fellow workers and the public as well as themselves. The presence and influence of drugs and alcohol on the job, and the influence of these substances on employees during working hours, are inconsistent with this objective.

Employees who think they may have an alcohol or drug usage problem are urged to voluntarily seek confidential assistance from the Employee Assistance Program. [ENTITY] acknowledges that significant psychological and physical alcohol and drug dependency is an illness and pursuit of treatment by the employee is the preferable resolution to associated performance problems caused by such dependency. While [ENTITY] will be supportive of those who seek help voluntarily, [ENTITY] will be firm in identifying and disciplining those employees who do not seek help and are found to be impaired by drugs or alcohol during working hours.

This policy provides guidelines for the detection and deterrence of alcohol and drug abuse. It also outlines the responsibilities of County managers and employees. To that end, [ENTITY] will act to prevent the use of alcohol or drugs which impair an employee's ability to safely and effectively perform the functions of the particular job. All persons covered by this policy should be aware that violation of the policy may result in discipline up to and including termination.

In recognition of the public service responsibilities entrusted to County employees, and that drug and alcohol usage can impair an employee's ability both mentally and physically to perform the duties and functions safely and effectively, the following policy against drug and alcohol impairment is hereby adopted by [ENTITY].

**II. POLICY**

Definition – The term “drug” or “drugs” whenever used in this policy means any controlled substance that is not legally obtainable under State or Federal law, a prescription drug obtained or used without benefit of a valid prescription by a medical provider licensed to prescribe medications, and marijuana even if prescribed by a medical provider licensed to prescribe medications.

- Employees shall not be impaired by alcohol or drugs, nor possess alcohol or drugs at the assigned worksite. This policy also applies to employees working on-call duty.
- The illegal or unauthorized use of prescription drugs is prohibited. It is a violation of this policy to intentionally misuse and/or abuse prescription medications.
- Employees shall not sell or provide drugs or alcohol to any other employee while such employee is on duty.
- No alcoholic beverages are permitted at the assigned worksite or in County Vehicles other than at special events authorized by the Chief Executive Officer. County employees who reside on premises provided by [ENTITY] shall be exempt from the restriction of this policy from possessing alcohol where they reside.
- "Probable cause" is such a state of facts as would lead a supervisor of ordinary care and prudence to believe, or to entertain an honest and strong suspicion that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of

the job is impaired or so that the employee is not able to physically and/or mentally perform the duties of his or her position in a proper manner.

### **III. PROCESS**

[ENTITY] reserves the right to search without employee consent all areas and property in which [ENTITY] maintains control, or joint control, with the employee. Controlled and jointly controlled areas include County vehicles, offices, desks, file cabinets, etc. Notwithstanding the above, no employee shall have his or her locker or other space for storage that is owned or leased by [ENTITY] that may be assigned to him or her, searched except under one of the following conditions: in his or her presence; with his/her consent; if a valid search warrant has been obtained; or, where he/she has been notified that a search will be conducted. Employee requests to be present during the search shall be honored if the employee is able to return to the worksite within one hour of notification of the search. All such searches shall be based upon probable cause to search. Probable cause forming the basis of the search shall be provided to the employee in writing. The written document shall be given to the employee prior to the search or, if that is not possible, within twenty-four hours after the search.

Any applicable privileges or confidentiality of files or documents will be honored by [ENTITY]. If [ENTITY] desires to search such documents or records, or the area where such documents are located, the appropriate process for searches and seizures as defined by California law will be followed. [ENTITY] may notify the appropriate law enforcement agency that an employee may have drugs in his or her possession or in an area not jointly or fully controlled by [ENTITY].

Refusal to submit immediately for drug and/or alcohol testing, based upon probable cause of drug or alcohol impairment while on duty when ordered by the Department Head or his/her designee in accordance with County Code Section 3.08.050 may constitute insubordination and may be grounds for discipline. For the purpose of this policy, designee shall be defined as the assistant department head or other County manager who is assigned the authority to act for the Department Head during his or her absence.

Employees reasonably believed to be impaired by alcohol and/or drugs shall be prevented from engaging in further work and shall be detained for a reasonable time until they can be safely transported from the work site.

[ENTITY] is committed to providing reasonable accommodation to those employees whose drug or alcohol problem classifies them as disabled under Federal and/or State law. [ENTITY] is also committed to providing reasonable accommodation to employees who use lawfully prescribed medication(s) to treat or control a disability and who may need an accommodation because of the side effects of the medication(s).

