Commentary | Community Choice Aggregation - Change could prove risky

The sunset reflects in the San Diego skyline taken from Shelter Island on Thursday in San Diego, California. The city will be considering Community Choice Aggregation as an option in its Climate Action Plan. (Eduardo Contreras / San Diego Union-Tribune)

By **HANEY HONG & CAMERON GYORFFY**

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The city of San Diego jumped to the forefront of the fight against climate change in late 2015 with adoption of its Climate Action Plan. This commitment earned the city much praise, and we at the San Diego County Taxpayers Association supported it with the caveat that we must achieve these goals cost effectively. Let's maximize our greenhouse gas reduction with as few dollars as possible; we have many public problems, like homelessness, to tackle with finite resources.

Community Choice Aggregation (CCA) is one option in the Climate Action Plan to achieve 100 percent renewable energy by 2035, and because San Diegans have trusted us for three-quarters of a century to do our homework, we have several questions about the CCA proposal before the mayor and City Council. We hope city leaders are searching for the same answers we are — basic fiduciary management demands it.

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Under CCA, the city would enter into the energy business, buying and selling power to local customers while committing to supplying power generated from renewable sources. A draft CCA report the city recently released indicates that in some scenarios CCA could be feasible or even beneficial. By the report's own assumptions, however, many unquantified risks would accompany CCA. In fact, the report highlights this concern as one of its primary conclusions.

How much would CCA cost to implement and operate, and what would ratepayers pay?

The city's draft report demonstrates some positive and some negative scenarios, and the cost uncertainty is about $3 billion. In other words, we don't know if this would be a gain of $257 million or a loss of $2.77 billion, according to the draft report. It is absolutely reasonable to demand more certainty. All of us have seen what projection errors have meant for our regional transportation agency. We don't want to repeat the same mistake.

The city's draft report shows scenarios where customers under a CCA would pay lower rates. But the report also points out that under the desired scenario of 100 percent renewable energy, SDG&E's rates would actually be cheaper than CCA's rates. With this much uncertainty on a key point, is there really enough information to justify a decision?

Would it force non-CCA customers in surrounding communities to pay more for their electricity?

One important unknown is the Power Charge Indifference Adjustment (PCIA) — an "exit fee" charged to customers who leave a utility for a CCA to recoup the difference for long-term production contracts it entered into to serve a specific number of customers. Low exit fees could force ratepayers from across the region to subsidize the city for opting out of SDG&E service. The California Public Utilities Commission has 18 months to establish exit fees.

Does it make sense to pursue CCA if pending state legislation would achieve the same renewable goals without any of the financial risk the city would incur under CCA?

SB 100 is a bill progressing through Sacramento that would establish a policy goal requiring California to use zero carbon energy sources by 2045. If passed, this law could reduce the future price of renewable energy, undercutting the ability of CCAs to lower costs and reduce greenhouse gas emissions.

Would the CCA be able to build new renewable energy sources (wind farms, etc.) locally? What would they cost to construct and what would the taxpayer liabilities be?

If a CCA is unable to generate positive returns, as indicated by almost half the scenarios in the draft report, investment in renewable generation could decline. Reducing greenhouse gas production through the energy

supply can only be done by increasing renewable energy generation. A failure to do so defeats the primary purpose of CCA.

ading us down a path without doing their

The draft report is a good starting point, but it also highlights the fact that we need more information to determine if this is the most cost effective approach to reducing greenhouse gasses. At a minimum, city leaders owe taxpayers answers to questions like ours before deciding whether CCA makes sense for San Diego.

The city set a positive goal with the Climate Action Plan, and San Diegans should support its aims. But city leaders willing to bet they can provide greener and cheaper power for homes and business need to determine if CCA is worth the risk before they commit to plugging in.

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This article is related to: San Diego County

Consumer and Retail Choice, the Role of the Utility, and an Evolving Regulatory Framework

Staff White Paper

CALIFORNIA PUBLIC UTILITIES COMMISSION
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Introduction

California's electric sector is undergoing unprecedented change, brought about by a sequence of innovations in technology as well as many incremental policy actions taken in several different decision-making arenas. Between rooftop solar, Community Choice Aggregators (CCAs) and Direct Access providers (ESPs), as much as 25%[1] of Investor Owned Utility (IOU) retail electric load will be effectively unbundled and served by a non-IOU source or provider sometime later this year. This share is set to grow quickly over the coming decade with some estimates that over 85% of retail load served by sources other than the IOUs by the middle of the 2020s[2]. All this is to say that California may well be on the path towards a competitive market for consumer electric services, but is moving in that direction without a coherent plan to deal with all the associated challenges that competition poses, ranging from renewable procurement rules to reliability requirements and consumer protection.

In many ways, these changes are a function of California's success implementing world leading policies like the Renewable Portfolio Standard (RPS), the California Solar Initiative (CSI), and the Energy Storage Mandate. Through these policies, California's regulatory bodies and its IOUs have integrated renewable energy into the electric grid at massive scale, both at the transmission level through independently-owned large-scale projects and the distribution level through rooftop solar. This experience has empowered customers to choose new energy options and enabled new market entrants like Community Choice Aggregators (CCAs) to serve customers with innovative solutions. Though these changes have been largely positive so far, the consequence of fast-scaling competition is that the California Public Utilities Commission (CPUC) and California Energy Commission (CEC) must now look at long held assumptions in their regulatory frameworks and examine the role of the electric utility at the center of this system, tasked with the primary responsibility for providing power and other services to all consumers within a geographic service area.

California's Changing Electricity Landscape

California has set itself on the path to reducing statewide greenhouse gas emissions by 40% below 1990 levels[3] by 2030, using tools such as a 50% renewable portfolio standard, doubling of existing energy efficiency savings for both electricity and natural gas usage[4] and putting well over 1.5 million zero emission vehicles on the road[5]. Achieving these goals will require enormous investments in the electricity sector, from widespread deployment of electric charging infrastructure to thousands of

[1] Estimate of Direct Access, CCA and NEM retail sales offsets are 23% to 24% of Utility 2015 Retail Sales. For Direct Access, in 2016 ESPs served 12.9% of IOU Load (Direct Access Implementation Activity Reports). For CCAs, estimated retail sales are 7.4 GWh per CPUC Presentation at Feb 1, 2017 CCA En Banc. For NEM, 4,555 MWs of rooftop PV, per California Solar Statistics, April 19, 2017, with expected capacity factor of 15%-16% based on NREL PV Watts calculation of fixed tilt rooftop systems in San Jose, Los Angeles and San Diego. Other sources of NEM not counted for purposes of this estimate as rooftop PV accounts for more than 90% of NEM capacity per CPUC Net Energy Metering information page.

[2] Estimate of 85% load departure based on 15 to 20 million consumers being served by CCA, Direct Access or Customer sited generation like rooftop solar

[3] SB 32 (2016) requires California Air Resources Board ensures that statewide greenhouse gas emissions are reduced 40% below the 1990 level by 2030

[4] SB 350 (2015) requires the amount of electricity generated and sold to retail customers per year from eligible renewable energy resources be increased to 50% by December 31, 2030. Requires the State Energy Resources Conservation and Development Commission (Energy Commission) to establish annual targets for statewide energy efficiency savings and demand reduction that will achieve a cumulative doubling of statewide energy efficiency savings in electricity and natural gas final end uses of retail customers by January 1, 2030.

[5] Executive Order B-16-12: Goal for CA to Deploy 1.5 million Zero-Emission Vehicles by 2025

megawatts of renewable energy, hundreds of miles of transmission lines and a much more robust distribution system.

Much of the policy framework underpinning the goals has presumed the electric utility serves as the central agent for making these investments, raising low cost capital in financial markets, and then recovering costs through sales of electricity. Yet, at the same time that California is grappling with how to plot a path forward to build this infrastructure in the most efficient, reliable and equitable way, the status quo retail electric service model is being up-ended.

Leading up to the new millennium, California de-regulated the electric industry and created a flawed retail market structure and rate design for consumer choice. Essentially, private electric utilities only provided wire and transmission services, and customers were expected over time to buy their electricity from third party companies. After a catastrophic collapse of the new markets, California made the conscious decision to return to the three IOUs as the dominant and monopoly providers of retail electric service for most California consumers, while continuing to restrict their ownership of sources of electric generation. As part of California's return to a regulated retail electric market, customers who had direct access at the time of the suspension were allowed to maintain service with their ESPs. A 2009 law (Senate Bill 695) led to a relatively small number of additional non-residential electric consumers being given the option to obtain their electric needs by ESPs. None of this had directly affected ongoing service by municipal and publicly owned utilities (POUs) who serve all customers in their service area with both electric and local transmission services. As a result, the three IOUs and 34 POUs have been the dominant parties on whom policy makers have relied as enablers of a number of key public policy initiatives, ranging from the procurement of renewable energy to providing low-income Californians with subsidized electricity.

Among the many new trends reshaping the California electricity landscape is the continued growth of net energy metering, largely driven by technology innovation and cost reduction in solar PV manufacturing and financing. Since 2007, over 4,500 MWs and 550,000 customers have 'gone solar'[6]. Programs like the Self Generation Incentive Program (SGIP) have furthered market transformation for additional technologies like fuel cells, thermal storage and lithium ion battery storage, allowing customers to produce their own power and /or to reduce their peak energy consumption. On top of these trends, energy efficiency programs and changes in California's economy have sharply reduced the growth rate in the use of electricity here.

One more recent trend is the growth of the CCA. Marin Clean Energy formed California's first CCA in 2010 and now serves 255,000 customers in Marin County, Napa County and the Cities of Richmond, Benicia, El Cerrito, San Pablo, Walnut Creek, and Lafayette.[7] Other active CCAs include Sonoma Clean Power, Lancaster Choice Energy, Clean Power San Francisco and Peninsula Clean Energy who serve a cumulative 660,000 customers[8]. Between all these communities, 915,000 customers currently take retail

[6] https://www.californiasolarstatistics.ca.gov/ as of April 19, 2017
[7] CPUC Staff Presentation at Feb 1, 2017 CCA En Banc– http://www.cpuc.ca.gov/general.aspx?id=2567
[8] CPUC Staff Presentation at Feb 1, 2017 CCA En Banc– http://www.cpuc.ca.gov/general.aspx?id=2567

service from a CCA[9]. This number is set to grow significantly in the coming years as cities and counties with populations in excess of 15,000,000 people consider launching CCAs[10].

This new set of developments fundamentally challenges the incumbent regulated utility business model, which depends on: a) borrowing large amounts of money to meet customer needs based on the expectation that IOUs are able to recover their investment through retail rates; b) maintaining highly reliable service at all times and for all customers; c) providing help to low income customers to ensure that everyone has access to basic electricity service; and d) providing quality customer service among other more traditional services. Additionally, utility financing is increasingly being used to pay for new mandates that will help reduce California's greenhouse gas emissions, not just in the electric industry, but also in natural gas, transportation and natural land sectors, as well.

Much of the revenue to repay that borrowing by IOUs for the energy infrastructure Californians need to safeguard our future comes from a rate structure that depends on the volumetric ($/kWh) sales of electricity. When customers pay for electricity, they are paying for a vast network of connected infrastructure and services, from generation (from utility scale to rooftop) to energy efficiency programs to poles, power lines, substations and the many components of the grid beyond electric power generators that delivers it to California homes, businesses and industries. As sales by the regulated IOUs shifts to customers who provide for some of their own needs but still rely on the grid for various services, or to third party providers (like CCAs) of retail service, some portion of the many costs other than electricity itself may shift to the ratepayers who remain fully bundled customers of the IOUs.

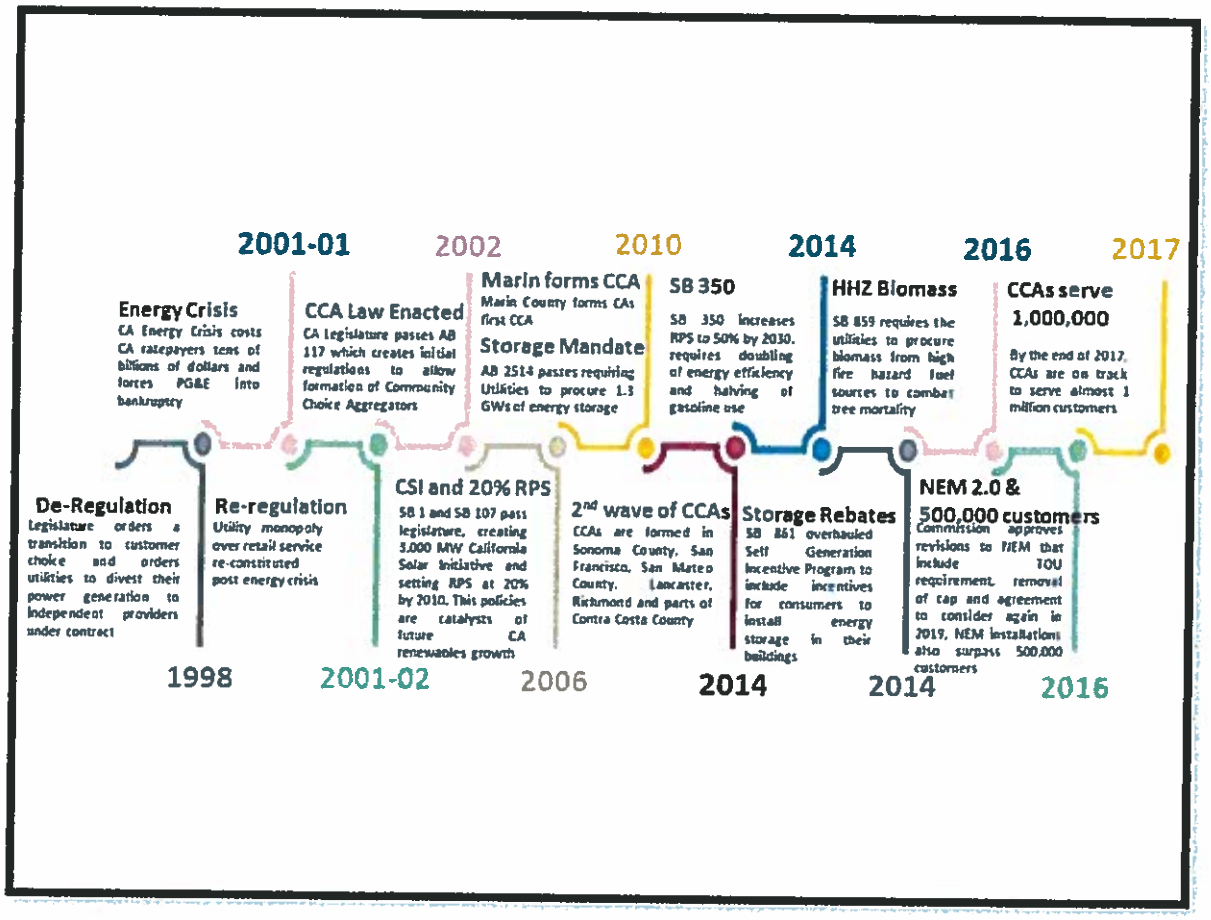
But there is more at risk here than fairly apportioning costs or the utility business model: California's utility policy makers must address how these changes will affect our continued progress on our efforts to avoid and mitigate the impacts of climate change (and to do so in ways that sustain California's strong economy). This emergent issue may be at the heart of the most important policy discussion regarding the electric industry in the last century.

This whitepaper and the upcoming 'Customer and Retail Choice En Banc' aim to frame a discussion on the trends that are driving change within California's electricity sector and overall clean-energy economy. The overarching goal being to lay out elements of a path forward to ensure that California achieves its reliability, affordability, equity and carbon reduction imperatives while recognizing important role that technology and customer preferences will play in shaping this future.

[9] CPUC Staff Presentation at Feb 1, 2017 CCA En Banc– http://www.cpuc.ca.gov/general.aspx?id=2567

[10] Los Angeles County, Alameda County, Santa Clara County, City of San Diego, and City of San Francisco are all actively in the process of forming, expanding or considering the formation of CCAs. A number of smaller communities are also pursing CCA formation, including Hermosa Beach, Monterey, Salinas and Lake County. Cumulative population of these Cities and Counties exceeds 15,000,000 people according to census.gov.

Figure 1 - How did we get here?



The following section lays out a timeline of the major events that have occurred since the mid-1990's that have played a major role in the evolution of the retail electric market and describes the major regulatory efforts that are implicated by these changes.

Part 2 . Key framework policies affected by these trends:

Resource Planning

The annual process for planning for energy needs, including natural gas, petroleum, electric generation and energy efficiency, starts with the CEC's Integrated Energy Planning Report (IEPR), which establishes a ten year needs projection. The CPUC includes this in an annual Long Term Procurement Process (LTPP), setting a long range set of resource goals – taking into account legislative and policy direction such as the Renewable Portfolio Standard or AB 2514's storage requirements – for each load setting entity under the agency's purview. The CPUC also sets annual requirements for resource adequacy. The CAISO also uses the IEPR's forecast for its transmission planning process.

SB 350 established new clean energy, clean air and greenhouse gas reduction goals for 2030 and beyond. SB 350 requires the CPUC to (1) identify a preferred portfolio of resources that meets multiple objectives including minimizing costs, maintaining reliability, and reducing greenhouse gas (GHG) emissions (Section 454.51), and (2) oversee an integrated resource planning process involving a wide range of load serving entities, including the IOUs, CCAs and ESPs. SB 350 requires these LSEs to submit proposals for incremental procurement to satisfy their renewable integration needs. The CPUC is currently undertaking a proceeding to develop the rules that will govern the IRP process, including the level of oversight that the Commission will exert over resource portfolios. The CEC and CPUC are working hand in hand in this process, holding joint hearings and sharing modeling and analysis as needed, in order to develop a consistent framework that will also apply to publicly-owned utilities.

CPUC oversight of IOU procurement, through the legacy LTPP proceedings, has historically been extremely rigorous, with CPUC approval required for both resource need and individual contracts for resources that anticipate recovery of contract costs from customers. The challenge facing the CPUC in the implementation of the IRP proceeding is that as non-IOU LSEs serve an ever-greater percentage of load, the CPUC's top-down approach to regulation will be challenged by the need to interact with many more procuring entities. Further complicating the issue is the fact that there are outstanding questions regarding what role the CPUC has in the CCA IRP process.[11]. Depending on the resolution of these questions, issues of consistency and coordination between CPUC requirements and CCA independent authority could diminish the long-term effectiveness of the IRP process and could limit the state's ability to meet its GHG emission reduction goals.

These complications are also implicit in the limited CEC oversight of the POUs, who have generally developed procurement plans for their local service areas, but which has somewhat reduced the most optimal procurement and coordination of resources and utilization across the state.

Ensuring Reliability

The CPUC's Resource Adequacy (RA) program covers all CPUC-jurisdictional LSEs including IOUs, CCAs and ESPs. All LSEs submit load forecasts and the CPUC determines each LSE's RA obligations as

[11] See "Comments on Implementing GHG Planning Targets Staff White Paper" at www.cpuc.ca.gov/General.aspx?id=6442451195.

proportionate to their peak load share. The LSEs then submit annual and monthly filings to the CPUC to demonstrate compliance with their RA obligations.

When there is a need for procurement in order to meet a reliability need or a state priority goal (e.g., in response to the outage of San Onofre Nuclear Generating Station and the procurement of preferred resources to meet the need) the CPUC has ordered the IOUs to procure capacity and allocates the associated costs to all LSEs through the "Cost Allocation Mechanism" (CAM). The capacity benefits for these priority resources are also allocated to the LSEs as a reduction in their RA requirement. If significant numbers of bundled customers move to non-Utility LSEs, entities like CCAs and ESPs would make up the majority of the RA procurement requirement. This creates a number of new risk factors. These entities, without the traditional tethers to state regulatory bodies and statewide policy goals, might be less willing to utilize the RA program to advance dual reliability and public policy goals, particularly in emergency situations. This could create inequities across the body of consumers who benefit from and need to support the state's economic and environmental goals, and could disrupt RA assumptions that must be commonly shared by all consumers of electricity from the grid. These issues of central planning and goal setting become even more critical as the grid becomes more variable due to the dynamic changes in generation from renewables, the need to focus on localized reliability instead of system reliability needs, and accommodating the increase in behind the meter distributed energy resources.

The CEC demand forecast is a foundational element of electricity system planning and procurement in California. The adopted demand forecast incorporates analysis of fundamental demand trends, impacts of distributed resources, and energy efficiency. To support distributed and renewable resource integration, the demand forecast is increasingly disaggregated, both geographically and temporally; future forecasts will be produced at an hourly level. The CEC forecast is a key input into the CPUC LTTP and resource adequacy proceedings, and the CAISO's TPP and local and flexibility capacity needs analysis.

To support CEC demand forecasting, all LSEs in California, including CCAs and ESPs, are currently subject to data and forecast reporting requirements that vary in complexity by the size and type of the LSE. As nontraditional service providers expand and evolve, the data they provide to the CEC will also need to evolve to support demand forecasting that reflects the multiple trends affecting the timing and location of energy demand.

The California Independent System Operator (ISO) ensures reliable operation of the high voltage transmission system and infrastructure planning. Every year, the ISO conducts a transmission planning process that provides a comprehensive evaluation of the grid under the ISO's control. The Transmission Planning Process (TPP) identifies upgrades needed to maintain reliability, successfully meet California's policy goals, and projects that can bring economic benefits to consumers. The ISO's TPP uses the same single forecast set as LTPP and the CEC's IEPR. Efforts are underway to continue the agency process alignment under the CPUC's IRP.

Ensuring All Customers Pay Their Fair Share

One of the most contentious issues that comes before the CPUC has to do with allocating costs between customers. For CCAs and ESPs, the CPUC relies on the Power Charge Indifference Adjustment (PCIA) to recover above market energy costs from customers who depart bundled service for ESPs or CCAs.

For CCA and ESP customers, the PCIA rate is set annually through the IOUs Energy Resource Recovery Account (ERRA) forecast proceedings. As the IOUs have procured increasing quantities of renewable energy, an increasing share of costs recovered through the PCIA are made up of the cost of the initial round of wind and solar projects procured through the RPS. These early, high-cost projects are often pointed to as one of the critical drivers globally of the major cost reductions that now benefit CCAs. Both the IOUs and the departing load parties have agreed that the current PCIA methodology is flawed. However stakeholders disagree on what changes are needed to ensure customer indifference and fairness.

For Self-Generation customers, IOUs rely on rates, including non-bypassable charges (NBCs), to recover broad infrastructure costs, as well as specific types of costs like low-income programs, and funding future de-commissioning of nuclear power stations. Each IOU calculates its own NBCs and applies them to all customer bills. When a customer self-generates, the IOU applies NBCs onto both electricity the customer buys from the grid and the electricity they produce and consume on-site. NEM customers have historically been exempt from paying NBCs on their solar generation, but with approval of NEM 2.0, a subset of NBCs are now going to be applied to NEM generation. Figure 2 below illustrates three examples of how NBCs are applied to PG&Es residential customers bills.

Figure 2 – PG&E Residential NBCs

	Residential NBCs	NEM 2.0 NBCs	NEM 1.0 NBCs
PPP	1.405	1.405	0
Nuclear Decommissioning	0.022	0.022	0
Competition Transition Charge	0.338	0.338	0
DWR Bond	0.539	0.539	0
Transmission	1.649	0	0
New System Generation Charge	0.255	0	0
Storage Mandate	0.045	0.045	0
TOTAL	**$0.04253/kWh**	**$0.02349/kWh**	**$0.00/kWh**

Setting the NBCs for NEM customers was a central point of conflict throughout the NEM 2.0 proceeding and remains contentious, with both the IOUs and consumer advocates arguing that NEM customers still do not pay their fair share transmission infrastructure they rely on. Whereas, solar advocates argue that the value of NEM systems to the grid exceeds the cost of NBCs.

For the broader set of infrastructure investments, IOUs recover their transmission and distribution (T&D) related costs from ratepayers predominantly through volumetric ($/kWh) rates. For larger customers, a portion of these infrastructure costs are recovered through demand based rates ($/kW). Under NEM, customers (particularly residential customers) are able to largely avoid paying any volumetric contribution to infrastructure costs – with the passage of AB 327 (2014), the CPUC can consider allowing a utility to collect a$10/month fixed charge for non-CARE customers. In the larger customer segments, energy storage systems – often subsidized by the Self Generation Incentive Program - are starting to be installed that allow customers to minimize paying demand based charges. The issue that both IOUs and consumer advocates raise is that NEM – and potentially energy storage – customers are not paying their fair share of T&D infrastructure costs. In contrast, solar advocates argue that the grid benefits of rooftop solar exceed the solar customer's share of infrastructure costs, and as a result all customers are better off. In an effort to find middle ground between these two positions, the CPUC mandated that all NEM 2.0 systems take service under Time of Use (TOU) rates that more closely align what a customer pays for T&D infrastructure with the costs IOUs actually to incur to serve them.

Allocating both generation and infrastructure costs between bundled customers and un-bundled customers is going to become more complicated as both business models and technology provide different forms of unbundling that each require different cost allocation solutions. The CPUCs task is to seek to continue to adjust rates and tariffs like the PCIA and NEM in ways to both allow customers to continue to make the choices they want while ensuring that all other customers are not left with an unfair allocation of costs.

Ensuring Universal Access

Currently, POUs and IOUs are the provider of last resort in their respective service territories. With changes coming to California's retail energy market, the CPUC must consider the implications of the changes for customers and evaluate whether a new 'provider of last resort' (POLR) requirement should be put in place. In retail choice states, POLR service (also known as Default, Basic Generation, or Standard Offer Service) is typically made available to customers who do not exercise their right to shop for energy. In all states besides Texas, the retail distribution utility holds the POLR responsibility. Even so, an overarching principle in virtually every jurisdiction with retail choice is that POLR's structure should not undermine the competitive retail energy market and should afford to customers the opportunity to provide quality, reliable, and transparent electric commodity service while also having access to non-discriminatory electric delivery service through the local utility.

One question which may need to be addressed is: which service – competitive retail or POLR service – becomes the default. This arises in consideration of whether non-Utility LSE service is an "opt in" or an "opt out" choice. Only Texas has adopted a retail-choice model in which all customers must still affirmatively decide which retail commodity supply is the one to provide them with electricity service.

Another issue arises from IOUs' historical obligation as the sole default providers of bundled retail service, for which they were required to make long-term investments in generation resources and long-term financial commitments through purchased power contracts. This has created (and if unaddressed

may continue to create further) a cost legacy that must be addressed during a transition to retail choice. Most of the states that adopted retail choice have addressed legacy costs through the imposition of non-bypassable exit fees and/or continuing wires charges. The sizes of the fee have been controversial. Fees set too high undermine retail choice, while fees set too low enable departing customers to shift costs to those who remain on bundled service.

A third issue pertains to rules governing when and under what circumstances CCA or ESP customers are allowed to return to a utility's bundled retail service (assuming the utility continues to provide such service). If unchecked, one possible outcome may be customers taking CCA or ESP service when it is relatively less costly and to return to the utility when it is not. There should be clear rules about the conditions applicable to customer returns to utility service: when are customers allowed to return, how long they must they remain on utility service, what price must they pay for energy, and so on. As CCAs continue to grow quickly, the CPUC must consider how its current rules fit within a much bigger competitive landscape.

Rate Design

With the passage of AB 327 (2014) and CPUC Decision (D) 15-07-001, time-of-use rate structures are scheduled to become the default for all customers in 2019. The major goals of this requirement are to better align customer bills with the actual cost to serve and to provide customers with greater incentives to use electricity during off-peak periods when the grid is less strained and with lower costs to serve. AB 327 allowed the CPUC to require each of the IOUs to develop default time-of-use rates for residential customers, but did not authorize the CPUC to set such a requirement CCAs or ESPs. As a result, it is conceivable that the utility rates for bundled service will reflect time-of-use rates for all components of electric service, and that in cases where the utility only provides T&D service, this T&D component will be based on a time-of-use structure, while the generation component of the rate served by the CCA or ESP may not.

Non-participation in default time-of-use carries two major risks. The first one has to do with consumer protection. Currently, the vast majority of residential customers in each of the IOU service territories have the same basic rate design, incorporating both the design of delivery rates and the supply of electric commodity service. By contrast, customers taking service from CCAs and ESPs have rates that reflect the retail distribution rate design approved by the CPUC as well as the generation-service provider's non-CPUC regulated generation rates. This means that residential consumers in Pacific Gas and Electric's (PG&E) territory could go from effectively having the same rate everywhere – from Chico to San Francisco to Fresno - to having dozens of different rates based solely on where a customer lives. This is not *per se* a bad thing; the risk comes when the rates among CCAs or ESPs are more or less expensive based on factors like the consumer's income or where the consumer lives. Where variation arises due to customers' options for utility service, this seems like a benefit of competition; but where variation in pricing and rates for commodity service arises from customer profiling by location, it gives rise to concerns about discrimination and other problems relating to assurance of access to basic electricity services.

The second risk is that some CCAs will choose not to default their residential customers to time-of-use or that consumer confusion around applicability of time-of-use and hard-to-understand differences in time-of-use rates across communities that are served by both an IOU and a CCA will undermine the effectiveness of time-of-use pricing. Though the actual impact of time-of-use is as yet unmeasured, the hope is that the time-of-use transition will play an important role in supporting important grid integration and renewables growth policies.

Consumer Protection

In 1997, California Senate Bill 477 adopted consumer protections that, among other things, required that all ESPs offering electrical services to residential or small commercial customers provide proof of financial viability and of technical and operational ability as a precondition to registration. SB 477 also required the CPUC to develop uniform standards for assessing ESPs financial viability and technical and operational ability. In Decision (D.) 98-03-072, D.99-05-034, and D.03-12-015, the CPUC implemented these standards through its framework for ESP registration, with particular attention to concerns about residential and small commercial customers with peak demands under 20 kW. Subsequent CPUC decisions modified various provisions governing DA enrollment, customer switching, involuntary returns to bundled service, and ESP financial security requirements.

Similar safeguards have never been fully developed to govern new forms of customer choice, whether it be CCAs, rooftop solar installers or community solar marketers. That said, the market for these products is different than the services marketed by ESPs and so differing regulations may be appropriate. The CPUC currently is examining consumer protection issues as part of its on-going oversight of NEM. As retail electric choices expand, the CPUC will need to adapt its capabilities to protect consumers from predatory marketing, misinformation and fraudulent behavior. In California, competition in telecom and natural gas have demonstrated that the CPUC must have robust consumer protection programs, otherwise residential customers face risks.

PART 3 -- Expectations for the En Banc:

Given the strong evidence of profound changes and disruptions within the electric industry and its ratemaking/regulatory foundations, we seek comment and thoughts from a wide range of key constituencies on the following major questions:

1. As an increasing number of customers can obtain electric generation service from a variety of sources (including IOUs, ESPs, CCAs, and on-site technologies), how does California ensure that all customers get the benefit of having multiple institutions play an important role in helping finance the infrastructure needed to meet the State of California's GHG strategies, including electrification of transportation and fuel switching in the natural gas industry, while also ensuring that all customers have access to at least basic electric service?
2. What are the roles of the incumbent electric distribution utilities in the future, and what are the means for them to finance their core functions (e.g., distribution service, transmission service, POLR retail service) where some of these services are provided to all electricity customers and some are provided to only some customers (and in some cases may be provided because no other supplier is willing and/or able to provide them)?
3. Who will be the provider of last resort for customers who don't seek to make key decisions for themselves, but prefer a simple and reliable bundled service? What agencies are best designed to provide customer protection in this new electric industry structure? What policies and/or authorities are necessary for utility regulators (or others) to assure that all customers - regardless of their supplier of generation and/or delivery service) have access to reliable and efficient electricity supply that also supports California's economic and environmental goals?
4. How does the State of California ensure that the many different players work together to ensure that the State's electric supply is not only clean but is also reliable, efficient and resilient? For example in light of the changes underway in the State's electric system, how should the State provide such products and services as ramping power, voltage support, frequency control and managing over-generation? How should the State's electric system become more resilient (e.g., capable of fending off attacks from physical and cyber threats, as well as speedy recovery from disasters)? How will California's consumers pay for the many mandated public goods programs, ranging from energy research to providing energy efficiency upgrades and rate discounts for low income customers, which the California legislature has determined are core elements of the State's electric system?
5. How will the State of California provide protection for consumers against predatory actions by providers of electric service or energy technologies in these new policy settings?

The CPUC and CEC, as sponsors of the En Banc, will prepare and publish a report from the hearing, summarizing the range of comments on these key questions, and summarizing the insights gleaned from comments.

The CPUC intends to open a Rulemaking to examine, and coordinate among other open proceedings, an examination of the future role(s), structure(s), fiscal and other functions of the three large California electric IOUs. This, in turn, requires a discussion of the scope and scale of the current framework for

regulation of competition – including customer centered technologies - and the structure of the retail electric market, and the transition from IOUs' responsibilities today and their responsibilities in the future. As part of this process, the CPUC will likely examine a variety of different retail market and customer choice constructs to assess what best practices and lessons learned can be applied in California given our unique set of public policy goals.

As part of this process, the CPUC will work closely with the CEC to coordinate efforts with the Integrated Energy Planning Report (IEPR) and the Energy Program Investment Charge (EPIC) program. Because of the interplay between the CPUC and the CEC on funding research (drawn from the IOUs based on their share of electric sales), and because of the CEC's role in setting overall electric need and overall procurement goals to meet that need, both agencies are both concerned about finding good and durable answers to these questions.

This effort necessarily implicates the ISO, as changes to retail market structures and the evolution of regulation will affect the transmission system and the wholesale power market. Furthermore, the same providers and technologies that are disrupting the retail electric market and the distribution system are also finding ways to participate within the bulk power system -- whether it be toward transacting in the wholesale market or offering alternative solutions to traditional transmission projects. To this end, this Rulemaking will seek to identify opportunities to harmonize market rules between retail and wholesale market and planning efforts between distribution and transmission infrastructure.

Finally (and as a fundamental framing consideration), it is critical to recognize that whatever the specific outcomes of this proceeding, it is very difficult to conceive of a scenario where the CPUC and CEC will not find that significant changes to the regulatory model and the utility structure are required. Drivers of change to the California electric system are accelerating whether we want them to or not. Technology will continue to advance and as a result consumers will have more options to meet their energy needs. Customers will seek to use these new developments to further their own needs and interests. California leaders and citizens intend to continue moving forward to decarbonize our economy, and the will to forge ahead grows stronger every day.

Item 8.2 Cover sheet – ARD Memorial Donation Policy and Possible Amendments

Auburn Recreation District Policy Committee meeting November, 2017; December, 2017; January, 2018; Board of Director's meeting January, 2018

The Issue

Shall the Auburn Area Recreation and Park District (ARD) make changes to its policy regarding memorial donations?

Background

ARD's policy on memorial donations is as follows:

D. Criteria for creating memorials in an individual's name:

1. Individual must have made a significant contribution to the facility by:

   a. Donation of land or large financial contribution to the facility.

   b. Contributed significantly and improved the quality of life in the Auburn Area Recreation and Park District (Area 5). This could relate to involvement with parks and recreation or other public agency.

1. The memorial should be a non-living, low maintenance improvement, which should serve a purpose to the District, for example, a bench with a plaque. All costs of the improvement shall be the responsibility of the donor. The donor may submit information and recommendation to the District Administrator regarding relevant history of the person to be memorialized, type of improvement desired and verbiage requested. Final decisions regarding the improvement, including, but not limited to, materials, equipment, location and labor will be made by the District.

Most people contact ARD about the installation of a memorial bench for a recently deceased family member. It has been suggested that ARD's criteria is too onerous. It has been suggested that ARD be more inclusive with who can qualify for a memorial bench.

This policy was previously reviewed in March, 2016. The Policy Committee recommendation was to not change the policy.

In November, 2017, the Policy Committee recommended that staff review the policies of other agencies. A list of the email responses and any associated policies is attached. Of the 6 responding agencies, 2 indicated that they had criteria for who could have a bench or other memorial named after an individual or group.

Recommendation for the Board of Directors

The Policy Committee and staff recommend approval of the changes to the Memorial Donation policy as written.

Fiscal Impact
N/A

Attachments

Memorial Donations – proposed policy amendment January, 2018

Responses from other agencies re: memorial donations

Memorial Donations – proposed policy amendment January, 2018

D. Criteria for creating non-living memorials in an individual's name:

~~1. Individual must have made a significant contribution to the facility by:~~

~~a. Donation of land or large financial contribution to the facility.~~

~~b. Contributed significantly and improved the quality of life in the Auburn Area Recreation and Park District (Area 5). This could relate to involvement with parks and recreation or other public agency.~~

1. The memorial should be a non-living, low maintenance improvement, which should serve a purpose to the District, for example, a bench with a plaque. All costs of the improvement shall be the responsibility of the donor. The donor may submit information and recommendation to the District Administrator regarding relevant history of the person to be memorialized, type of improvement desired and verbiage requested. Final decisions regarding the improvement, including, but not limited to, materials, equipment, location and labor will be made by the District.

E. Criteria for Memorial Tree plantings

1. Memorial Trees may be planted in District Parks as approved by the District. A plaque no larger than 5" x 7" can be requested to be placed by the base of a memorial tree on a case by case basis. All cost for the tree planting, including a plaque, shall be the responsibility of the donor. Final decisions regarding the tree species, location and labor will be made by the District.

Memorial Benches – Question asked to CPRS List-Serve:

Hello all –

What is your agency's policy on erecting/establishing memorials in your parks? To clarify: what is your policy if an individual contacts you and wishes to put a memorial bench in one of your parks for their deceased loved one?

Thank you in advance for any information.

Kahl Muscott, District Administrator

Hi Kahl-

We do not have any specific criteria for whom gets a bench. Any person can donate a bench and personalize what wording they would like and we approve of course. It is considered a "community gift." It is not considered a marker. It enhances the park by providing a bench for the community as little or no cost to the city. Our process involves the customer selecting the color or the bench, verbiage approval, we ordered, install, and contacting the person to know that it has been completed.

Please let me know if you would like a copy of the policy, as I would need to do a little more research to get it.

Thanks.

Eric Dexter

From: Kahl Muscott [mailto:kmuscott@auburnrec.com]

Hi Eric –
Thank you for this information. In the brochure it says "A policy, adopted by the City Council on November 17, 1999, outlines the process for this type of donation." Do you have a copy of that policy?

Specifically I am looking for any criteria that Roseville may have on who can get a memorial bench. Our current criteria requires that the person must have made a significant contribution to the community (financial or bettered the quality of life). Does Roseville have any such criteria?
Kahl

From: Dexter, Eric [mailto:EDexter@roseville.ca.us]

Hello Mr. Muscott-

My Director Dion Louthan asked me to follow up with you on your question about our memorial policy/benches. Attached is a brochure that we give to the public for memorials in parks. We only allow names and verbiage on concrete benches ($1,200) unless approved by City Council. Attached are some samples of the approved benches. We only allow one style with two different colors. We order them from Outdoor Creations for about $1,000 for the bench. Our team installs them on a concrete pad with epoxy.

Please let me know if you would like additional details or feel free to give me a call with questions, Have a great day!

Eric Dexter
Parks Superintendent, City of Roseville

Our policy is basically open to anyone but the District must approve the application/request for the specific amenity and its placement. I've attached our Naming Policy. Once it is Board approved, I will email you a copy of our brochure.

Sincerely,
Stephanie L. Young

From: Kahl Muscott [mailto:kmuscott@auburnrec.com]
Hi Stephanie –

Anything you have would be appreciated.