[ENTITY] has established a voluntary Employee Assistance Program (EAP) to assist those employees who voluntarily seek help for alcohol or drug problems. Employees should contact their supervisors, Human Resources, or the EAP Counselor for additional information. Information about [ENTITY]'s EAP is also available on [ENTITY]'s website at <http://www.stancounty.com/riskmgmt/risk-eb-eap-sub-main.shtm>

The provisions of this policy do not act to limit or restrict in any manner a law enforcement officer's ability to enforce all appropriate state and federal laws. No department shall have any rule or policy which contravenes or which is in conflict with this Drug Free Work Place Policy.

### **IV. APPLICATION**

This policy applies to all County employees. This policy applies to alcohol and drugs which could impair an employee's ability physically and/or mentally to effectively and safely perform the functions and duties of the employee's position.



## **V. EMPLOYEE RESPONSIBILITIES**

- A. An employee must not report to work or be subject to duty while his/her physical and/or mental ability to perform job duties is impaired due to on or off duty alcohol or drug use.
- B. An employee must not possess drugs or alcohol as defined by this policy during working hours or while subject to duty, on breaks, or at any time while at the assigned worksite. An exception exists for those employees whose duties require possession of drugs and/or alcohol in the course and scope of job duties (i.e., undercover, narcotics investigators).
- C. An employee must not directly or through a third party sell or provide drugs or alcohol to any person, including any employee, while either employee or both employees are on duty.
- D. Prescription and over-the-counter medications are not prohibited when taken in standard dosage and/or according to a physician's prescription. However, an employee taking prescribed or over-the-counter medications will be responsible for consulting the prescribing physician and/or pharmacist and/or the medication label to ascertain whether the medication may interfere with the ability to safely and effectively perform his or her job. If the use of a medication could compromise the safety of the employee, fellow employees, or the public, it is the employee's responsibility to notify the supervisor or manager (e.g., call in sick, use leave, request change of duty) to avoid any unsafe workplace practices. Unless the employee is working in a position affecting public safety, the employee, is not required to reveal the existence of a disability or disclose the medications the employee is taking if the employee can manage the medications through the use of leave or benefits available to all employees without formally requesting a reasonable accommodation.
- E. An employee must submit immediately to an alcohol or drug test when ordered, in writing, by a Department Head or his/her designee when probable cause exists that the employee is impaired by drugs and/or alcohol.
- F. An employee may be required to submit to a fitness for duty examination where there is a reasonable and objective belief that an employee may be impaired while on duty by prescription or over-the-counter medications that the employee is taking to treat or control a disability. The purpose of the fitness for duty examination will be limited to determining whether the employee can safely perform the essential functions of the job with or without accommodation. Such fitness for duty examinations will be conducted in compliance with the limitations set forth under State and Federal law.
- G. An employee must provide within two (2) working days of request bona fide verification of a current valid prescription in the employee's name for any potentially impairing medication identified when a drug screening/test is positive. Extensions of time beyond the two working days may be granted upon the showing of good cause. An employee must abide by the regulations of the Federal Drug-Free Workplace Act of 1988. Thus, such employees who are convicted after March 18, 1989 of any criminal drug statute for a violation occurring in the workplace must notify the Chief Executive Officer no later than five (5) days after the conviction. Once [ENTITY] is notified of the conviction, [ENTITY] must then notify the appropriate Federal agency of the conviction. With respect to any employee so convicted, [ENTITY] will take appropriate personnel action up to and including termination. As a condition of continued employment, [ENTITY] may require the convicted employee to satisfactorily participate in an approved drug abuse rehabilitation program.

## **VI. MANAGEMENT RESPONSIBILITIES AND GUIDELINES**

Department Heads or their designees are responsible for reasonable enforcement of this policy.

Department Head or his/her designee may order an employee in writing to submit to an alcohol or drug test following [ENTITY]'s Ordered for Cause Alcohol and Drug Testing procedure including notifying the employee of their right to representation in accordance with this policy. When a Department Head or his/her designee has probable cause that an employee is intoxicated or impaired by drugs or alcohol while on the job or receiving compensation for on-call duty and thereby subject to being called, and is not physically and/or mentally able to perform the duties of his/her position. Should employee be a Department of Transportation (DOT) driver acting in the course and scope of employment, the Department Head or designee should refer to DOT policy for additional information.

Prior to the request for the alcohol or drug test, a Department Head or his/her designee ordering an employee to undergo an alcohol or drug test shall document in writing the facts constituting probable cause that the employee in question is intoxicated or impaired by alcohol or drugs.