My main question is in regards to criteria. Does your agency have any? Can anyone get a memorial bench put in the park? Our current policy states that the person had to have made a significant contribution to the District, either philanthropically or financially.
Kahl

From: Stephanie Young [mailto:syoung@carmichaelpark.com]
Kahl,
Carmichael has a "Naming Policy" which is very general. It addresses the purpose, definitions, policy, naming new and existing facilities, etc. We are in the midst of creating a commemorative program brochure which will include the specifics of what is available for purchase, prices for each amenity, and placement determination. I've been researching and collecting brochures from other Districts and Cities so we can finalize the language we want to use for our brochure. If you'd like, I can email you a

copy of the "Naming Policy" but my guess is that you'd be more interested in the final product – the brochure. Just let me know. Thank you and good luck!

Sincerely,
Stephanie L. Young
Administrative Analyst

From: TJ Newman, Mission Oaks RPD

Here's what we have. It's woefully inadequate as it is, with some of our parks looking as much like cemeteries as parks. A couple years ago, the Facilities Committee requested that a moratorium be considered until we can get a new one in place. Lately, I have been encouraging people to plant trees as an honorarium, and to place appropriate quotes or trinkets in the planting holes. However, I need to get going on a new draft policy, as there are a couple new requests that are likely to come in soon.

5901 Memorials and Honorariums

Due to safety and maintenance considerations, the District will not accept donations of raised monuments to be located in District parks.

Donors will be encouraged to consider providing items such as, benches, fountains, picnic tables, etc., which may be acknowledged with a plaque. The plaque, to be provided by the donor, shall not exceed the dimensions of 8" x 10".

Whenever appropriate, the plaque shall be embedded at ground level in concrete to reduce maintenance and promote safety.

To have a park dedicated in your name, there must be a "significant" contribution to the city/community. Yes, anyone can have a bench in a park even without a contribution.

When you think about it, the donors are providing a nice contribution in the way of a nice new (high quality!) bench for the community to sit on...

Robert

From: Kahl Muscott [mailto:kmuscott@auburnrec.com]

Thank you Robert. Does the City of Folsom have any sort of criteria that must be met for a bench to be donated (i.e. must have made a significant contribution to life in the city either through philanthropic activities or large cash donation)? Another way of putting it: can **anyone** get a bench erected in a park?

Kahl

From: Robert Goss [mailto:rgoss@folsom.ca.us]

Kahl,
We allow benches, trees, etc. Fundamentally, the proposing entity pays for ALL direct costs. It wasn't always that way, but we've moved it that direction.

Benches: One manufacturer that incorporates the memorial plate into the bench design. ADA compliant. Most locations require additional concrete. Donor pays for all materials. We will install as time allows.

Trees: We approve species and location. Donor pays for all materials. We will allow planting if they want to. Little headstone markers ARE NOT allowed. Our view is that we operate parks not cemeteries.

Other: Think Cummings Family Park. Mrs. Cummings funded a $60,000 public art installation at the entrance to the park. The proposal went through our arts commission, and our parks commission for approval. We did a lot of site coordination with her artists and moved some irrigation around for her, along with the replanting. She paid for all materials and the art.

PARKS & COMMUNITY SERVICES
ADMINISTRATIVE POLICY & PROCEDURE

PARK AMENITY AND TREE DONATION PROGRAM

POLICY

The City of Davis Park Amenity and Tree Donation program provides the opportunity for members of the community to make donations within City parks, greenbelts and other City owned property which serves to enhance the beauty and utility of the City's overall park system. In order to allow for a coordinated and consistent program for soliciting and recognizing contributions, the City has established the following guidelines and procedures. These guidelines and procedures have been developed based on research of best practices of similar agencies, the needs and resource capabilities of the Parks & Open Space division, and the desire of residents to contribute monetary donations in remembrance of loved ones through specific lasting memorials.

SCOPE

This policy shall apply to all groups, individuals, non-profit organizations, businesses, citizens, and other persons who may be interested in making a donation to the Parks & Open Space division. The City of Davis Park Amenity and Tree Donation program allows for general donations of park amenities, project-specific donations, and several types of memorial opportunities. Donations are accepted in the following categories:

- Art
- Benches, Pavers & General Amenities
- Tree plantings

Amenity donations become the property of the City of Davis to be used, maintained, and disposed of in accordance with City policy.

Interested individuals or organizations are encouraged to contact Parks & Open Space staff to discuss their specific ideas for donations and desired locations. Types of donations and final determinations of on-site locations are at the discretion of the City based upon the needs of the division and any planning or design processes already underway.

Contributions to the City of Davis may be tax-deductible to the extent permitted by law. The City of Davis encourages donors to consult with their legal or tax advisor before making any donation.

PROCEDURES

1. **General Donation Guidelines**
   a. Costs of any donation will include actual costs associated with the purchase and installation of the donation item, any recognition plaque, and an administrative fee equal to 10% of overall project cost. An ongoing annual maintenance cost may also be included depending on the type of donation.

b. Materials allowed include metal, concrete or recycled plastic; no perishable materials will be accepted. The City encourages the use of the same vendors and like products that the division ordinarily uses for similar purchases. All donations must be heavy duty for public use and must be compatible with other park amenities.

c. Style and color of new amenities must be compatible with other amenities in the park or greenbelt area.

d. Location suggestions from the donor(s) will be considered, but the final decision will be made by Parks & Open Space staff based upon the following considerations:

1. Desirable locations include those near playgrounds or other high use areas, desirable views (nature, sports, wildlife), shade, pick up/drop off areas.
2. Proximity to other benches (50-100 yards apart) and to private residences (within same range as existing benches in area).
3. Safety concerns: well lit, visibility adequate and level (5% slope maximum).
4. Maintenance issues (mowers require 11 foot clearance, irrigation spray patterns, maintenance access, messy trees).
5. ADA access, benches installed adjacent to path with four foot wide wheelchair seating space on one side.
6. Installation may be on slab, on footers or by embedment as determined by Parks & Open Space staff, and shall be no less than 24" off pathways.

e. Donor recognition - All donations will be acknowledged with a letter from Parks & Open Space staff at a minimum, unless otherwise specified under Section 4 – Tree Plantings. Major donations may be recognized with certificates of appreciation, individual plaques presented to the donor and depending on the value or significance of the donated item, formal recognition by the City Council and/or the appropriate City Commission.

f. Memorial Plaques will be allowed for two categories of donations (benches and trees), or other items if specifically approved by the Recreation and Park Commission or City Council.

i. Memorial bench plaques may be included in a manner consistent with similar benches, with size, design, placement and language to be approved by Parks & Open Space staff.
ii. Memorial tree plaques will only be allowed as described in Section 4 and will be consistent in language, design and materials to be approved by Parks and Open Space staff.
iii. Unauthorized memorials are subject to immediate removal without notice.

g. Non-memorial plaques may be allowed on other various donated amenities.
i. Non-memorial plaques which are allowed by Parks & Open Space staff shall be included in a manner consistent with similar amenities, with size, design, placement and language to be approved by staff.
ii. When appropriate, plaques will be displayed a designated central display area.

h. Public Noticing - when necessary, as recommended in the Noticing Guidelines and Standards for Impacts to Parks and Greenbelts, the affected neighborhood or surrounding areas may be notified of any modification and/or additional amenities to be considered.

i. Replacement of park amenities may be necessary either before or upon the item reaching its anticipated life expectancy. If the donated amenity or its plaque needs to be replaced, the City will attempt to contact the donor to see if they wish to pay the replacement cost. If the City does not receive a response within 90 days, the space may be made available for another donor if the original donor is unavailable, or if they do not wish to pay for such replacement.

In instances where donated trees do not survive due to disease, vandalism, etc., tree replacements will be provided for a single occurrence replacement. Replacement trees may not necessarily be of the same variety or size as the original donation pending availability.

j. Future removal or relocation of a donated park amenity may be necessary due to changing conditions. The City shall determine when modifications are required at any park or facility with no guarantee of donated amenities being retained. If a donated item is eliminated or relocated, attempts will be made to notify the donor in advance of its removal.

2. **Art**
   a. Proposed donations of art, as determined by staff, shall be referred to both the Civic Arts Commission and the Recreation and Park Commission for review and then to the City Council for authorization to accept or decline.

   b. Placement of other new amenities which may impact public art will also be referred to the Civic Arts Commission as needed.

3. **Benches, Pavers and General Amenities**
   a. General monetary gifts to the Parks & Open Space division will be used to best meet the current needs of the division as determined by the Director or his/her designee.

   b. General amenity donations will be accepted in accordance with the strategic plan of each park and greenbelt area. Based upon existing inventory of park amenities and their estimated life cycle, any unmet needs for a specific park or greenbelt location shall be considered priority.

      i. Types of amenities to be accepted include, but are not limited to, benches, picnic tables, barbeques, gardens, park name signs, play equipment, plazas, pavers and drinking fountains.

      ii. Inventories
         1. An inventory of worn amenities will be maintained and donors will be encouraged to provide replacement amenities at these locations.
         2. An inventory of desired new amenities will be developed and made available to prospective donors.
         3. An inventory of project specific amenities will be maintained and provided to interested donors.
            a. Community Gardens
            b. Fountains

c. Play equipment
d. Picnic areas
e. Other major desired amenities and upgrades

4. Tree Plantings

The City of Davis has a long standing, established partnership with the non-profit organization, TREE DAVIS, to assist with the overall planting and maintenance of the City's urban forest. To this end, TREE DAVIS and the City offers four distinct opportunities for citizens to honor a special person with a gift that will endure, while also ensuring the Davis community will remain green, clean and cool for generations to come.

a. Tree Preservation Fund – general monetary donations to this City maintained fund are directed to the City's Urban Forest Management program to support future plantings throughout the City on an as-needed basis.

b. Tree Tributes - Tree Tributes are planted in Davis parks, schools, greenbelts and neighborhood areas by Tree Davis volunteers. Due to the nature of these plantings, the trees are not identified with the recipient's name or any commemorative message. When making a Tree Tribute donation, the donor will receive personalized recognition for their donation as specified by TREE DAVIS. Tree Tribute donations are processed directly through TREE DAVIS.

c. Honorary Trees - Honorary Trees are planted in one of the City's designated Honorary Tree Groves, located at 1515 Shasta Drive or 3141 Fifth Street in Mace Ranch Park. In recognition of an Honorary Tree donation, an engraved plaque is installed on a central sculpture in the grove, and donors may request a private planting and plaque installation ceremony. When making an Honorary Tree donation, the donor will receive personalized recognition for their donation as specified by TREE DAVIS. Honorary Tree donations are processed directly through TREE DAVIS.

d. Memorial Trees – Memorial Trees may be planted in parks or greenbelt areas as approved by the Parks and Urban Forest Management staff. Memorial Trees will be listed on the City's web site where a listing of Memorial Tree donations will be provided. A plaque no larger than 5" x 7" can be requested to be placed by the base of a memorial tree on a case by case basis if there are no other memorial trees with plaques within 50-100 yards, and if the requesting party pays for the cost of the plaque and any additional costs for its maintenance and replacement in the future. A plaque will be provided to the family in recognition of the tree donation in lieu of having the plaque located at the actual planting site. Planting will be processed by the City of Davis in conjunction with TREE DAVIS.

e. Interested individuals or organizations are encouraged to contact TREE DAVIS for more information on pricing and tree planting timelines. TREE DAVIS may be contacted via mail at P.O. Box 72053, Davis, CA 95617, via telephone at (530) 758-7337, or by visiting their web site at www.treedavis.org

5. **Other Amenity Donations**
Proposed amenity donations which are outside the scope of the Park Amenity and Tree Donation program will be directed to the appropriate City Commissions for review and to the City Council for final determination based upon the following:

a. A written proposal shall be submitted by the prospective donor including a cost benefit analysis. Financial analysis shall include long term maintenance and an examination of the need of the proposed donation.
b. If recommended by a City Commission and approved by City Council, the donor shall enter into a written agreement with the City as to the construction and maintenance of the amenity.
c. Costs of any donation will include all costs associated with the purchase, installation, a ten year maintenance plan, and an administrative fee equal to 10% of the overall project cost.
d. In advance of significant design or planning for the proposed contribution, the donor shall consult with park maintenance staff on the most appropriate materials to use for the custom amenity and ensure the desired location does not interfere with maintenance practices or park and open space infrastructure.
e. Once the amenity is installed, the donated amenity becomes City property and will be maintained in the same manner as all City amenities.
f. Time frames for installation of a donated amenity will be incorporated with other park maintenance workload tasks and prioritized in accordance with citywide maintenance responsibilities.
g. If damaged beyond reasonable repair of a City amenity, the amenity may be removed and not replaced by the City.
h. No personal or commemorative messages will be permitted on the donated amenity unless specifically approved by the City Council as part of the project proposal.

RESPONSIBILITY
The Parks & Open Space Manager and the Urban Forest Manager are jointly responsible for the maintenance of this policy and procedure.

RELATED DOCUMENTS: (located at P:\Parks\Approved Policies)
1. Noticing Guidelines and Standards for Impacts to Parks and Greenbelts
2. Naming City Facilities Policy

Carmichael Recreation & Park District
NAMING POLICY

PURPOSE:

To provide guidelines and procedures for naming of Carmichael Recreation and Park District (CRPD) facilities, programs, and site furnishings/amenities.

DEFINITIONS:

FACILITIES are owned and managed by CRPD, used for public recreation purposes and include developed and undeveloped park areas, designated open space areas and specific amenities within these areas.

SITE FURNISHINGS/AMENITIES are amenities that could be located within a park or part of a facility. These include, but are not limited to athletic fields, gymnasiums, meeting rooms, picnic shelters, tennis and basketball courts, playground equipment, benches, picnic tables, and water fountains.

POLICY:

The following criteria shall be used in the naming of CRPD facilities and programs.

(1) The CRPD Advisory Board will evaluate the merit of each suggested facility, program, or site furnishing/amenity and name according to criteria outline in this policy. CRPD District Administrator or designated staff shall make recommendations to the CRPD Advisory Board.

General:

(1) The policy of the CRPD is to name facilities, programs, and/or site furnishings/amenities in a manner that will provide an easy and recognizable reference to CRPD and be compatible to the area in which they are located. The language, product material, and location must be approved by the District Administrator or designated staff for final approval by the Advisory Board of Directors. CRPD will not be responsible for any replacement of such items due to vandalism.

(2) A facility or specific facility may be named for the street it is adjacent to.

(3) A facility or specific amenity may be named based on the identification of the park with a specific place, neighborhood, or characteristic of the community or CRPD.

(4) A facility or specific amenity may be named in a manner consistent with the historical name of the area.

(5) A program may be named in a manner consistent with the purpose of the program and may be named in recognition of groups and/or individual who have made a significant contribution to the programs and/or district.

(6) A facility or specific amenity may be named in a manner that recognizes the natural resources of the site.

(7) Site furnishings/amenities may be named in recognition of organizations/groups, family members, individuals or as a current donor in support of CRPD.

(8) Site furnishings/amenities options will be provided by the District staff along with pricing to purchase and install item.

(9) Items to be purchased will be ordered and installed by the District to ensure continuity and standard of quality of equipment being placed in the park system.

Individual/Organization Naming (The following criteria shall be used in evaluating the merit of each naming request.

(1) The individual is living or deceased and must not have been convicted of a felony. Compliance will be verified prior to recommendation.

(2) The individual/organization has made exceptional contributions to CRPD, including one or more of the following: financial gifts, public service or long term sponsorship agreements. The significance of the contribution from the individual/organization needs to be evaluated in terms of the service impact to the CRPD.

(3) The individual/organization that has made contributions of community wide significance may be considered for the naming of facilities, programs or specific amenities that serve the community.

(4) The person being memorialized died in the line of duty serving CRPD or the United States of America or died while performing a heroic act (e.g. saving the life of another person).

Satisfying one or more of the eligibility criteria listed above does not assure a recommendation from CRPD.

Naming Procedure:

New Parks or Facilities

(1) The naming of facilities and parks will begin prior to the first phase of development.

(2) Groups or individuals may submit nominations for naming a new facility or park in writing on a form provided by CRPD, or in a letter that contains all the pertinent information. All recommendations will be given the same consideration without regard to the nomination source.

(3) Staff will solicit and review nominations and forward a recommendation to the CRPD Advisory Board of Directors for approval.

Existing Facilities

(1) The intent of naming is for permanent recognition. Therefore any request of CRPD to rename an existing facility or site furnishings/amenities should not diminish the look or function of the facility or park in which it's contained.

(2) Any site furniture/amenity to be named will be authorized by District staff as to type and model so as to fit the location, use demands and longevity guidelines of the District.

Nomination Acceptance:

Nomination may be on the official nomination form or in a letter that contains all the pertinent information and received by CRPD by the designated date. Assigned staff will review nominations and forward to the CRPD Advisory Board of Directors for approval.

Community Gift

Donations may be anonymous or in the name of a special person.

Why give a community gift?

This program gives Roseville residents a unique opportunity to show their pride and invest in the City as well as recognize or memorialize special individuals.

For more information, contact the City of Roseville Parks, Recreation & Libraries Department 916-774-5748

City of Roseville

Parks, Recreation & Libraries
2005 Hilltop Circle
Roseville, CA 95747

916-774-5748

parks@roseville.ca.us
roseville.ca.us/parks

Community Gifts

City of Roseville

CITY OF ROSEVILLE CALIFORNIA
Parks, Recreation & Libraries

GIFT LIST

The variety and quality of trees and park furniture contribute to the beauty and value of our parks. If you would like to donate, select from the items listed.

Item	Cost
Picnic Table	$1,000
Park Bench	$ 500
Memorial Bench	$1,200
Drinking Fountain	$3,500
15 Gal. Tree	$ 100
24" Box Tree	$ 300
Playground Equip.	$10,000 & up
Interpretive Sign	$ 300
Interpretive Kiosk	$2,500

Choice of plant species, site furniture, play equipment and other physical donations shall be by the City of Roseville to best reflect the actual site constraints and to comply with City standards.

ACKNOWLEDGMENTS

In return for your donations, you will receive a certificate of appreciation and recognition from the City of Roseville Parks Commission, unless you choose to remain anonymous. Markers at the park are prohibited, unless excepted by the City Council

OTHER DONATIONS

Donations, memorials, markers, or other types of donations are subject to the review by a committee comprised of City Council members and Parks and Recreation Commissioners. A policy, adopted by the City Council on November 17, 1999, outlines the process for this type of donation.

TAX DEDUCTIBILITY

Contributions to the City for public use are tax deductible for income tax purposes. Donors shall retain their canceled check and the certificate of appreciation received from the Department of Parks, Recreation & Libraries as documentation for tax purposes.

Consult your tax advisor to verify if a tax deduction applies to you.

TERMS & CONDITIONS

I understand that items selected within a specific park must match the existing site furniture and/or plant or tree type. Due to policy requirements, markers or plaques are prohibited. My signature below indicates my understanding of the terms and conditions of the gift.

Signature Date

ORDER FORM

Name _____

Organization_____

Address_____

City_____STt_____Zip_____

Phone (___)_____

Item Description Cost

_____

_____

_____

Please accept this check for $_____

As a contribution to the City of Roseville, Parks, Recreation & Libraries Department Community Gifts Program.

This gift is in memory of:

_____

Send check and order form to:

Community Gifts Program
City of Roseville
Parks, Recreation & Libraries
2005 Hilltop Circle
Roseville, CA 95747

Please make checks payable to the City of Roseville

CITY OF WEST SACRAMENTO

ADMINISTRATIVE POLICY NUMBER: IX-A-7

DATE: June 14, 2017

SUBJECT: PUBLIC MEMORIAL DEDICATION POLICY AUTHORITY: City Council

PURPOSE

The purpose of this policy is to provide for a consistent method for the public to propose and fund memorial dedications within certain areas of public facilities and on or adjacent to trees and benches in City-owned public open spaces. Dedications will be done in a manner that preserves the positive experience for the public in the park or other public space, and provides a benefit to park users, neighbors, and the public. This policy does not apply to the naming of parks or facilities, which is covered by Administrative Policy IX-A-2.

POLICY

The policy shall be to utilize a consistent process that allows the public to propose the dedication of memorial plaques within certain areas of public facilities and on or adjacent to trees and benches within City-owned public spaces subject to the stated procedure and the following provisions:

A. The City will produce a small metal plaque for installation as a memorial. The design of the plaque will be within the sole discretion of the City.