Any Department Head or his/her designee encountering an employee who refuses an order to submit to an alcohol or drug test shall remind the employee of the requirements and disciplinary consequences of this policy. Where there is probable cause that the employee is then impaired by alcohol or drugs, the Department Head or his/her designee should detain the employee for a reasonable time until the employee can be safely transported home or removed to another appropriate location.

Any Department Head or his/her designee shall not physically search the person of employees; nor shall they search the personal possession of employees without the freely given written consent by the employee, unless such search is authorized by County Ordinance or policy.

Managers and supervisors shall notify their Department Head or designee when there is probable cause to believe that an employee may have drugs or alcohol in his or her possession or in an area not jointly or fully controlled by [ENTITY]. If the Department Head or designee concurs that there is probable cause of alcohol or drug possession, the Department Head shall notify the appropriate parties, including Human Resources and County Counsel.

The Department Head or his/her designee shall give due consideration to the employee's completion of any generally recognized treatment plan, including that treatment as may be recommended by the Employee's Assistance Program when determining whether disciplinary action shall be taken and/or the appropriate level of discipline.

## **VII. RESULTS OF DRUG AND ALCOHOL TESTING**

A positive result from a drug and/or alcohol test may result in disciplinary action, up to and including termination.

If the alcohol or drug test is positive, [ENTITY] shall conduct an investigation to gather all relevant facts. The decision to discipline or discharge will be carried out in conformance with [ENTITY]'s discipline procedures and policies.

Testing and reporting of test results will follow the guidelines and all subsequent amendments as established by the Department of Health and Human Services as promulgated in Volume 53, No. 69 of the Federal Register and as incorporated herein and made a part of this policy by reference.

Upon a conditional offer of employment, prospective employees may be required to submit to a drug test by a [ENTITY]-approved testing facility at the [ENTITY]'s expense. Pre-employment testing will be conducted for job candidates who are applying for jobs that are safety sensitive, mandated by federal or state law (such as DOT requirements for commercial drivers) or for which the District has established an objective special need to require pre-employment "suspicion-less" drug testing.

### **VIII. CONFIDENTIALITY**

Medical or laboratory reports or test results shall not appear in an employee's general personnel file unless they result in discipline. Information of this nature will be contained in a separate confidential medical folder that will be securely kept under the control of the Chief Executive Officer/Director of Personnel or designee. The reports or test results may be disclosed to County management on a strictly need-to-know basis and to the employee upon request. Disclosures without employee consent may also occur when:

- (1) the information is compelled by law or by judicial or administrative process;
- (2) the information has been placed at issue in a formal dispute between the employer and employee;
- (3) the information is needed by medical personnel for the diagnosis or treatment of the employee who is unable to authorize disclosure;
- (4) when requested by DOT or any state or local officials with regulatory authority over [ENTITY] or any of its safety-sensitive employees.