B. At the discretion of the City, memorial plaques may be installed within certain areas of public facilities and on or adjacent to either existing or donated trees or benches within City-owned public spaces. The City will only purchase a donated tree, plaque or bench after receiving a donation to pay the full costs of such donation including tax, shipping, and installation. No public funds shall be used for the purchase of a donated tree or bench, unless authorized by the City Council.

C. The City will have no obligation to repair or replace, and may remove, a donated bench or tree if it becomes damaged, destroyed, or deteriorates.

D. The City's Parks and Recreation Department will establish and maintain a price list for the donation of plaques, benches and preferred trees.

PROCEDURE

Applications for dedications must be submitted to the Parks & Recreation Department on the provided application form. The Director of Parks and Recreation will screen proposals for suitability of language and location and possible conflicts. Suitable dedication proposals may include geographical locations, historical references or figures, and individual recognition, including but not limited to, retired public officials or community volunteers who have made extraordinary non-monetary contributions to the community or performed heroic actions. Political and religious affiliations will not be permitted. No dedication proposal shall be accepted for an individual, group, or business as a result of a financial donation or in-kind contribution to the City. The appropriate size, type, verbiage and location of the dedication proposals shall be reviewed and determined on a case by case basis by the Director of Parks and Recreation. In all cases, dedications are encouraged to use traditional verbiage (i.e. In Honor of/Honoring, In Memory Of, Commemorating, etc.) and each dedication shall blend with or complement existing surroundings. No vulgar or inappropriate language will be accepted.

Proposals deemed suitable by the Director of Parks and Recreation will be presented to the Parks, Recreation, and Intergenerational Commission for consideration and approval. At the time of

application, Parks staff shall identify any anticipated maintenance needs associated with the proposal. If approved, the applicant will bear the associated costs as outlined by Parks and Recreation staff. The cost of the dedication will include the cost of the donated tree or bench, if applicable, and the production, installation and any long-term maintenance of the donated tree or bench, if applicable, and memorial plaque. The City will maintain the dedication in the selected location unless the City determines removal or relocation of the dedication is required. In the event of a removal without relocation, the memorial plaque shall be returned to the applicant. If the City wishes to no longer maintain the dedication, due to higher maintenance costs than originally estimated, significant or repetitive damage to the dedication or for other reasons, the applicant will be notified and have the option to reapply.

Parks and Recreation Department staff will maintain a current listing of all dedications and their location. It is recognized that a particular location may reach a saturation point and it would then be appropriate to consider limitations on future installations at that location.

If the applicant's proposal is not approved by the Parks, Recreation, and Intergenerational Commission, the applicant has the right after the review process is complete to appeal to the City Council for reconsideration of their proposal. The decision of the City Council shall be final.

ATTACHMENT
Public Memorial Dedication Application

City of West Sacramento
Parks and Recreation Department
Public Memorial Dedication Application

Please complete this form to the best of your ability. The Parks, Recreation and Intergenerational Services Commission may ask you to make a presentation as part of the consideration process.

1. Application Date: _____
2. Location/Name/Address of Memorial Dedication: _____
3. Applicant: _____
4. Contact Name: _____ Phone Number: _____
   Street Address: _____
   E-mail Address: _____
5. After whom/what are you proposing the memorial to be named? _____
6. Nominations must meet at least one of the following criteria:

   ☐ Geographic names descriptive of the location or significant natural features (including flora, fauna, and geography) in or near the location
   ☐ Names that preserve the history of West Sacramento
   ☐ Names of individuals, families or organizations who have made significant non-monetary contributions to the community, culture, facility, or program, or those who have achieved outstanding accomplishment.

7. If a person, are they deceased? Yes ___ No ___
8. There are costs involved in the production, installation and maintenance of memorials that range from $325 to $2,000, depending on the type of memorial. Do you have the funds for such a purpose? Yes ___ No ___
9. If a person, for historical reference, please include with this application, documentation (news clippings, photographs, etc.) that illustrate the contributions this individual(s) has made to the City of West Sacramento. Please also include any petitions and/or letters of support from community members.

CITY OF WEST SACRAMENTO

Please return to:
City of West Sacramento
Parks & Recreation Department
1110 West Capitol Avenue, First Floor
West Sacramento, CA 95691
(916) 617-4620

Item 8.3 Cover sheet – ARD Memorial Donation Policy and Possible Amendments

Auburn Recreation District Policy Committee meeting November, 2017; December, 2017; January, 2018; Board of Director's meeting January, 2018

The Issue

Shall the Auburn Area Recreation and Park District (ARD) make changes to its policy regarding memorial donations?

Background

ARD's policy on memorial donations is as follows:

D. Criteria for creating memorials in an individual's name:

1. Individual must have made a significant contribution to the facility by:

   a. Donation of land or large financial contribution to the facility.

   b. Contributed significantly and improved the quality of life in the Auburn Area Recreation and Park District (Area 5). This could relate to involvement with parks and recreation or other public agency.

1. The memorial should be a non-living, low maintenance improvement, which should serve a purpose to the District, for example, a bench with a plaque. All costs of the improvement shall be the responsibility of the donor. The donor may submit information and recommendation to the District Administrator regarding relevant history of the person to be memorialized, type of improvement desired and verbiage requested. Final decisions regarding the improvement, including, but not limited to, materials, equipment, location and labor will be made by the District.

Most people contact ARD about the installation of a memorial bench for a recently deceased family member. It has been suggested that ARD's criteria is too onerous. It has been suggested that ARD be more inclusive with who can qualify for a memorial bench.

This policy was previously reviewed in March, 2016. The Policy Committee recommendation was to not change the policy.

In November, 2017, the Policy Committee recommended that staff review the policies of other agencies. A list of the email responses and any associated policies is attached. Of the 6 responding agencies, 2 indicated that they had criteria for who could have a bench or other memorial named after an individual or group.

Recommendation for the Board of Directors

The Policy Committee and staff recommend approval of the changes to the Memorial Donation policy as written.

Fiscal Impact
N/A

Attachments

Memorial Donations – proposed policy amendment January, 2018

Responses from other agencies re: memorial donations

Proposed Amendments to ARD's Class/Program and Non-Resident Fees

Proposed changes are highlighted

X. Program Policies

A. Class/Program Fees. Fee splits between the District and Independent Contractor will vary depending upon class or program type, location and executed contract between the parties and District Administrator. The percentage of program fees received by the District shall be no less than 20% and no greater than 50% of the total program fees. The District Administrator or his/her designee may, under special circumstances, adjust the percentage higher or lower. Special circumstances may include a special, one-time program, a program that is beneficial to community safety (lifeguard training, CPR) or a startup class that needs incentive to get started.

In general, most classes will operate under a 65/35 split. Circumstances in which this split may be different include classes that happen off District property (i.e. golf) or programs in which the Independent Contractor provides a higher level of administrative support (i.e. promotional mailings to residents).

Fees for classes, programs, leagues and camps will range from $3 to $250/hour, depending on the class length, equipment and supply costs, instructor split and other mitigating circumstances.

~~B. Non Resident Fees. It shall be the policy of the District that all activities sponsored by the District will be open to non residents, if space is available. Out of District residents, however, will be charged an additional fee as follows:~~

~~Fees: Non Resident fees will be established by the Board of Directors, ARD's schedule of fees says nothing about Out of District fees~~.

B. Resident Discounts It shall be the policy of the Board that residents of the Auburn Area Recreation and Park District will receive a 15% discount on all classes, programs, camps and leagues, with the noted exceptions below. This discount shall be a minimum of $5 and a maximum of $10 and will be rounded to the nearest dollar when applied.

Resident discounts will not be assessed on the following:

- Events: this includes vendor fees
- Races
- Tournaments
- Pool entry fees
- Youth Services Day Camp and Discovery Club programs
- Any person using ARD Youth Assistance Funding

Proposed Non-Resident Fee Policy

15% with a $5 minimum, $10 maximum

Class	Current Fee	Non-resident fee w/ proposed new policy	Current Non-Res Regist.	Current Non-Res fees collected	Fees collected w/proposed policy
Fall Country Western Dance (adult)	$50.00	$57.50	7	$35.00	$52.50
Fall Hip Hop (youth)	$30.00	$35.00	2	$10.00	$10.00
Fall Beginning Ukulele	$30.00	$35.00	2	$10.00	$10.00
Fall Shotokan Karate	$35.00	$40.25	3	$15.00	$15.75
ARD-YDL	$105.00	$115.00	362	$1,810.00	$3,620.00
Senior Advanced Volleyball	$12.00	$17.00	6	$30.00	$30.00
Skyhawks Summer Bball Camp	$99.00	$109.00	18	$90.00	$180.00
Robalos Swim Team	160/140	170/150	33	$165.00	$330.00
Mermaids Synchronized Swim Team	$170.00	$180.00	12	$60.00	$120.00
Swim Lessons	$48.00	$55.20	287	$1,435.00	$2,066.00
Adult softball; $500/team + $5 each non-resident			32	$160.00	$160.00
				$3,820.00	**$6,594.25**

Note: this is a sampling of classes/camps/leagues offered by ARD

Aquatics and Youth Assistance Fund Information

	Auburn	Cordova	Folsom	Orangevale	Placerville	Rocklin	Roseville	Sunrise
Group Swim Lessons	$48.00	$50.00	$39.00	$55.00	$68.00		$62.00	$55.00
	240 min	240 min	120 min	240 min	200 min		240 min	240 min
Cost per minute	$0.20	$0.21	$0.33	$0.23	$0.34		$0.26	$0.23
Private Swim Lessons	$99.00	$105.00		$130.00	$108.00		$228.00	$76.00
	120 min	160 min		240 min	100 min		240 min	120 min

Swimming Team	1	$160.00	$170.00	$365.00	$150.00	$260.00	$185.00	$240.00	$260.00
	2	$160.00	$170.00	$315.00	$145.00	$235.00	$185.00	$215.00	$245.00
	3	$145.00	$170.00	$265.00	$135.00	$235.00	$185.00	$190.00	$245.00
	4	$145.00	$170.00	$215.00	$135.00	$235.00	$185.00	$190.00	$245.00
	5	$145.00	$170.00	$120.00	$135.00	$235.00	$185.00		$245.00
				15-18		Private	Private	2 teams	
								$155.00	
								2nd team	
Synchro Swim		$170.00	$170.00	N/A	N/A	N/A	N/A	N/A	

Bowman	30.00%	Free lunch
Foresthill	43.00%	
Placer Hills	30.00%	
Colfax	46.00%	
Alta Vista	47.00%	
Auburn El	56.00%	
EV Cain	55.00%	
Rock Creek	94.00%	
Skyridge	47.00%	
District wide	58.00%	Free and Reduced lunch

Nearly half of all the families with children in the greater Auburn area are on free or reduced lunch program

Last year 20 swimmers received Youth Assistance (5 OOD), Year before 14 swimmers (3 OOD)
This year 21 kids used Youth Assistance for YDL Basketball

2016 24 YDL Basketball players used the Youth Assistance Fund
2015 18 YDL Basketball players used the Youth Assistance Fund

Facility Rental Fee Structure

Group A/B: Activities sponsored or conducted by volunteers, the majority of which are 17 years of ago or under who have adult leaders or chaperones/Meetings or smaller activities of resident, civic or service organizations, non-profit groups where no fee is charged for participation.

Group C/D: Private citizens' parties/receptions wehre the primary function is social/activities sponsored by a business, corporation, or other firm where their interest is profit-making.

Rooms	Group A/B	Group C/D	Capacity	
	Per Hour	Per Hour	Dining	Seating
Sierra Room	$45.00	$70.00	140	200
Foothills Room	$40.00	$65.00	100	150
Lakeside Room	$40.00	$65.00	75	90
Canyon View Room	$35.00	$55.00	50	75
Board Room	$40.00	$50.00	0	90
Sunset Room	$30.00	$45.00	0	40
CVCC Kitchen	$25.00	$40.00	N/A	N/A
Broadwell Room-MVCC	$40.00	$80.00	80	100
Regional Kitchen	$15.00	$25.00	N/A	N/A

MINIMUM 2 HOURS

Rental hours	
Sunday - Thursday:	8:00am - 10:00pm (music must be off by 9:00pm)
Friday and Saturday:	8:00am - 11:00pm (music must be off by 10:00pm)

Additional Fees (all groups)	
Rental Deposit Fee	$400.00
Out-Of-District Fee	$50.00
Alcohol Permit Fee	$30.00
Custodial Fee	$30.00
Set Up/Take Down	$70.00

(refundable)

Note: $60.00 custodial fee for groups over 100.

Group A/B COMBINED
Regional & Rec Gym
Hourly
$39.00
Custodial Fee: $30 per day

All other groups with sports-related events:	**$50 per hour**
Gym rental for non sport related events:	**$80.00 per hour, minimum of 2 hours**

Outdoor Facilities	Res half	Res. full
Picnic Units (per unit)	$50.00	$75.00
Gazebos	**Res full day**	**NR full day**
Front Gazebo	$40.00	$60.00
Back Gazebo	$90.00	$100.00

Non-resident

NR half day	NR full day
$60.00	$85.00

Picnic units hold Approx. 50 people. $30 custodial fee will be applied per unit.

Pool	Group A/B	Group C/D
Marsha Skinner Pool	$200.00	$300.00
(2hrs, max 75 people)		
Splash Pool	$150.00	$250.00
(2hrs, max 30 people		
Meadow Vista Pool	$150.00	$250.00
(2hrs, max 75 people)		

GROUP A: Activities sponsored or conducted by a volunteer organization, the majority of which are 17 years of age and under who have adult leaders or chaperones (i.e. Boy Scouts, Girl Scouts, Little League, etc)

GROUP B: Meetings or similar activities of resident, civic, or service organization; Non profit groups, such as Red Cross, schools, or other resident adult organizations where there is no fee charged for participation.

GROUP C: Private Citizens' parties/receptions where the primary function is social.

GROUP D: Activities sponsored by a business, corporation, or other firm where their interest is in profit making.

Fields	Group A	Group B	Group C	Group D
	Hourly	Hourly	Hourly	Hourly
Recreation Field	$9.61	$19.21	$26.78	$35.33
Beggs Field	$10.66	$24.52	$31.97	$40.53
James Field	$18.25	$25.40	$33.50	$41.60
Regional A Softball	$18.11	$23.47	$30.92	$39.45
Regional B Softball	$17.06	$21.31	$29.82	$37.33
Regional C Softball	$17.06	$21.31	$29.82	$37.33
Regional Soccer Field	$12.81	$21.31	$29.82	$37.33
MV Soccer A/B	$13.20	$23.35	$30.45	$38.60
MV Pee Wee Soccer	$8.15	$15.25	$23.35	$30.45
MV Softball	$16.25	$18.30	$25.50	$33.50
Railhead A Field	$12.20	$23.35	$30.45	$38.60
Railhead B Field	$12.20	$23.35	$30.45	$38.60
Christian Valley Field	$9.61	$16.01	$24.52	$31.97
Winchester Field	$17.06	$21.31	$29.82	$37.33
Placer Hills Field	$7.51	$16.01	$24.82	$31.97

Out of District fees: $75 per hour for James field, $60 per hour for all other fields.

Tournament Packages

Tournament Location	All Groups	
	1/2 Day 9am-3pm, 6 hours	All day 9am-9pm, 12 hours
Recreation Fields	$110.00	$220.00
Regional Fields	$110.00	$220.00
Fairgrounds Fields	$110.00	$220.00
Regional Soccer Field	$110.00	$220.00
Railhead Soccer Fields	$110.00	$220.00

Lights	$25.00 per hour
Field Lining-Softball Fields only	$40.00
Custodial Fee over 100 people	$60.00
Alcohol Permit Fee	$30.00
Field Lining-Soccer Fields only	$255.00

Question posed to CPRS List Serve re: Out of District/Non-Resident Fees:

Does your agency charge out of district (or non-resident) fees when registering for classes, camps, leagues, etc.? If so, can you please send me your policy and fee schedule?

Also, is anyone aware of any laws that require Special Districts or Cities to collect out of district/non-resident fees?

Replies

No we don't. We rely on non-residents to make the programs go and some are long time participants.

Stephen F. Frahcr, CPRP
District Administrator
Arcade Creek Recreation and Park District

No. We are failrly isolated from other districts so it isn't really an issue with us.

Dean Moore, Paradise Rec and Park District

We do not currently, but will look closer during our next budget session and minimum wage increases...

Kimberly A. Niemer
Director of Community Services
City of Redding

Hi,

The Cosumnes CSD does not charge Non-Resident fees. To my knowledge there is no law that requires any government agency to set a fee scheduled based upon residency.
Thanks!

Tom Hellmann, CPRP
Recreation Manager
Consumnes CSD

City of Davis has a "fair share" policy (non-resident fees).

"A non-resident fee will be charge for all youth living outside of the Davis Joint Unified School District boundaries and all adults living outside the Davis city limits. Generally, the non-resident fee is 10% but some activities may have a lower fee based upon the nature of the activity."

None of us know what activity might have a different fee but it's a placeholder if one turns up.

I don't think we are required by law per se to collect fees, but in the spirit of balancing out residents who are paying local property taxes that create the general fund, those that are not residents need to pay a bit to be equitable.
Hope this helps.
Thanks
Anne Marquez
City of Davis

Hi.

Yes, West Sacramento charges non-resident fees. Here is a link to our Book Of Fees. Scroll down to Parks and Recreation. The Rec Center fees have good examples. I hope this is helpful.
http://www.cityofwestsacramento.org/city/depts/admin_services/finance/book_of_fees.asp

CINDY TUTTLE
Director of Parks and Recreation

Hi Kahl,

Our District, NHRPD, stopped enforcing our non-resident fees about seven years ago. At the time, the non-resident fee was only $2.00 more than the regular fee. For accounting purposes, we went to the one fee structure. In all honesty, I have never heard of a law that requires that both fees must be offered. Is this something that you are hearing?

Here are all of our current fees for our youth and adult programs. Hopefully this is of help.
Mark Brunner
North Highlands Rec and Park District

Kahl,
We market it as "resident discount" vs non-resident fee. Sounds better. We have a general policy for such, but we customize the "discount" for each program area. If you look at our guide, it's easy to see what we do.

Not aware of any law requiring such. For us as a city, the city council sets the policy. We implement.

Robert Goss, Director City of Folsom Parks and Recreation

Hey Kahl,
We currently do not charge any as we have an agreement with the County where we can't charge any non-res fees for any programs at Elk Grove Park. And seeing as how we have the same swim programs, events, rentals, youth development programs, and contracted classes at different places within the park, as we do at our main community center it would be a logistical nightmare.

There aren't any laws requiring the collection the non-res fees it is more up to the governing body as to whether or not they wish to charge them. Thanks!

Mike Dopson
Recreation Superintendent
Consumnes CSD

Hello Kahl...yes, the City of Roseville does charge non-resident fees for programs. We created a pricing policy a couple of years ago that might help explain how we determine pricing. I have attached it for your reference.

Kathy M. Barsotti
Recreation Manager

The City of Willows does not have a policy.
Carol Lemenager
City of Willows Recreation Director

Kahl,

In terms of our Classes, Camps, Preschool, & Facilities we charge an additional $5 non-resident fee for any participant who lives outside the 95628 zip code ($5 discount for residents). For Camp we also give a $5 additional resident discount for a second child registered in the same week (discount is $10 for non-residents and $15 for residents for additional child).

For Adult Sports Leagues, we do not currently charge a non-resident fee for teams. A percentage of the team would need to be Fair Oaks Residents to have an applicable discount (hard to verify – players may use false addresses to qualify).

Our current fee schedule is attached for reference. I am not currently aware of any laws that require Special Districts or Cities to collect out of district/non-resident fees, but I would be interested in any information you might find.

Please let me know if I can help with anything else. Have a great day!