# New York Times Article

## *When the Law Says Using Marijuana Is O.K., but the Boss Disagrees*

By Dan Hyman

- July 19, 2019

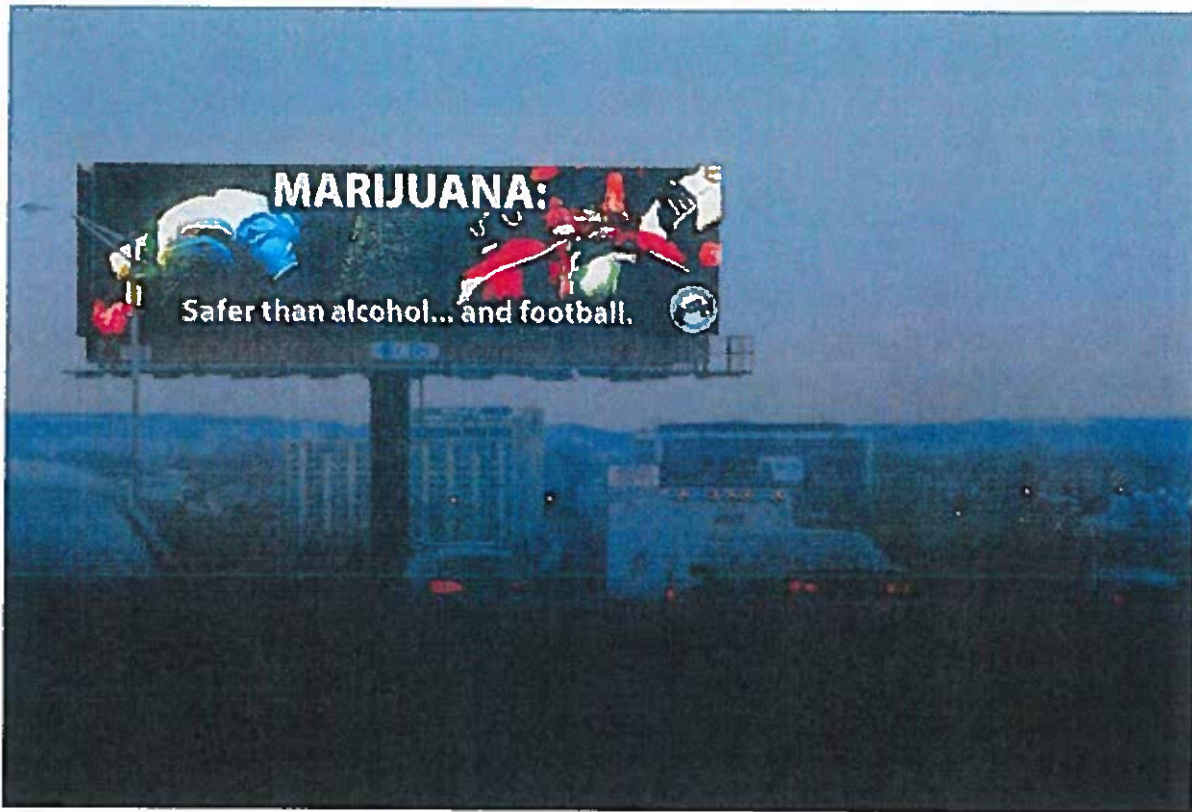
Smoking pot cost Kimberly Cue her job.

Ms. Cue, a 44-year-old chemical engineer from Silicon Valley, received an offer this year from a medical device manufacturer only to have it rescinded when the company found out that she smoked prescription marijuana to treat post-traumatic stress disorder.

“My email was set up with the company,” she said. “My business cards were printed.” But after a pre-employment drug test came back positive for marijuana, a human resources representative told her the job was no longer hers.

“I’ve lost all confidence in the process,” said Ms. Cue, who ultimately took a different job, at 20 percent less pay. “I’m so frustrated and so irritated. I should be able to be upfront and honest with my employer.”

The relatively rapid acceptance of marijuana use in the United States has forced lawmakers and employers to grapple with how to adapt. Last month, Nevada passed a bill prohibiting the denial of employment based on a positive test for marijuana. In Maine, employers may not discriminate against people who have used cannabis, but state law does not specifically regulate drug testing. And under a bill overwhelmingly approved in April by the New York City Council and awaiting Mayor Bill de Blasio’s signature, employers would no longer be able to force job applicants to take drug tests for marijuana use.



#### Image

The Marijuana Policy Project rented 60-foot-wide billboards in New Jersey, like this one on Interstate 80 near Hackensack, to protest the National Football League's position on marijuana in 2014. Credit: Alex di Suvero for The New York Times

“If the state is saying someone can use marijuana for responsible adult use then why should we care what someone does when they’re off work?” said Steven W. Hawkins, the executive director of the Marijuana Policy Project, an advocacy group.

In fact, marijuana is legal in some form in 33 states and the District of Columbia. The district and 10 states allow recreational use. (Illinois will join the group next year; New York and New Jersey appear to be headed in that direction.) Surveys [in 2017](#) and [this year](#) showed that millions of Americans used cannabis with some regularity.

Some employers have already changed their policies on pre-employment drug screening, and not just to address the dissonance in punishing someone for using a legal substance. With unemployment so low, companies are finding that testing for marijuana adds an unnecessary barrier in hiring top talent.

“With an economy that’s humming along, employers are desperate,” said Jim Reidy, a lawyer with the firm Sheehan Phinney in Manchester, N.H., who regularly advises large corporations on drug-testing policies. “If they have these rigid drug and alcohol policies and drug testing at the pre-employment stage, where marijuana was still on one of the panels, they found they were otherwise losing out on qualified candidates.”

Last year, Caesars Entertainment, one of Nevada's largest casino companies and employers, said it would no longer test candidates for marijuana. A company press officer called such testing "counterproductive" and acknowledged that it might be eliminating good candidates. Cannabis is legal for recreational use in Nevada, and Las Vegas is dotted with dispensaries.

Apple, too, has changed course. "In general, we have stopped testing most candidates and have never done testing of current employees," the company said. "We continue to do pre-employment drug testing for a limited number of positions that have a safety risk."