Thank You,

Katy Coss, CPRP
Recreation Superintendent
Fair Oaks Recreation & Park District

Sing!

with New Star Children's Theatre

If you've ever wondered what it would be like to be on a Disney show or "Glee," look no further – come be a part of a singing class that will rock your socks off! Children will learn to harmonize, sing acapella, do beats, etc while performing notable pop tracks and musical theatre numbers. Children will also work on breathing techniques and vocal warm ups. Some simple movement will be incorporated into musical numbers. All participants will need black dance shoes, binders and pencils. There will be a recital at the end of the session. Non-refundable Materials Fee: $50 will include all Lyric sheets, Rehearsal CDs and Sing T-shirt. Payable to instructor on first class. Performance outfit to be discussed – not included

Ages 10-18

344475-01	W	9/13-12/6*	6:30-7:30P

*Note: no class 11/22

Location: Folsom Sports Complex
Fee: $207 / $200 resident discount

Pre-K Kickers

with Joe Mihaljevic

Participate in a fun atmosphere of soccer drills, games & exercise with focus on developing the fundamental and proper elements of skill in the game of soccer. Parent participation welcome. Athletic shoes requested.

Ages 2.5-4

Morning Sessions

355103-01	F	9/1-9/22	11:00-11:50A
355103-02	F	9/29-10/20	11:00-11:50A
355103-03	F	10/27-11/17	11:00-11:50A
355103-04	F	12/1-12/22	11:00-11:50A
155103-01	F	1/5-1/26	11:00-11:50A

Afternoon Sessions

355106-01	M	8/28-9/25	4:30-5:20P
355106-02	M	10/2-10/23	4:30-5:20P
355106-03	M	11/6-11/27	4:30-5:20P
355106-04	M	12/4-1/8	4:30-5:20P
155106-01	M	1/15-2/5	4:30-5:20P

Evening Sessions

355106-05	M	8/28-9/25	5:30-6:20P
355106-06	M	10/2-10/23	5:30-6:20P
355106-07	M	11/6-11/27	5:30-6:20P
355106-08	M	12/4-1/8	5:30-6:20P
155106-01	M	1/15-2/5	5:30-6:20P

Location: Folsom Sports Complex
Fee: $70 / $60 resident discount

Child and Babysitting Safety *with Rescue Training Institute*

A course for building a safe and successful babysitting business. Covers getting started, leadership, caregiving, safety & prevention, playtime, and first aid tips. No CPR training in this class, see Babysitting CPR. Participation card received. No certification card for this class.

Ages 11-15

344591-01	Tu,W	9/5-9/6	5:30-8:30P
344591-02	Tu,W	10/10-10/11	5:30-8:30P
344591-03	Tu,W	11/7-11/8	5:30-8:30P
344591-04	Tu,W	12/5-12/6	5:30-8:30P

Location: Rescue Training Institute, 13405 Folsom Blvd., Suite 150, Folsom
Fee: $62 / $55 resident discount; $5 materials fee due to instructor at first class

Babysitting CPR *with Rescue Training Institute*

This course teaches child & infant CPR. Participation card received. No certification card for this class.

Ages 11-15

344592-01	F	9/8	5:00-7:00P
344592-02	F	10/13	5:00-7:00P
344592-03	F	11/10	5:00-7:00P
344592-04	F	12/8	5:00-7:00P

Location: Rescue Training Institute, 13405 Folsom Blvd., Suite 150, Folsom
Fee: $42 / $35 resident discount; $5 materials fee due to instructor at class

Holiday Break Camps for Youth & Teens

Tennis Camp *with Bryan Solem*
Looking for a fun way to introduce your child to tennis or do you have a child looking to improve his or her skills? Join Bryan, our USPTA certified tennis pro over the school breaks. Camp will include instruction, games, fun contests, and a mini-tournament on the last day. Please bring your racquet and one un-opened can of tennis balls.
Ages 6-17
Thanksgiving Break Camp
330441-01 M-W 11/20-11/22 9:00A-12:00P
Holiday Break Camp
330441-02 W-F 12/27-12/29 9:00A-12:00P
Location: Ed Mitchell Park
Fee: $119 / $109 resident discount

Skyhawks Mini Hawk Camp:
Soccer, Baseball and Basketball
with Skyhawks Academy
This multi-sport program provides kids with a positive first step into athletics. The essentials of baseball, basketball and soccer are taught in a safe, structured environment with lots of encouragement and a big focus on fun. Through games and activities, campers explore balance, hand/eye coordination, and skill development at their own pace. All participants receive a t-shirt, ball and player evaluation. Participant-to-coach ratio is 8:1. Participants should bring: appropriate clothing, two snacks, water bottle, running shoes, and sunscreen. (Baseball glove is optional)
Ages 4-7
Thanksgiving Break Camp
331021-01 M-W 11/20-11/22 9:00A-12:00P
Holiday Break Camp
331021-02 W-F 12/27-12/29 9:00A-12:00P
Location: Folsom Sports Complex
Fee: $119 / $109 resident discount

Register online!

Register for your fall programs at your convenience!

http://webtrac.folsom.ca.us

Accepted online payment methods:
VISA, MasterCard, Discover Card, and American Express.
You may also pay with a Folsom Parks & Recreation gift card.

Skyhawks Basketball Camp
with Skyhawks Academy
This fun, skill-intensive program is designed for beginning to intermediate players and focuses on passing, shooting, dribbling, defense and rebounding. All participants receive a t-shirt, basketball, and player evaluation. Participant-to-coach ratio is 10:1 Participants should bring appropriate clothing, a snack, a water bottle and basketball or running shoes.
Ages 6-12
Thanksgiving Break Camp
331031-01 M-W 11/20-11/22 9:00A-12:00P
Holiday Break Camp
331031-02 W-F 12/27-12/29 9:00A-12:00P
Location: Folsom Sports Complex
Fee: $119 / $109 resident discount

Skyhawks Flag Football Camp
with Skyhawks Academy
This camp is a fun and safe introduction to the "American Game." Participants learn the fundamentals of passing, rushing, receiving and defense along with the rules, strategy and play-calls of the game. Participant-to-coach ratio is 12:1
Ages 6-12
Thanksgiving Break Camp
331053-01 M-W 11/20-11/22 9:00A-12:00P
Location: John Kemp Comm. Park
Fee: $119 / $109 resident discount

Junior Zookeeper Camp
Caring for animals is a fun, rewarding and sometimes messy job! Folsom City Zoo Sanctuary's Junior Zookeeper Camp is a hands-on "what it's like to care for animals" experience. Campers can help prepare animal diets and clean enclosures just like the zookeepers do. Make enrichment for the animals, maybe a piñata filled with snacks? And meet some special animal, such as a hedgehog, skunk, ferrets, tortoise and gecko which are part of our outreach education. Activities might vary based on weather.
Questions: lbell@folsom.ca.us
Ages 8-11
Thanksgiving Break Camp
Ages 8-11
391041-01 M-W 11/20-11/22 10:00A-3:00P
Location: Folsom Zoo Sanctuary
Fee: $198 / $174 resident discount
Holiday Break Camp
Ages 8-11
391042-01 W-F 12/27-12/29 10:00A-3:00P
Location: Folsom Zoo Sanctuary
Fee: $198 / $174 resident discount

PLAYRS:
Program for Local Assistance Youth Recreation Scholarships

Folsom Parks & Recreation has developed a financial assistance/scholarship opportunity for children of Folsom families in financial need to participate in recreation activities.

Interested participants should contact Folsom Parks & Recreation at 916-355-7285.

You can also read more about this opportunity and download an application on our website: www.folsom.ca.us – use search keyword "scholarships"

Digital SLR & 35mm Photography *with Bonita Chimes*

Ages 18+ • Location: 48 Natoma • Fee: $86 / $79 resident discount
Note: a 48-hour cancellation is required for these classes

Basic Photography 102: Lighting

Want to know the secret to good photography? Its LIGHTING! If you can use your SLR camera on manual then come and learn how to manipulate light at any time of day and under any conditions. During this course learn the difference between quantity, quality, and direction of light. Also learn how to use and eliminate shadows, mix lighting, etc. A field trip is offered with this course with an individual critique of photographs to follow.

211672-01 Th 9/14-9/28 6:30-8:30P; field trip 9/24 – time/location TBA

Basic Photography 101: Camera Manipulation

Learn how to begin operating a camera like a pro. The course offers intensive hands-on coaching on controlling your camera when creating photographs. Class includes information on such subjects as camera technology, lenses, use of F-stops and shutter speeds. Also learn the basics of purchasing equipment. Bring an adjustable camera and all equipment to the first class.

211673-02 Tu 9/12-9/26 6:30-8:30P; field trip 9/24 – time/location TBA

Intermediate Photography 201: Photo Composition

If you can use a manual camera, this course offers you, the amateur photographer, tips on composition. Learn the rules to make your photographs stand out from all the rest. How to place subjects, balance, perspective, and how to guide the viewers eye to effectively communicate your ideas.This hands-on course offers a field trip with an individual critique of photographs to follow.

211676-01 W 9/13-9/27 6:30-8.30P; field trip 9/24 – time/location TBA

Get Organized! Take Control of your Digital Photos!

Are your photos seemingly everywhere on your phone, laptop, Apple photos, Google photos, the "cloud," but you can't seem to locate your photos? No matter how far gone your image collection may seem – unintelligible file names, photos without dates, too many images clogging up your hard drive or cloud storage – you can reorganize it so that it becomes more useful. The goal of this class is to easily find and share the photos you love without hassle. We will explore downloading from various devices, social media sites, tagging and backing up your collection. Bring your photo mess to this workshop where we will discuss ideas for organization. Bring your laptops, smartphone or iPads/tablets plus charging devices/USB.

Ages 18+

311851-02 Th 10/19 6:00-9:00P
Location: 48 Natoma
Fee: $42 / $35 resident discount

Wire Work for Jewelry Design

with Susan Perreault

If you've always wanted to add wire to your jewelry designs, this class is for you! In this class you will learn how to make findings (clasps and ear-wires) and beaded chain. Both will be used to design a unique bracelet and earring set for you to take home. Wire work is easy and adds depth and texture to your jewelry design. Just think of the personal gifts you can make for the upcoming holiday season.

Ages 18+

311841-01 Th 10/5-10/5 6:30-8:30P
Location: 48 Natoma
Fee: $52 / $45 resident discount

You have photos? We have solutions!

Do you have precious family photos and memorabilia just sitting neglected in the closet? Are your photos fading or stuck in photo album plastic? Here is your opportunity to learn the ABC's and the do's and don'ts of photo organizing. We will sort and organize your box of photos and then choose some of your favorites for scanning. By the end of the class, you will have scanned 80-100 photos (or 6 photo album pages) to start your digital collection for permanent preservation. Students should bring a box of photos, memorabilia, photo albums. Laptops and external drives (flash drives) optional.

Ages 18+

311836-01 F 10/20-10/20 9:00-11:30A
Location: 48 Natoma
Fee: $32 / $25 resident discount

Creating Holiday Photo Memory Books and Calendars

You will learn the step-by-step process to make your own custom photo memory book and calendar. Simply bring up to 50 photos that are either on your laptop, tablet, smart phone, on Facebook, or loose photos, for your photo book. We will show you how to create a design that will bring your photos to life! By the end of class, you will be able to continue creating your photo memory book. Laptops, or iPads/tablets required. Bring you smart phone full of photos with your loose photos for scanning; charging cables/USB required for transferring photos.

Ages 18+

311837-01 Tu 11/7-11/7 6:00-9:00P
Location: 48 Natoma
Fee: $42 / $35 resident discount

Open Studio Sessions at 48 Natoma Art Center

Painting Open Studio

Why paint alone? Join us for open studio – all levels welcome!

Ages 18+

313991 W/F (ongoing)
Painting Open Studio takes place 9 a.m.-noon on Wednesdays and 1-4 p.m. on Fridays
Fee: $10 / $5 Folsom Arts Association member discount

CITY OF WEST SACRAMENTO

BOOK OF FEES

Description	Authority	Effective Date
YOUTH RECREATION PROGRAM FEES	**Resolution 17-60**	**Oct. 18, 2017**

Fee Schedule (Per Parks and Community Services Commission approval on September 1, 1998.)

A. PERCENTAGE OF RATES TO CHARGE THE PUBLIC

Rates are based on the cost of delivering the services, including direct costs such as salaries and benefits (at step E), maintenance and operations costs, and indirect costs such as accounting, data processing, and insurance. Additional costs may apply for advertising, T-shirts when appropriate, awards, and other materials above the allocated approved appropriations. (Example: Hourly salary and benefit rate, plus maintenance and operations expense calculated as 25% of the hourly salary and benefit rate, plus indirect costs calculated as 20% of the hourly salary and benefit rate. [$50.00, plus $12.50, plus $10.00 equals $72.50 service fee].)

1. SPARK – minimum of 50% of activity, including transportation
2. Youth sports – minimum of 50% of cost of delivering services*
3. Dances – 100% of cost of delivering services
4. Camp Lakeside – 100% of cost of delivering services

* "Volunteer for Work" program allows adults to volunteer/coach a minimum of 10 working hours in lieu of one child's sports program registration fee.

B. FLAT FEES

1. Summer K.I.D.S. Camp, Youth Drop-in programs @Bridgeway Island & Southport Elementary Schools	
Regular fee – per week/per child	$15.00
Scholarship fee – per summer/per child	$15.00
2. Summer K.I.D.S Camp Youth Drop-In Programs at Westfield Elementary & Riverbank Elementary	no fee
3. Summer teen camp	
Regular fee – per week/per child	$30.00
Scholarship fee – per summer/per child	$30.00
4. ASES Kid Zone and Club West	no fee

C. NONRESIDENT FEES

An additional fee of $8.00 will be charged

HISTORY:

AUTHORITY	DATE	ACTION
Res. 02-6	1/9/02	Update fees
Res. 09-80	1/1/10	A. delete middle school program, add * to 1, add 3,4,5,6, edit * to include 10 hours, delete example; B. delete old programs, add new programs, delete daily rates, add weekly/summer rates
Res. 13-2	3/20/13	Change rate formula to be consistent citywide.
Res. 16-48	6/15/16	Remove programs that no longer exist
Res. 17-60	10/18/17	Update language

CITY OF WEST SACRAMENTO

BOOK OF FEES

Description	Authority	Effective Date
ADULT SPORT FEES	**Resolution 13-2**	**Mar. 21, 2013**

Fee Schedule (Per Parks and Community Services Commission approval on June 6, 1995.)

A. PERCENTAGE OF RATES TO CHARGE THE PUBLIC

Rates are based on the cost of delivering the services, including direct costs such as salaries and benefits (at step E), maintenance and operations costs, and indirect costs such as accounting, data processing, and insurance. Additional costs may apply for advertising, T-shirts when appropriate, awards, and other materials above the allocated approved appropriations. (Example: Hourly salary and benefit rate, plus maintenance and operations expense calculated as 25% of the hourly salary and benefit rate, plus indirect costs calculated as 20% of the hourly salary and benefit rate. [$50.00, plus $12.50, plus $10.00 equals $72.50 service fee].)

1. Adult sports – minimum of 100% of cost of delivering services

B. FLAT FEES

Not applicable in this category.

C. NONRESIDENTS

1. Adult sports leagues non-resident each player $8.00

HISTORY:

AUTHORITY	DATE	ACTION
Res. 13-2	3/20/13	Change rate formula to be consistent citywide
Res. 16-48	6/15/16	Amend non-resident fees

STAFF REPORT

FAIR OAKS
RECREATION & PARK DISTRICT

Meeting Date:	**June 21, 2017**
To:	**Board of Directors**
From:	**Jack Harrison – Interim District Administrator**
Subject:	**Discussion and Possible Action Regarding the FY 17-18 Recreation Fee Schedule Proposal**
Prepared By:	**Katy Coss – Recreation Superintendent**

I. Recommendation

The Board of Directors:

1) Open the public hearing;
2) Receive testimony regarding the revision of the recreation fee schedule (Attachment A);
3) Close the public hearing; and
4) Approve Resolution No. 062117-01 (Attachment B) revising the recreation fee schedule, approving new recreation fees and giving the District Administrator authority to waive or reduce program and facility rental fees.

II. Background

In 2010 voters approved Proposition 26, the Supermajority Vote to Pass New Taxes and Fees Act, as part of the November 2, 2010 ballot. Proposition 26 amends Section 3 of Article XIII A and Section 1 of Article XIII C of the California Constitution to provide that a new levy, charge, or exaction of any kind imposed, increased, or extended by a local government is a tax unless an exception applies. Exceptions to Proposition 26 include user fees; government service or product fees; regulatory fees; government property fees; government property entrance fees; fines and penalties imposed by a court or local government; property development impact fees; and assessments and property-related fees governed by Proposition 218.

Calculating the cost of service per person or group for a specific program or service is challenging for most Park and Recreation programs. Since multiple uses can occur at a facility at one time, deriving costs for each service is difficult.

According to the requirements outlined in Proposition 26, the District must establish user fees and fees for service based on the cost of providing the service, which will include direct, indirect, and capital costs. No fee shall exceed the costs reasonably borne by the District in providing the service (Gov. Code 61123). In order to levy a new fee or service charge, staff must follow these requirements (Gov. Code 66018):

- Must hold at least one open and public hearing;
- Any action taken to levy a new fee shall be taken only by ordinance or resolution; and
- A general explanation of the matter to be considered shall be published in accordance with section 6062a of the Government Code.

III. Problem /Situation/ Request

The District's main goals for the Park and Recreation Fee Schedule is to; comply with the New Taxes and Fees Act (Proposition 26); simplify rate structures; update terms and conditions; and revise rates when deemed appropriate. Staff prepared the Recreation Fee Schedule that separates all District fees into three categories; fee's requiring Board approval, the recommended section of fees requiring Administrator approval, and fees requiring no approval as a result of no change in the existing fee.

1. Board Approval Required

   The current practice of the District is to raise fees for classes, programs, and rentals by no more than $10.00 - $20.00 annually (not all program areas receive an increase annually); and based on the original fee for some items a 20% increase could actually amount to between $1.00 and $3.00. However, there are some instances where a 20% increase could reflect more than a $10 increase, which staff recommends requiring Board approval. Additionally, all new and/or removed programs (fees) are important to communicate to the Board and the public. All proposed items requiring Board approval are significant enough that the Board should be made aware of these items and approve said items in order to create an understanding within the community that we are in fact requesting feedback and approval on any and all major changes that may affect District customers. It should be noted that after conducting research within the industry, this tends to be the practice for other parks and recreation agencies (Consumes CSD, San Diego, etc.).

   a. New fees (highlighted yellow)
   b. Fees modified by 20% or more (highlighted green)

c. Eliminated Fees (highlighted red)

2. Administrator Approval Only:
   The ability of the Administrator to approve fees modified by 19% or less allows staff the ability to modify fees throughout the fiscal year without waiting until the annual fee schedule approval by the Board. Fees within the category of 19% or less typically represent items such as a deposits, drop-in classes, etc.

   a. Fees being modified less than the 20% limit (highlighted blue)

3. **NC** is used to identify no change in fees

The Board's adoption of Resolution 062117-01, will establish a fee schedule for the performance of various Parks and Recreation Department services and for the permitted use of District property. The approval of this resolution will allow:

- The fee schedule to be amended by resolution adopted by the Board of Directors to reflect increases in costs resulting from inflation or the experience of the District in the administration of the program;

- The Administrator and the Superintendents the discretion to waive or reduce fees as deemed appropriate; and
  - Reduced fees only occur when individuals qualify and are approved for the Don Ralls Scholarship Program. Annually there are approximately 6-8 Don Ralls Scholarships given. Staff would like the number to increase to at least a dozen annually in FY17/18. Staff has created a social media campaign to help advertise the scholarship program.
  - Historically, waived fees have only occurred three to five times since 2005. The only situation requiring a fee waiver is when someone directly connected to the District passes away and a memorial service is held in a District facility. Decisions of this nature have typically been based on meeting some of the following criteria:
    - Individual sat on a District formed committee (Board, Events, Programs, Capital, etc.) for at least one (1) year.
    - Individual acted as a leading member of a District supported Community Partner Group for at least two (2) years.