There is also federal law to contend with. Employers with federal contracts or those whose employees are licensed through federal agencies are legally required to screen job candidates for drugs, including marijuana, which remains a Schedule 1 drug in the federal government's view. And Transportation Department rules frequently require companies in the industry to screen for drugs when hiring for safety-sensitive positions.

In a survey conducted in 2011, a year before Colorado and Washington became the first states to pass ballot questions legalizing marijuana for recreational use, the Society for Human Resource Management and the Drug and Alcohol Testing Industry Association found that 57 percent of employers conducted drug tests on all job candidates. In recent years, "more and more companies are dropping marijuana from pre-employment testing," Mr. Reidy said.

But not all are doing so.

In Fresno, Calif., Nicole Perez, 32, recently applied for a receptionist position at a trucking company only to be ruled out when she disclosed her cannabis use.

"I don't feel like I'm doing anything wrong and have anything to hide," said Ms. Perez, who recently moved to Eureka, Calif., in Humboldt County, where marijuana is more widely accepted. "So I will tell companies frankly and honestly that I will fail the test. And that's usually when the interview ends."

Marina Dobbie of Pine Grove, Calif., has limited herself to applying for jobs that do not test applicants for marijuana, after losing out on a copywriter job years ago after a positive test.

"Now when I see a drug test is involved I don't even bother," Ms. Dobbie, 55, said. "I filter myself out."

Drug-testing policies affect more prominent professions, as well. David Irving, a former defensive end with the Dallas Cowboys, preferred marijuana to treat his playing-related aches to the team-prescribed painkillers.

Mr. Irving had to lie, and cheat on his urine test, for his job. “I would rather have just been honest and straightforward with them, but I knew that wasn’t a reality,” said Mr. Irving, who is 25 and an ordained youth minister. “I was going to be the first person in my family to make that type of money. I needed to do what I needed to do to get into the N.F.L.”

Courts have upheld the right of employers to set and enforce drug policies.

In a 2008 medical marijuana case, the California Supreme Court ruled that an employer could refuse to hire an applicant who tested positive for cannabis, even if it was legally prescribed for a disability. And in 2015, the Colorado Supreme Court ruled that Dish Network was legally allowed to fire a quadriplegic man who used medical marijuana at home, because the drug was still illegal under federal law.

Furthermore, most states, when they legalized marijuana use, gave employers the explicit right to discipline an employee for violation of a workplace drug policy or for working while under the influence.

Fiat Chrysler Automobiles in Michigan, a state that legalized recreational use last year, tests all of its employees. “A positive test for marijuana use will disqualify a candidate,” the company told The Detroit Free Press. When contacted by The New York Times last month, the company added that its rules barred possession or use at work.

Josh Hovey, who served as communications director for the campaign to legalize recreational marijuana in Michigan, said he had met regularly with the state Chamber of Commerce and local businesses before the referendum. “And a lot of what they were concerned with was their H.R. policies,” he said.

In other states, like Minnesota, where medical marijuana is legal and 19 Fortune 500 companies are based, there has not been as much interaction between lobbyists for legal marijuana and the business community.

“We have not really seen large companies reach out to us about this issue,” said Leili Fatehi, campaign manager for Minnesotans for Responsible Marijuana Regulation.

Change came quickly to the states, but on the front lines of drug tests, there is a decided lag.

Quest Diagnostics compiles data on more than 10 million drug tests a year. Only a small number of companies have struck marijuana from the list of drugs they screen for, and nationally, roughly 99 percent of all general work force drug tests include marijuana.

“For the most part it hasn’t had a large effect in those recreational-use states and no measurable effect in the medical marijuana states,” said Barry Sample, Quest’s senior director for science and technology.

There have been subtle but real differences at the state level. From 2015 to 2018, the number of companies in both Colorado and Washington that included marijuana on their drug-testing panel dropped just under 4 percent. In Nevada's first year of legalization, marijuana testing among employers fell more than 8 percent.

For Mr. Irving and others, each sign of a decrease in testing for marijuana is a small victory.

Last month, the N.F.L. and its players' union announced the creation of a committee that will study alternative methods of pain management, including marijuana. Mr. Irving, who since leaving the N.F.L. has been outspoken on the league's marijuana rules, sees it as much as a humanitarian issue as a legal or even equal-rights one.

"As players we need to stand up for what's right and stick together," he said. "But if we all remain afraid and quiet, nothing's ever going to change."