- Any new fees, fees modified by 20% or more, and fees proposed to be eliminated will be presented annually to the Board for approval

prior to each fiscal year. Modifications to existing fees of less than 20% would be presented to the Administrator for approval during the same process.

Fee Effective Dates
All eliminated, modified or new fees will take effect immediately following the June 2017 Board meeting.

Public Meeting Notice
The Public Meeting Notice for the review of a parks and recreation department fee schedule was published in the Carmichael Times and the Rancho Grapevine Independent on May 26th and June 2nd to ensure a compliance with California Code Title 4 Section 6062a, which requires a public hearing notice be published for ten days prior to the identified public hearing date, as required by law.

The law allows the Board to hold a public hearing and introduce and approve the resolution by action of the Board. The fees can go into effect immediately after the adoption of the resolution.

IV. Financial Analysis

Included in this report are the fee modifications to recreation programs, facilities and events. The financial impact of the recommended fee modifications is a potential increase in the Department's revenue by a minimum of 5%. The majority of the additional revenue will be offset by the increased costs in full-time salary and benefit costs, part-time minimum wage increases, and various operational expense increases. Additionally, the recommended new fees have various start dates which will impact when new revenue is earned.

Respectfully Submitted,

Jack Harrison
Interim District Administrator

Attachment A – FY 17/18 Recreation Fee Schedule
Attachment B – Resolution 062117-01

Recreation Fee Schedule Proposal
FY 2017/2018
New Taxes and Fees Act (Proposition 26)

Key:

Board Approval Required - New Fee's
Board Approval Required - Fee's Modified by 20% or More
Board Approval Required - Eliminated Fee's
Administrator Approval Only - Fee's Modified by 19% or Less
NC - No Change in Fee's

Program Name	Current	Proposed Fee Range		
	16/17 Cost/Rate	17/18 Cost/Rate	Increase Amount	% Change
Jr. NFL Flag Football - Early Registration	$90.00	$90.00	$0.00	NC
Jr. NFL Flag Football - Regular Registration	$95.00	$95.00	$0.00	NC
Jr. NFL Flag Football - Late Registration	$105.00	$105.00	$0.00	NC
Adult Softball - Spring League	$420.00	$420.00	$0.00	NC
Adult Softball - Early Summer League	$420.00	$420.00	$0.00	NC
Adult Softball - Late Summer League	$420.00	$430.00	$10.00	2%
Adult Softball - Fall Double Header League	$420.00	$430.00	$10.00	2%
Adult Basketball - Winter League	$430.00	$450.00	$20.00	5%
Adult Basketball - Spring League	$430.00	$450.00	$20.00	5%
Adult Basketball - Summer League	$430.00	$450.00	$20.00	5%
Adult Basketball - Fall League	$430.00	$450.00	$20.00	5%
Bubble Soccer Rental Packages - Two Hour Block	$250.00	$275.00	$25.00	10%
Bubble Soccer Rentals - Each Additional Hour	$50.00	$50.00	$0.00	NC
Tiny Tots - Resident	$31.00	$33.00	$2.00	6%
Tiny Tots - Non Resident	$36.00	$38.00	$2.00	6%
Santa Letters	$4.00	$4.00	$0.00	NC
Preschool Annual Registration Fee - Nonrefundable	$85.00	$85.00	$0.00	NC
Preschool MWF AM - Resident	$185.00	$205.00	$20.00	11%
Preschool MWF AM - Non Resident	$190.00	$210.00	$20.00	11%
Preschool MWF PM - Resident	$185.00	$205.00	$20.00	11%
Preschool MWF PM - Non Resident	$190.00	$210.00	$20.00	11%
Preschool T/TH AM - Resident	$135.00	$155.00	$20.00	15%
Preschool T/TH AM - Non Resident	$140.00	$160.00	$20.00	14%
Summer Camp Full Day (Resident)	$150.00	$160.00	$10.00	7%
Summer Camp Full Day (Non-Resident)	$155.00	$165.00	$10.00	6%
Summer Camp Extended Day (Resident)	$170.00	$180.00	$10.00	6%
Summer Camp Extended Day (Non-Resident)	$175.00	$185.00	$10.00	6%
Summer Camp Second Child Discount - Resident	-$15.00	-$15.00	$0.00	NC
Summer Camp Second Child Discount - Non-Resident	-$10.00	-$10.00	$0.00	NC
Parents Night Out (per kid)	$15-$25	$15-$25	$0.00	NC
District Non-Resident Fee (Classes & Programs - $5 difference)	$5.00	$5.00	$0.00	NC
Programs (Drop-in/Demo/Per Hour)	$3-$65	$3-$65	$3-$65	NC
Leisure Classes (Per Hour)	$3-$65	$3-$65	$3-$65	NC
Easter - Kids Park Wristbands	$10.00	$10.00	$0.00	NC
Easter - Individual Tickets	$0.50	$0.50	$0.00	NC
Easter - Bags	$2.00	$2.00	$0.00	NC
Easter - Adult Egg Hunt Tickets	$3.00	$3.00	$0.00	NC
Breakfast with the Bunny Presale - Adults 12 & Over	$10.00	$10.00	$0.00	NC
Breakfast with the Bunny After April 1st - Adults 12 & Over	$12.00	$12.00	$0.00	NC
Breakfast with the Bunny Presale - Children 11 & Under	$8.00	$8.00	$0.00	NC
Breakfast with the Bunny After April 1st - Children 11 & Under	$10.00	$10.00	$0.00	NC
Comedy Tickets - At the Door	$20.00	$20.00	$0.00	NC
Comedy Tickets - Advance	$15.00	$15.00	$0.00	NC
Comedy Tickets - Group Pack	$42.00	$42.00	$0.00	NC
Chicken Fest- GREAT Chicken Contest	$20.00	$20.00	$0.00	NC
Chicken Fest - Kids Park Wristbands	$5.00	$5.00	$0.00	NC
Chicken Fest - T-Shirts (Color Shirt/Black & White Print)	$15.00	$15.00	$0.00	NC
Chicken Fest - T-Shirts (Color Ink)	$20.00	$20.00	$0.00	NC
Chicken Fest - Food Vendor High Risk TFF	$350.00	$350.00	$0.00	NC
Chicken Fest - Food Vendor Low Risk TFF	$275.00	$275.00	$0.00	NC
Chicken Fest - Food Vendor MFF/ MEV/ VET	$225.00	$225.00	$0.00	NC
Chicken Fest - Company Vendor	$200.00	$200.00	$0.00	NC
Chicken Fest - Non-Profit Vendor	$75.00	$75.00	$0.00	NC
Chicken Fest - Craft Vendor	$150.00	$150.00	$0.00	NC
Chicken Fest - Vendor Late Fee	$30.00	$30.00	$0.00	NC

Program Name	Current	Proposed Fee Range		
	16/17 Cost/Rate	17/18 Cost/Rate	Increase Amount	% Change
Silent Movie Night Tickets - Advance	$6.00	$6.00	$0.00	NC
Silent Movie Night Tickets - At the Door	$8.00	$8.00	$0.00	NC
Senior Luau Tickets - Advance	$12.00	$12.00	$0.00	NC
Senior Luau Tickets - 2 Tickets Sale	$20.00	$20.00	$0.00	NC
Senior Luau Table (seats 6)	$55.00	$55.00	$0.00	NC
Mother Son Kickball Tickets - Per Couple	$25.00	$25.00	$0.00	NC
Mother Son Kickball Tickets - Each Additional Kid	$5.00	$5.00	$0.00	NC
Father Daughter Dance Tickets - Per Couple	$25.00	$25.00	$0.00	NC
Father Daughter Dance Tickets - Each Additional Kid	$5.00	$5.00	$0.00	NC
Rachel Anne Gray Spaghetti Dinner - Individual Ticket	$25.00	$25.00	$0.00	NC
Rachel Anne Gray Spaghetti Dinner - Table (seats 10)	$225.00	$225.00	$0.00	NC
Breakfast with Santa Presale - Adults 12 & Over	$10.00	$10.00	$0.00	NC
Breakfast with Santa After December 1st - Adults 12 & Over	$12.00	$12.00	$0.00	NC
Breakfast with Santa Presale - Children 11 & Under	$8.00	$8.00	$0.00	NC
Breakfast with Santa After December 1st - Children 11 & Under	$10.00	$10.00	$0.00	NC

Facility Name	Current	Proposed Fee Range		
	16/17 Cost/Rate	17/18 Cost/Rate	Increase Amount	% Change
Facility Setup Fee - flat rate (excluding Old Library & Fireside Room)	$25.00	$25.00	$0.00	NC
Facility Rental Deposit CLUBHOUSE - Indoor (No Alcohol)	$300.00	$300.00	$0.00	NC
Facility Rental Deposit CLUBHOUSE - Indoor (Alcohol)	$400.00	$400.00	$0.00	NC
Facility Rental Deposit CLUBHOUSE - Indoor (Alcohol & Youth Event)	$500.00	$500.00	$0.00	NC
Facility Rental Deposit VILLAGE HALL - Indoor (No Alcohol)	$300.00	$300.00	$0.00	NC
Facility Rental Deposit VILLAGE HALL - Indoor (Alcohol)	$400.00	$400.00	$0.00	NC
Facility Rental Deposit VILLAGE HALL - Indoor (Alcohol & Youth Event)	$500.00	$500.00	$0.00	NC
Facility Rental Deposit MCMILLAN CENTER - Indoor (No Alcohol)	$200.00	$200.00	$0.00	NC
Facility Rental Deposit MCMILLAN CENTER - Indoor (Alcohol)	$300.00	$300.00	$0.00	NC
Facility Rental Deposit MCMILLAN CENTER - Indoor (Alcohol & Youth Event)	$400.00	$400.00	$0.00	NC
Facility Rental Deposit OLD LIBRARY - Indoor (No Alcohol)	$200.00	$200.00	$0.00	NC
Facility Rental Deposit - Outdoor	$50.00	$50.00	$0.00	NC
Clubhouse Auditorium - per hour (1-7 hours) RESIDENT	$95.00	$95.00	$0.00	NC
Clubhouse Auditorium - per hour (1-7 hours) NON-RESIDENT	$105.00	$105.00	$0.00	NC
Clubhouse Auditorium - per hour (1-7 hours) NON-PROFIT	$90.00	$90.00	$0.00	NC
Clubhouse Auditorium - per hour (8+ hours) RESIDENT	$85.00	$85.00	$0.00	NC
Clubhouse Auditorium - per hour (8+ hours) NON-RESIDENT	$95.00	$95.00	$0.00	NC
Clubhouse Auditorium - per hour (8+ hours) NON-PROFIT	$80.00	$80.00	$0.00	NC
Clubhouse Auditorium KITCHEN - flat rate (8 hr. max)	$50.00	$50.00	$0.00	NC
Clubhouse Auditorium Cocktail Tables & Barstools - flat rate	**$0.00**	**$50.00**	**$50.00**	**NEW**
Clubhouse Auditorium Sound System - flat rate	$50.00	$50.00	$0.00	NC
Clubhouse Auditorium Microphone - flat rate	$25.00	$25.00	$0.00	NC
Clubhouse Auditorium Portable Bar & Utensils - flat rate	$50.00	$50.00	$0.00	NC
Clubhouse Village Hall - per hour (1-7 hours) RESIDENT	$75.00	$75.00	$0.00	NC
Clubhouse Village Hall - per hour (1-7 hours) NON-RESIDENT	$85.00	$85.00	$0.00	NC
Clubhouse Village Hall - per hour (1-7 hours) NON-PROFIT	$70.00	$70.00	$0.00	NC
Clubhouse Village Hall - per hour (8+ hours) RESIDENT	$65.00	$65.00	$0.00	NC
Clubhouse Village Hall - per hour (8+ hours) NON-RESIDENT	$75.00	$75.00	$0.00	NC
Clubhouse Village Hall - per hour (8+ hours) NON-PROFIT	$60.00	$60.00	$0.00	NC
Clubhouse Village Hall KITCHEN - flat rate (8 hr. max)	$30.00	$30.00	$0.00	NC
Clubhouse Village Hall Sound System - flat rate	$50.00	$50.00	$0.00	NC
Clubhouse Village Hall Microphone - flat rate	$25.00	$25.00	$0.00	NC
Clubhouse Village Hall Flat Screen TV - flat rate	$25.00	$25.00	$0.00	NC
Old Library - per hour (1-7 hours) RESIDENT	$40.00	$40.00	$0.00	NC
Old Library - per hour (1-7 hours) NON-RESIDENT	$50.00	$50.00	$0.00	NC
Old Library - per hour (1-7 hours) NON-PROFIT	$35.00	$35.00	$0.00	NC
Old Library - per hour (8+ hours) RESIDENT	$30.00	$30.00	$0.00	NC
Old Library - per hour (8+ hours) NON-RESIDENT	$40.00	$40.00	$0.00	NC
Old Library - per hour (8+ hours) NON-PROFIT	$25.00	$25.00	$0.00	NC
Old Library Setup Fee - flat rate	$10.00	$10.00	$0.00	NC
McMillan Center - per hour (1-7 hours) RESIDENT	$55.00	$55.00	$0.00	NC
McMillan Center - per hour (1-7 hours) NON-RESIDENT	$65.00	$65.00	$0.00	NC
McMillan Center - per hour (1-7 hours) NON-PROFIT	$50.00	$50.00	$0.00	NC
McMillan Center - per hour (8+ hours) RESIDENT	$45.00	$45.00	$0.00	NC
McMillan Center - per hour (8+ hours) NON-RESIDENT	$55.00	$55.00	$0.00	NC
McMillan Center - per hour (8+ hours) NON-RESIDENT	$40.00	$40.00	$0.00	NC
Arts & Crafts Building Entire Building - per hour (1-7 hours) RESIDENT	$45.00	$45.00	$0.00	NC
Arts & Crafts Building Entire Building - per hour (1-7 hours) NON-RESIDENT	$55.00	$55.00	$0.00	NC

Program Name	Current	Proposed Fee Range		
	16/17 Cost/Rate	17/18 Cost/Rate	Increase Amount	% Change
Arts & Crafts Building Entire Building- per hour (8+ hours) NON-RESIDENT	$45.00	$45.00	$0.00	NC
Arts & Crafts Building Entire Building- per hour (8+ hours) NON-PROFIT	$30.00	$30.00	$0.00	NC
Arts & Crafts Building One Side - per hour (1-7 hours) RESIDENT	$25.00	$25.00	$0.00	NC
Arts & Crafts Building One Side - per hour (1-7 hours) NON-RESIDENT	$30.00	$30.00	$0.00	NC
Arts & Crafts Building One Side - per hour (1-7 hours) NON-PROFIT	$20.00	$20.00	$0.00	NC
Arts & Crafts Building One Side - per hour (8+ hours) RESIDENT	$20.00	$20.00	$0.00	NC
Arts & Crafts Building One Side - per hour (8+ hours) NON-RESIDENT	$25.00	$25.00	$0.00	NC
Arts & Crafts Building One Side - per hour (8+ hours) NON-PROFIT	$15.00	$15.00	$0.00	NC
Fireside Room - per hour (1-7 hours) RESIDENT	$25.00	$25.00	$0.00	NC
Fireside Room - per hour (1-7 hours) NON-RESIDENT	$30.00	$30.00	$0.00	NC
Fireside Room - per hour (1-7 hours) NON-PROFIT	$20.00	$20.00	$0.00	NC
Fireside Room - per hour (8+ hours) RESIDENT	$20.00	$20.00	$0.00	NC
Fireside Room - per hour (8+ hours) NON-RESIDENT	$25.00	$25.00	$0.00	NC
Fireside Room - per hour (8+ hours) NON-PROFIT	$15.00	$15.00	$0.00	NC
Fireside Room Setup Fee - flat rate	$10.00	$10.00	$0.00	NC
Private Security Unarmed - per hour (1 guard)	$16.08	$16.08	$0.00	NC
Private Security Unarmed - per hour (2 guards)	$32.16	$32.16	$0.00	NC
Private Security Unarmed - per hour (3 guards)	$48.24	$48.24	$0.00	NC
Private Security Armed - per hour (1 guard)	$18.08	$18.08	$0.00	NC
Facility Rental Insurance (Hub International) - per use (1-25 attendance)	$66.12	$66.12	$0.00	NC
Facility Rental Insurance (Hub International) - per use (26-50 attendance)	$100.18	$100.18	$0.00	NC
Facility Rental Insurance (Hub International) - per use (51-150 attendance)	$107.40	$107.40	$0.00	NC
Facility Rental Insurance (Hub International) - per use (151-250 attendance)	$125.98	$125.98	$0.00	NC
Facility Rental Insurance (Hub International) - per use (1251-500 attendance)	$148.68	$148.68	$0.00	NC
Birthday Party Rental Package - BASIC (Resident)	$190.00	$190.00	$0.00	NC
Birthday Party Rental Package - BASIC (Non-Resident)	$230.00	$230.00	$0.00	NC
Birthday Party Rental Package - DELUXE (Resident)	$255.00	$255.00	$0.00	NC
Birthday Party Rental Package - DELUXE (Non-Resident)	$295.00	$295.00	$0.00	NC
Birthday Party Rental Package - ULTIMATE (Resident)	$310.00	$310.00	$0.00	NC
Birthday Party Rental Package - ULTIMATE (Non-Resident)	$350.00	$350.00	$0.00	NC
WOW Bus Rental (per hour) – Under 30 People	$50.00	$50.00	$0.00	NC
WOW Bus Rental (per hour) – Under 30 - 50 People	$70.00	$70.00	$0.00	NC
WOW Bus Rental (per hour) – Under 50 - 100 People	$90.00	$90.00	$0.00	NC
Bandshell - per hour RESIDENT	$25.00	$25.00	$0.00	NC
Bandshell - per hour NON-RESIDENT	$30.00	$30.00	$0.00	NC
Bandshell - per hour NON-PROFIT	$20.00	$20.00	$0.00	NC
Fair Oaks Park BBQ Area - per hour RESIDENT	$25.00	$25.00	$0.00	NC
Fair Oaks Park BBQ Area - per hour NON-RESIDENT	$35.00	$35.00	$0.00	NC
Fair Oaks Park BBQ Area - per hour NON-PROFIT	$20.00	$20.00	$0.00	NC
Fair Oaks Park BBQ Area Bounce House Fee - flat rate	$10.00	$10.00	$0.00	NC
Miller Park BBQ Area - per hour RESIDENT	$15.00	$15.00	$0.00	NC
Miller Park BBQ Area - per hour NON-RESIDENT	$25.00	$25.00	$0.00	NC
Miller Park BBQ Area - per hour NON-PROFIT	$10.00	$10.00	$0.00	NC
Miller Park Covered BBQ Area - per hour RESIDENT	**$0.00**	**$15.00**	**$15.00**	**NEW**
Miller Park Covered BBQ Area - per hour NON-RESIDENT	**$0.00**	**$25.00**	**$25.00**	**NEW**
Miller Park Covered BBQ Area - per hour NON-PROFIT	**$0.00**	**$10.00**	**$10.00**	**NEW**
Miller Park BBQ Area Bounce House Fee - flat rate	$10.00	$10.00	$0.00	NC
Miller Park Tennis Courts - per hour RESIDENT	$15.00	$15.00	$0.00	NC
Miller Park Tennis Courts - per hour NON-RESIDENT	$20.00	$20.00	$0.00	NC
Miller Park Tennis Courts - per hour NON-PROFIT	$10.00	$10.00	$0.00	NC
BBQ Area Electricity - per use	$10.00	$10.00	$0.00	NC
Community Partner Level A Clubhouse Rental (1-10)	$80.00	$80.00	$0.00	NC
Community Partner Level B Clubhouse Rental (1-10)	$90.00	$90.00	$0.00	NC
Community Partner Level A Clubhouse Rental (11-20)	$75.00	$75.00	$0.00	NC
Community Partner Level B Clubhouse Rental (11-20)	$85.00	$85.00	$0.00	NC
Community Partner Level A Clubhouse Rental (21-30)	$70.00	$70.00	$0.00	NC
Community Partner Level B Clubhouse Rental (21-30)	$75.00	$75.00	$0.00	NC
Community Partner Level A Clubhouse Rental (31-50)	$65.00	$65.00	$0.00	NC
Community Partner Level B Clubhouse Rental (31-50)	$65.00	$65.00	$0.00	NC
Community Partner Level A Clubhouse Rental (51-80)	$55.00	$55.00	$0.00	NC
Community Partner Level B Clubhouse Rental (51-80)	$60.00	$60.00	$0.00	NC
Community Partner Level A Clubhouse Rental (81-100)	$50.00	$50.00	$0.00	NC
Community Partner Level B Clubhouse Rental (81-100)	$55.00	$55.00	$0.00	NC
Community Partner Level A Village Hall Rental (1-10)	$75.00	$75.00	$0.00	NC
Community Partner Level B Village Hall Rental (1-10)	$80.00	$80.00	$0.00	NC
Community Partner Level A Village Hall Rental (11-20)	$70.00	$70.00	$0.00	NC

Program Name	Current	Proposed Fee Range		
	16/17 Cost/Rate	17/18 Cost/Rate	Increase Amount	% Change
Community Partner Level B Village Hall Rental (11-20)	$75.00	$75.00	$0.00	NC
Community Partner Level A Village Hall Rental (21-30)	$65.00	$65.00	$0.00	NC
Community Partner Level B Village Hall Rental (21-30)	$70.00	$70.00	$0.00	NC
Community Partner Level A Village Hall Rental (31-50)	$60.00	$60.00	$0.00	NC
Community Partner Level B Village Hall Rental (31-50)	$65.00	$65.00	$0.00	NC
Community Partner Level A Village Hall Rental (51-80)	$55.00	$55.00	$0.00	NC
Community Partner Level B Village Hall Rental (51-80)	$60.00	$60.00	$0.00	NC
Community Partner Level A Village Hall Rental (81-100)	$45.00	$45.00	$0.00	NC
Community Partner Level B Village Hall Rental (81-100)	$50.00	$50.00	$0.00	NC
Community Partner Level A McMillan Center Rental (1-10)	$75.00	$75.00	$0.00	NC
Community Partner Level B McMillan Center Rental (1-10)	$80.00	$80.00	$0.00	NC
Community Partner Level A McMillan Center Rental (11-20)	$70.00	$70.00	$0.00	NC
Community Partner Level B McMillan Center Rental (11-20)	$75.00	$75.00	$0.00	NC
Community Partner Level A McMillan Center Rental (21-30)	$65.00	$65.00	$0.00	NC
Community Partner Level B McMillan Center Rental (21-30)	$70.00	$70.00	$0.00	NC
Community Partner Level A McMillan Center Rental (31-50)	$60.00	$60.00	$0.00	NC
Community Partner Level B McMillan Center Rental (31-50)	$65.00	$65.00	$0.00	NC
Community Partner Level A McMillan Center Rental (51-80)	$55.00	$55.00	$0.00	NC
Community Partner Level B McMillan Center Rental (51-80)	$60.00	$60.00	$0.00	NC
Community Partner Level A McMillan Center Rental (81-100)	$45.00	$45.00	$0.00	NC
Community Partner Level B McMillan Center Rental (81-100)	$50.00	$50.00	$0.00	NC
Community Partner Level A Old Library Rental (1-10)	$65.00	$65.00	$0.00	NC
Community Partner Level B Old Library Rental (1-10)	$70.00	$70.00	$0.00	NC
Community Partner Level A Old Library Rental (11-20)	$60.00	$60.00	$0.00	NC
Community Partner Level B Old Library Rental (11-20)	$65.00	$65.00	$0.00	NC
Community Partner Level A Old Library Rental (21-30)	$55.00	$55.00	$0.00	NC
Community Partner Level B Old Library Rental (21-30)	$60.00	$60.00	$0.00	NC
Community Partner Level A Old Library Rental (31-50)	$50.00	$50.00	$0.00	NC
Community Partner Level B Old Library Rental (31-50)	$55.00	$55.00	$0.00	NC
Community Partner Level A Old Library Rental (51-80)	$45.00	$45.00	$0.00	NC
Community Partner Level B Old Library Rental (51-80)	$50.00	$50.00	$0.00	NC
Community Partner Level A Old Library Rental (81-100)	$30.00	$30.00	$0.00	NC
Community Partner Level B Old Library Rental (81-100)	$40.00	$40.00	$0.00	NC
Multipurpose Fields Level A (Cost Per Month/Per Field)	$100.00	$100.00	$0.00	NC
Multipurpose Fields Level B (Cost Per Month/Per Field)	$125.00	$125.00	$0.00	NC
Baseball Fields Level A (Cost Per Month/Per Field)	$100.00	$100.00	$0.00	NC
Baseball Fields Level B (Cost Per Month/Per Field)	$125.00	$125.00	$0.00	NC
Tennis Courts Level A (Cost Per Month / Per Set of Courts)	$100.00	$100.00	$0.00	NC
Tennis Courts Level B (Cost Per Month / Per Set of Courts)	$125.00	$125.00	$0.00	NC
Clubhouse Level A - Eight (8) Hour Rental Per Facility	$320.00	$320.00	$0.00	NC
Clubhouse Level B - Eight (8) Hour Rental Per Facility	$340.00	$340.00	$0.00	NC
Village Hall Level A - Eight (8) Hour Rental Per Facility	$200.00	$200.00	$0.00	NC
Village Hall Level B - Eight (8) Hour Rental Per Facility	$220.00	$220.00	$0.00	NC
McMillan Cener Level A - Eight (8) Hour Rental Per Facility	$160.00	$160.00	$0.00	NC
McMillan Cener Level B - Eight (8) Hour Rental Per Facility	$180.00	$180.00	$0.00	NC
Ongoing Rental Fee - CLUBHOUSE AUDITORIUM - per hour / Sunday-Thursday	$47.50	$47.50	$0.00	NC
Ongoing Rental Fee - CLUBHOUSE AUDITORIUM - per hour / Friday & Saturday	$71.25	$71.25	$0.00	NC
Ongoing Rental Fee - VILLAGE HALL - per hour / Sunday-Thursday	$37.50	$37.50	$0.00	NC
Ongoing Rental Fee - VILLAGE HALL - per hour / Friday & Saturday	$56.25	$56.25	$0.00	NC
Ongoing Rental Fee - MCMILLAN CENTER - per hour / Sunday-Thursday	$27.50	$27.50	$0.00	NC
Ongoing Rental Fee - MCMILLAN CENTER - per hour / Friday & Saturday	$41.25	$41.25	$0.00	NC
Ongoing Rental Fee - OLD LIBRARY - per hour / Sunday-Thursday	$20.00	$20.00	$0.00	NC
Ongoing Rental Fee - OLD LIBRARY - per hour / Friday & Saturday	$30.00	$30.00	$0.00	NC
Ongoing Multipurpose Field Rental Rate - Per Hour (1-19) Times Per Year	$30.00	$30.00	$0.00	NC
Ongoing Multipurpose Field Rental Rate - Per Hour (20-39) Times Per Year	$25.00	$25.00	$0.00	NC
Ongoing Multipurpose Field Rental Rate - Per Hour (40-59) Times Per Year	$20.00	$20.00	$0.00	NC
Ongoing Baseball Field Rental Rate - Per Hour (1-19) Times Per Year	$30.00	$30.00	$0.00	NC
Ongoing Baseball Field Rental Rate - Per Hour (20-39) Times Per Year	$25.00	$25.00	$0.00	NC
Ongoing Baseball Field Rental Rate - Per Hour (40-59) Times Per Year	$20.00	$20.00	$0.00	NC
Ongoing Softball Field Rental Rate - Per Hour (1-19) Times Per Year	$30.00	$30.00	$0.00	NC
Ongoing Softball Field Rental Rate - Per Hour (20-39) Times Per Year	$25.00	$25.00	$0.00	NC
Ongoing Softball Field Rental Rate - Per Hour (40-59) Times Per Year	$20.00	$20.00	$0.00	NC
Fair Oaks Park Softball Field Rental - 1 Day / 1 Field	$285.00	$295.00	$10.00	4%
Fair Oaks Park Softball Field Rental - 1 Day / 2 Fields	$400.00	$410.00	$10.00	3%
Fair Oaks Park Softball Field Rental - 2 Day / 2 Fields	$995.00	$605.00	$10.00	2%
Fair Oaks Park Softball Field Rental - Deposit	$200.00	$200.00	$0.00	NC
Fair Oaks Park Softball Field Rental - LIGHTS - per hour / per field	$20.00	$20.00	$0.00	NC

An argument might also be made that business assessments actually are charges for services despite being cast in BID law, and in many local ordinances, as assessments for benefits. Under this argument, the applicable exception would be that of § 1(e)(2), which excepts charges:

> "imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product."

This argument could deflect a claim that while BID services are provided "directly" to business, they "benefit" the public. But it would also invite a new question – whether the services "are provided those not charged." Local governments may find this question easier to persuasively answer.

III. Exception No. 2: Section 1(e)(2) Exception for Fees for Services and Products Provided

Section 1(e)(2) excludes from the new definition of "tax":

> "A charge imposed for a **specific government service or product provided** directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product." (Emphasis added.)

This exception covers utility fees not subject to Proposition 218,[30] some park and recreation fees that are not admission or equipment rental fees, transit fees, emergency response fees,[31] and a wide range of other government fees.

A. *Application of Proposition 26 to park and recreation fees.*

1. In General

For purposes of Proposition 26, park and recreation fees can be divided into two general categories – those best analyzed under §1(e)(2)'s exception for service fees, and those best analyzed under § 1(e)(4) exception for fees for the use of government property. The first category includes fees imposed for a service – like lessons, transportation, child care, etc. The fee for services exception requires that such fees be limited to "the reasonable costs to the local government of providing the service."

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[30] Gas and electric charges are exempted from Proposition 218 by Article XIIID, § 3(b).

[31] By emergency response fees, we mean those authorized by Gov. Code §§ 53150-53158. We do not mean the 911 response fees called into question by *Bay Area Cellular Tel. Co. v. City of Union City*, (2008) 162 Cal.App.4th 686 (fee imposed on phone bills for 911 services was tax requiring voter approval).

League of

The second category includes fees for the use of government property. Fees imposed for admission to parks, rental of government property (like bikes, boats and recreation equipment), and for the rental of fields, meeting rooms and the like, are best analyzed under § 1(e)(4). The language of that exception does not include the "reasonable costs" limitation. But a general law city is subject to the constraint on the amount of a fee charged either under either category imposed by Gov. Code § 50402, which provides, in part, as follows:

> "A city, county or city and county owning property or leasing property which is devoted to park, amusement, or recreational purposes may make a charge for use or services provided therein in the amount as may be provided by resolution by the governing body. No charge shall be imposed which exceeds the cost of the service provided. To the extent feasible, charges for similar uses or services imposed by a governing body pursuant to this section shall be uniform throughout its area of jurisdiction."

Are charges for services offered in connection with recreational, cultural, educational, or other similar programs subject to Proposition 26?

Many local governments own and operate a wide variety of park, recreation, and cultural facilities. These may include facilities such as tennis courts, golf courses, fitness centers, swimming pools, museums, interpretive centers, and other similar civic facilities. The agency frequently provides classes, lessons, and other recreational, cultural, and educational programs at those facilities, often in competition with private enterprise. Additionally, agencies may sponsor running, cycling, or similar athletic events for which a participation fee is charged. Although admission charges are covered by the exception in art. XIIIC, § 1(e)(4) for charges "imposed for entrance to or use of local government property," there is a question whether charges for lessons, classes, or programs fall within the exception as a "use" of property, or whether the charges are "imposed" at all and, if not, excluded from the reach of Proposition 26's definition of "tax" for that reason.

There is a reasonable argument that a charge for a lesson, class, program, and other participation is not "imposed" within the meaning of Proposition 26 if the participants have meaningful private market options and participation is meaningfully voluntary. A local government may wish to document the market options available to consumers, demonstrating that participation in the government's program is meaningfully voluntary, to support its determination that charges for recreational, cultural and educational programs are not subject to Proposition 26.

To the extent that the charges are "imposed," the exceptions for conferring a benefit or privilege (§ 1(e)(1)) or providing a service or product (§ 1 (e)(2)) would appear to apply as long as the cost of service test is met.

California Special Districts Association

Districts Stronger Together

Proposition 26 Guide for Special Districts

Proposition 26

The proponents of Proposition 26 intended to target state and local government fees that they asserted exceed the reasonable costs of regulation or the reasonable costs of providing a specific benefit, privilege, government service, or product.

On November 2, 2010 California voters approved Proposition 26, a ballot initiative that established new limitations on the State's and local governments' power to impose fees and charges.[1] Proposition 26 amended provisions of Article XIII A of the California Constitution, which governs the imposition of taxes by the State, and Article XIII C of the California Constitution, which governs the imposition of taxes by local governments, by providing a new definition of the term "tax." For local governments, this narrow definition defines "tax" to mean any levy, charge, or exaction of any kind imposed by a local government,[2] except for seven specifically identified exceptions. As a consequence, fees and charges that do not fall within one of the seven exceptions are redefined as taxes and are subject to voter approval.[3]

The proponents of Proposition 26 intended to target state and local government fees that they asserted exceed the reasonable costs of regulation or the reasonable costs of providing a specific benefit, privilege, government service, or product. While many issues remain to be addressed by the courts or through clarifying legislation, this Proposition 26 Guide for Special Districts addresses the impacts Proposition 26 may have on special districts and issues that special districts should consider when adopting fees and charges in light of these new limitations.[4]

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Background

Articles XIII A and XIII B work in tandem, together restricting California governments' power both to levy and to spend [taxes] for public purposes.

State and local agencies impose a variety of special taxes, assessments, fees, and charges on individuals and entities in order to pay for the costs of or provide funding for government services, facilities, and programs. Several ballot initiatives have been approved by the voters between 1978 and 1996 that have restricted the ability of state and local agencies to raise revenue through these funding sources.

In 1978, California voters approved Proposition 13, the first of this series of initiatives. Proposition 13 added Article XIII A to the California Constitution. Billed as a property-taxpayer relief measure, it included "an interlocking 'package'" comprised of a real property tax rate limitation (Article XIII A, § 1), a real property assessment limitation (Article XIII A, § 2), a restriction on state taxes (Article XIII A, § 3), and a restriction on local taxes (Article XIII A, § 4)[5] Additionally, Article XIII A, section 4 placed limitations on local governments by establishing a two-thirds voter approval requirement for any special tax to be imposed by cities, counties, and special districts.[6]

Initial restrictions on the ability of local governments to raise revenue were implemented in 1996, when voters approved Proposition 218.

The State Legislature enacted Government Code sections 50075 and 50076 to implement Proposition 13. Section 50075 provides that it is the intent of the Legislature to provide all cities, counties, and special districts with the authority to impose special taxes pursuant to the provisions of Article XIII A. Section 50076 then excludes from the definition of special tax "any fee which does not exceed the reasonable cost of providing *the service or regulatory activity* for which the fee is charged and which is not levied for general revenue purposes."

In 1979, California voters approved Proposition 4, which added Article XIII B to the California Constitution. While Proposition 13 limited the State's and local governments' power to increase taxes, Proposition 4 imposed a complementary limit on the rate of growth in government spending.[7] "Articles XIII A and XIII B work in tandem, together restricting California governments' power both to levy and to spend [taxes] for public purposes."[8]

Article XIII B also included provisions intended to prevent state government attempts "to force programs on local governments without the state paying for them."[9]

Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues.[10]

The concern that prompted the voters to include Article XIII B, section 6 in the California Constitution "was the perceived attempt by the State to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public."[11]

Additional restrictions on the ability of local governments to raise revenue were implemented in 1996, when voters approved Proposition 218. The initiative amended the California Constitution by adding Article XIII C and Article XIII D. Article XIII C established voter approval requirements for general and special taxes and provided the initiative power to voters to reduce

Background continued

or repeal any local tax, assessment, fee, or charge, and further made that power of initiative applicable to all local governments. Article XIII D established procedural requirements for levying assessments and imposing or increasing property-related fees and charges.[12] Additionally, Article XIII D placed substantive limitations on the use of the revenue collected from assessments and property-related fees and charges and on the amount of the assessment and fee or charge that may be imposed on each parcel. *(For in-depth information on Proposition 218, see CSDA's Proposition 218 Guide for Special Districts.)*

Shortly after the adoption of Proposition 218, the California Supreme Court determined in *Sinclair Paint Co. v. State Board of Equalization* that a fee assessed on manufacturers of materials that contributed to environmental lead contamination could reasonably be characterized as a regulatory fee and not a special tax.[13] The purpose of the fee was to fund a program to reduce lead poisoning of children. The statute imposing the fee required paint manufacturers and others whose products exposed children to lead contamination to bear a fair share of the cost of mitigating the adverse health impacts of the manufacturers' products.

The Sinclair Paint Company claimed that the fee should have been imposed as a tax with the approval of a two-thirds vote of both houses of the State Legislature because proceeds of the fees did not benefit the fee payers. The court found that as long as the fee bears a reasonable relationship to the burden caused by those charged, the use of proceeds from regulatory fees does not have to confer benefits or privileges on the fee payer because the proceeds are imposed under a public agency's police power rather than its taxing power, and supermajority approval is not required.[14]

The Sinclair Paint Company also disputed the State's authority to impose industry-wide "remediation fees" to compensate for the adverse effects of an industry's products. The court, however, acknowledged that "the police power[15] is broad enough to include mandatory remedial measures to mitigate the *past, present, or future* adverse impact of the fee payer's operations, at least where, as here, the measure requires a causal connection or nexus between the product and its adverse effects."[16]

Table 1.

Voter Initiatives Restricting Local Revenue
Proposition 13 (1978) • Real property tax rate limited to 1 percent of property value and 2 percent annual growth • Reassessment only occurs after a change of ownership of the real property • Any local special tax must be passed by the voters by a two-thirds majority
Proposition 4 (1979) • State and local governments must reimburse taxpayers if tax revenue is greater than spending • State must reimburse local governments for the cost of complying with state mandates
Proposition 218 (1996) • Local governments must obtain majority voter approval for any new or increased general tax • Voters may repeal or reduce any local tax, assessment, fee or charge • Local governments must put all assessments, charges and fees to a vote of the people before imposition or increase • Benefit assessment must be calculated by the benefit received by each parcel of real property • Local governments prohibited from imposing fees on property owners for services that are available to the public at large *(For in-depth information on Proposition 218, see CSDA's Proposition 218 Guide for Special Districts.)*
Proposition 26 (2010) • "Tax" redefined to mean any levy, charge or exaction of any kind imposed by a local government, except for seven specifically defined exceptions that are considered fees • Fees and charges that do not fit one of the seven exceptions must receive voter approval

Post-Proposition 13 and 218

Other post-Proposition 13 and 218 cases have defined a regulatory fee as an imposition that funds a regulatory program or that distributes the collective cost of a regulation and is "enacted for purposes broader than the privilege to use a service or to obtain a permit. . . . [T]he regulatory program is for the protection of the health and safety of the public."[17] In general, prior to Proposition 26, courts have upheld regulatory fees when the fees (1) constitute an amount necessary to carry out the purposes and provisions of the regulation; (2) do not exceed the reasonable cost of providing the services necessary to regulate the activity on which the fees are based; and (3) are not levied for an unrelated revenue purpose. [18]

Proposition 26 Findings & Declarations

...the proposition targets fees that are "couched as 'regulatory' but which exceed the reasonable costs of actual regulation" or that are "imposed to raise revenue for a new program and are not part of any licensing or permitting program."

The regulatory fees imposed by local governments to mitigate the past, present, or future adverse impact of the fee payer's operations after the adoption of Proposition 218 are one of the primary targets of Proposition 26. The "Findings and Declarations of Purpose" of the ballot initiative note that taxes within California escalated as a result of the State and local agencies "disguising" new taxes as fees without having to comply with the voter approval requirements of Articles XIII A and XIII C. In particular, the proposition targets fees that are "couched as 'regulatory' but which exceed the reasonable costs of actual regulation" or that are "imposed to raise revenue for a new program and are not part of any licensing or permitting program."[1] These fees, the proposition declares, are actually taxes that should be subject to the limitations applicable to the imposition of taxes.[2] The proposition further declares that in order to ensure the effectiveness of the constitutional limitations placed on taxes, fees, and charges established in Propositions 13 and 218, it is necessary to define what a tax means. Consequently, Proposition 26 "defines a 'tax' for state and local purposes so that neither the Legislature nor local governments can circumvent these restrictions on increasing taxes by simply defining new or expanded taxes as 'fees.'"[3]

Proposition 26
Definition of Tax

For local governments, Proposition 26 establishes a new definition of the term "tax"

Although the primary target of Proposition 26 may have been the "mitigating-effects regulatory fees" approved by local governments after the adoption of Propositions 13 and 218, its impact on other fees and charges imposed by special districts is much broader. Article XIII C, section 1(a) defines "general tax" to mean "any tax imposed for general governmental purposes."[24] Article XIII C, section 1(d) defines "special tax" to mean "any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund."[24] Although Article XIII C provides definitions of the terms "general tax" and "special tax," it does not provide a definition of the term "tax."[24]

For local governments, Proposition 26 establishes a new definition of the term "tax" by adding Article XIII C, section 1(e) ("Section 1(e)").[25] The definition is as follows:

(e) As used in this article, "tax" means any levy, charge, or exaction of any kind imposed by a local government, except the following:

(1) A charge imposed for a specific benefit conferred or privilege granted[26] directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.

(2) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.

(3) A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

(4) A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.
(5) A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law.
(6) A charge imposed as a condition of property development.
(7) Assessments and property-related fees imposed in accordance with the provisions of Article XIII D.[27]

As is evident from the definition above, Section 1(e) defines what a tax is by defining what it is not. As a consequence, Proposition 26 narrows the purposes for which certain fees may be imposed by local governments and in effect reclassifies them as taxes. A discussion of the impacts this definitional change may have on fees and charges imposed by special districts follows.

Table 2.

Fee vs. Tax
FEE: A charge for a BENEFIT or PRIVILEGE directly provided. **TAX:** A charge imposed for a BENEFIT or PRIVILEGE provided to others at a reduced or no cost. A charge that exceeds the reasonable costs of providing the benefit or privilege.
FEE: A charge for a SERVICE or PRODUCT directly provided. **TAX:** A charge imposed for a SERVICE or PRODUCT provided to others at reduced or no cost. A charge that exceeds the reasonable costs of providing the service or product.
FEE: A charge for costs associated with issuing licenses and permits; performing investigations, inspections, and audits; and enforcing agricultural marketing orders. **TAX:** A charge above and beyond reasonable cost recovery for issuing licenses and permits; performing investigations, inspections and audits; and enforcing agricultural marketing orders.
FEE: A charge for use, purchase, rental or lease of local government property.
FEE: A charge imposed by the judicial branch of government or a local government for a violation of the law.
FEE: A charge imposed as a condition of property development.
FEE: Assessment or property-related charge imposed in compliance with the provisions of Proposition 218.

When Are Fees and Charges "Imposed"

Understand what it means to "impose" a fee or charge.

Preliminarily, in order for a fee or charge to be subject to Section 1(e), the fee or charge must be "imposed" by a local government. An understanding of what it means to "impose" a fee or charge is therefore the first step in determining whether a special district fee or charge is subject to the limitations of Section 1(e).[29]

When interpreting a provision of the California Constitution, a court will seek to determine and effectuate the intent of those who enacted the constitutional provision at issue. To determine the voters' intent, the court begins by examining the constitutional text, giving the words their ordinary meanings.[30] Cases interpreting what it means to impose a fee or charge are therefore instructive in this analysis.

In *Ponderosa Homes, Inc. v. City of San Ramon*,[31] the court examined what it means to "impose" a charge in the context of the Mitigation Fee Act. The court found that

> [t]he phrase "to impose" is generally defined to mean to establish or apply by authority or force, as in "to impose a tax."... As applicable here, the phrase refers to the creation of a condition or fee by authority of local government; it is not synonymous with the act of complying with that condition or fee.[32]

In *City of Madera v. Black*,[33] the court considered the meaning of the terms "tax," "impose," and "impost":

> A tax, in the general sense of the word, includes every charge upon persons or property, imposed by or under the authority of the Legislature, for public purposes. The word "impost," in its broader sense, means "any tax or tribute imposed by authority, and applies as well to a tax on persons as to a tax on property."... The money for which the plaintiff sued was a charge upon persons; it was imposed by the legislative authority of the city of Madera for public purposes, and under these definitions it was a tax; also, it was a tribute or contribution required by legislative authority and to be used for public purposes, and so comes within the definition of the word "impost."[34]

In *Richmond v. Shasta Community Services District*,[35] the court considered a water connection fee imposed by the district as a condition of receiving water service. In characterizing the fee, the court described it as a fee that "applicants for new water service connections would be required to pay."[35] In the context of Richmond, "imposed by" referred to a fee unilaterally adopted by the district and applied and charged to applicants for new service connections.

In summary, the courts have interpreted the term "impose" to mean an act of a local government, through ordinance or other legislative act, exercising its authority to levy, establish or apply something such as a tax on the public, a taxpayer, or a ratepayer. "Impose" therefore means a unilateral exercise of governmental authority to levy, establish, or apply a fee, charge, or exaction of some type. Thus, if a fee or charge is paid to a special district on a voluntary or negotiated basis, rather than by virtue of force or authority, the fee or charge arguably is not "imposed" and is therefore not subject to the provisions of Section 1(e). A discussion of each of the seven exceptions and the impact they may have on fees or charges "imposed" by special districts follows. Examples of specific fees and charges are provided to illustrate the application of Section 1(e) to fees and charges that may be imposed by a special district.

Imposing Fees For Benefits, Privileges, Services and Products

The first two exceptions of Proposition 26 clarify two situations as imposing a "tax" rather than a "fee." The first occurs when some fee payers are required to pay more so that other "fee" payers may pay less or nothing at all, an arrangement sometimes called a cross-subsidy. The second occurs when the "fee" imposed is greater than the local government's cost of conferring the benefit or privilege or providing the service or product. The second issue may be implicated by the first. The elements of Section 1(e)(1) and 1(e)(2) may be broken down as follows:

a fee is a tax if:

(1) the fee is imposed for a specific benefit conferred or privilege granted, or service or product provided directly to the payer and the same benefit is conferred, privilege is granted, or service or product is provided to others who are not charged for such benefit, privilege, service or product; and

(2) the fee exceeds the reasonable costs of the benefit conferred, privilege granted, or service or product provided.

As previously discussed, California Government Code section 50076 provides that any fee that does not exceed the reasonable cost of providing the service for which the fee is charged and that is not levied for general revenue purposes is not a special tax. While at first blush the provisions of Section 1 subdivisions (e)(1) and (2) do not appear to add anything new to when a fee may be deemed to be a tax, they do suggest that a more rigorous nexus for the imposition of fees and an accounting of the revenues from fees are now required. (For further discussion of these implications, see the discussion following under the heading "Burden of Proof.") Moreover, subdivisions (e)(1) and (2) extend the reach of what fees are deemed to be a tax to include fees not only for services, but also fees for a specific benefit conferred or privilege granted or specific government product provided.

Proposition 26 does not define what is meant by a "benefit," "privilege," "service," or "product." Applying a plain meaning to the terms "benefits" and "privileges,"[37] the types of fees that may fall within this category include fees for planning, permits, and licenses that grant an advantage or special legal right to perform or conduct certain activities. Similarly, the types of fees that fall within the category of "services" or "products" may include fees and charges imposed by special districts for gas and electric utility services, park and recreation services and programs, emergency response services,[38] wholesale water services,[39] and transit services.

In some instances, special districts provide services or products at discounted rates or at no cost to certain identified classes of individuals, or at differential rates for certain identified classes or

...a fee paid voluntarily by individuals who choose to participate in a program or receive services or products arguably is not "imposed."

individuals. These discounts may trigger other ratepayers' charges to be deemed to be "taxes" under Section 1(e). To demonstrate, the fees levied in the following examples may be implicated by Section 1(e)(1) and 1(e)(2):

- A county water district imposes a fishing permit fee for fishing in its local reservoir (i.e., a fee for a privilege or benefit) but waives the fee for local residents.
- A park district provides discounted fees to seniors and students who participate in a ceramics class (i.e., a fee for a service or product) provided at its community center.
- A community services district imposes different fees for adults, seniors, and children for swim classes (i.e., a fee for a service) provided at its aquatics center.
- An irrigation district provides gas and electrical service (i.e., a fee for a service or product) within its jurisdiction and provides discounted fees to low income customers.

In these examples, the fees may be deemed to be taxes if (1) the cost of providing the discount, fee waiver, or differential rate for the benefit, privilege, government service or product is diverted to other fee payers who are required to pay for the same benefit, privilege, government service or product; and (2) the fee or charge paid by the other fee payers exceeds the cost of providing the benefit, privilege, government service, or product. If, however, the incremental cost of providing the benefit, privilege, service, or product at a discount, or no cost is funded by unrestricted revenues other than the fees or charges imposed on other fee payers (e.g. real property tax revenues, grants, or donations), and the fees or charges imposed on the other fee payers do not exceed the cost of providing the benefit, privilege, service or product, the fees or charges would not be deemed taxes under Section 1(e)(1) or (1)(e)(2).

Notably, an argument can be made that the fees in the first three examples above are not taxes within the meaning of Section 1(e)(2). In these instances, the fees arguably are not "imposed" on the participants because the fee is not established or applied by authority or force, but rather is paid voluntarily by the person choosing to have the benefit conferred, privilege granted, or service or product provided.[49] Based upon the court decisions described previously interpreting what it means to impose a fee or charge, a fee paid voluntarily by individuals who choose to participate in a program or receive services or products arguably is not "imposed."

Imposing Regulatory Fees

Pursuant to Section 1(e)(3), a fee is not a tax if it is imposed for the reasonable regulatory costs of the local government. By definition, reasonable regulatory costs are limited to the costs of "issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof."[41] Any regulatory fees or charges,[42] or any portion of regulatory fees, imposed to recover other costs of a regulatory program, including (1) regulatory fees or charges imposed to mitigate the past, present, or future adverse impact of the fee payer's operations (like those identified in Sinclair Paint Co., discussed previously under the heading "Background"); and (2) regulatory fees and charges imposed to raise revenue for a new program or service,[43] are taxes under Section 1(e)(3).

The following examples are provided to demonstrate the types of regulatory fees and charges that may be implicated by Section 1(e)(3):

- In addition to a tipping fee, a community services district imposes on waste haulers delivering trash to a district-owned landfill a surcharge to mitigate the adverse impacts waste has on the environment. The fee is used to fund a no-cost program to dispose of household toxic materials (e.g., paint, solvents) and electrical appliances (e.g., computer hardware, small appliances).

- A fire protection district imposes an inspection fee for brush management on properties located adjacent to canyons, hillsides, and other open spaces. A portion of the inspection fee is used to fund an emergency preparedness education program.

- A municipal water district adopts a water conservation ordinance and imposes an inspection fee on property owners who violate the ordinance. A portion of the fee is used to fund a rebate program for the installation of low volume water fixtures.

In each of these examples, the fee, or a portion of the fee, could be deemed to be a tax because it is imposed to recover costs other than the reasonable regulatory costs to the local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administration and enforcement of the regulations. Because the fee would be imposed for a specific purpose, it would be deemed to be a special tax requiring a two-thirds voter approval.

Imposing Regulatory Fees and Charges Not Impacted by Proposition 26

Four categories of fees that are excepted from the definition of tax are unaffected by Proposition 26. These include the following specific categories of fees:

(1) charges imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property;[44]

(2) fines, penalties, or other monetary charges imposed by a court or local government as a result of a violation of law;[45]

(3) a charge imposed as a condition of development,[46] and

(4) assessments and property-related fees imposed in accordance with Article XIII D.[47]

Although the fees provided for in Section 1(e), subdivisions (4) through (7) are not taxes within the meaning of Section 1(e), they may or may not be subject to other constitutional or statutory limitations. Examples of fees under these exceptions and how certain constitutional or statutory requirements may affect them follows.

1. Fees and Charges For Use, Purchase, Rental, Or Lease Of Special District Property

- A park district discounts the special events fees paid by non-profit organizations for use of district-owned parks (i.e., a fee for use of real property).
- A California water district imposes a fee of $20.00 per hour for use of its boats at its local reservoir and provides discounted rates to local residents (i.e., a rental fee for use of personal property). [48]

In these examples, the public agencies would not be restricted from providing the discounts because the fees are imposed for entering, using, leasing, or renting local government property. There are no other limitations on the fees and charges public agencies may impose for these purposes. Rather, a local government may charge whatever the market will bear.[49]

Notwithstanding the foregoing, an argument can be made that, in the first example, the special event fee is a fee imposed for a benefit conferred or privilege granted under Section 1(e)(1)—i.e., the benefit or privilege of conducting the special event. In this instance it may be important to look at whether (1) the district's special events ordinance, resolution, or regulations require a permit (suggesting that this fee is imposed for a benefit conferred or privilege granted); (2) a contract is required between the district and the event holder (suggesting an arm's length transaction, and therefore a negotiated fee that is not "imposed"); or (3) the ordinance or resolution adopting the fee refers to the fee being imposed for the use of public property. This is a good example of how some fees may have more than one characteristic under Section 1(e). Consequently, it is important to establish in the administrative record the nature and purpose of the fee or charge to ensure that the fee or charge falls within one of the identified exceptions of Section 1(e), subdivisions (4) through (7).[50]

2. Fines and Penalties

- A cemetery district imposes a penalty of five percent for a late payment for a monument or marker at an interment plot.
- A park district imposes a fine of $1,500 for a first violation of its administrative regulation that prohibits any person from throwing a lighted cigarette onto park property.

The penalty in the first example is excepted from the definition of tax under Section 1(e)(2). The fine in the second example is also an exception under Section 1(e). However, in the second example the dollar amount of the fine is governed by another statutory restriction, namely, California Health and Safety Code section 13002(b), which limits penalties for throwing a lighted cigarette onto park property to no more than $1,000 for a first violation. As a result, the district may be preempted by state law from imposing a higher fine.

3. Fees Imposed as a Condition of Development

- As a condition of approval of a development project, a municipal utility district imposes a fee of $2.5 million for construction of a water pump station necessary to serve the proposed project. The estimated cost of the pump station is $1.5 million.

In this example, the fee is imposed as a condition of development and is an exception pursuant to Section 1(e)(6). The fee, however, is subject to the Mitigation Fee Act, which regulates development impact fees[51] Because the fee in this example exceeds the estimated reasonable cost of the facilities for which the fee is charged, it would be invalid and subject to challenge under the Act.[52]

Other Informative Guides

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4. Assessments and Property-Related Fees and Charges

- A resource conservation district levies an assessment for the acquisition of land for open space purposes but exempts city property located within the assessment district from the levy of the assessment.

Although assessments are an exception to the definition of a tax, they are restricted by the provisions of Article XIII D, section 4. Unless it can be shown that the city property in question does not receive any special benefit from the landscape improvements, the assessment would be invalid pursuant to Article XIII D section 4(a).

- An irrigation district discounts the rates of its water service fees imposed on low income water customers.

Water service fees are subject to the substantive limitations of Article XIII D, section 6, which require that the amount of a fee imposed upon any parcel or person as an incident of property ownership must not exceed the proportional cost of the service attributable to the parcel.[53] In this instance, to the extent that other water customers would be paying for the incremental cost of providing water service to low income water users, discounted water service fees would be prohibited. However, if no revenues from water service fees of other customers are used to fund the discount, the discount would not be prohibited.

5. Other Fees and Charges Not Imposed

- A community services district enters into a franchise agreement with a solid waste hauler to provide solid waste services to residential property within the district. Pursuant to the franchise agreement, the district collects a franchise fee from the solid waste hauler.

In this example, the franchise fee is the subject of an arms-length negotiation between the community services district and the waste hauler. Accordingly, it is not a fee "imposed" by the district but instead is an agreed-upon price for the right to provide solid waste services within the district. Because the fee is not "imposed" on the waste hauler, it is not a fee subject to Section 1(e). Moreover, the amount of the franchise fee that may be imposed is not necessarily restricted.[54]

Check out the endnotes!

Want to know more about the resources used to complete this guide? Check out the Endnotes section and find an extensive list of additional information on all things related to Proposition 26 as well as court cases related to this subject.

Burden of Proof

Once a special district has determined to adopt a new fee or charge or increase an existing fee or charge that may be implicated by Section 1(e), the district should consider how it will demonstrate that the fee or charge in question is not a tax.

Once a special district has determined to adopt a new fee or charge or increase an existing fee or charge that may be implicated by Section 1(e), the district should consider how it will demonstrate that the fee or charge in question is not a tax. Pursuant to Section 1(e), local agencies have the burden of demonstrating by a preponderance of the evidence (i.e., that it is more likely than not)

> "...that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the government activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity."[55]

Although this amendment does not change the law with respect to who bears the responsibility for proving that a fee or charge is not a tax, it does specify what standard of proof—a preponderance of the evidence—will be applied in the event of any challenge. Although this standard of proof is not rigorous, it does suggest that the proponents of Proposition 26 intended that a more rigorous documentation of expenses being paid for with local agency fees, and a more rigorous documented nexus between a local agency fee or charge and the allocation of related costs, will be required.

Because the burden is on a special district to demonstrate that its fees and charges are not taxes under Section 1(e), prior to adopting any new or increasing any existing fee or charge, a special district should carefully review the basis upon which the fee or charge is calculated. Additionally, the local government should ensure that the administrative record prepared in

connection with the adoption of the fee or charge provides a sufficient basis for demonstrating that the fee or charge qualifies within one of the seven exceptions.

It is worthwhile noting that the burden of proof language incorporated into Section 1(e) by the drafters of Proposition 26 repeats nearly verbatim the language of prior cases assessing whether a purported regulatory fee was in fact a fee or a special tax. As stated in *San Diego Gas & Electric Co. v. San Diego Air Pollution Control District*,

> [a] "special tax" under section 4 [of California Constitution article XIII A] does not embrace fees charged in connection with regulatory activities which do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and are not levied for unrelated revenue purposes. . . . [T]o show a fee is regulatory and not a special tax, the government should prove (1) the estimated costs of the service or regulatory activity, and (2) the basis for determining the manner in which costs are apportioned, so that charges allocated to the payor bear a fair and reasonable relationship to the payor's burdens on or benefits from the regulatory activity.[56]

In *California Farm Bureau Federation v. State Water Resources Control Board*, the Supreme Court was called upon to determine the validity of a fee imposed upon water appropriators by the State Water Resources Control Board.[57] Although this case did not concern Section 1(e), the court analyzed the language that originated in San Diego Gas & Electric Co. and was later adopted by the drafters of Proposition 26. The court's analysis of whether the state had produced enough evidence to demonstrate a fee is not a tax is instructive regarding this burden of proof and should be considered by any special district in determining the amount of any fee or charge that may be subject to provisions of Section 1(e). The court held that

> [t]he scope of regulatory fees is somewhat flexible and is related to the overall purposes of the regulatory governmental action. . . . . The question of proportionality is not measured on an individual basis. Rather it is measured collectively, considering all rate payors. Thus, permissible fees must be related to the overall cost of the governmental regulation. They need not be finely calibrated to the precise benefit each individual fee payor might derive. What fee cannot do is exceed the reasonable cost of regulation with the generated surplus used for general revenue collection. An excessive fee that is used to generate revenue becomes a tax.[58]

Fees Grandfathered In by Proposition 26

Any new fees or charges or any increases to any existing fees or charges of a special district after the effective date of Proposition 26 must qualify under one of the seven exceptions.

Proposition 26 voids any existing fee or charge created or increased by the State between January 1, 2010 and November 2, 2010 that conflicts with Proposition 26 unless the fee or charge is reenacted by a two-thirds vote of both houses of the Legislature and approved by the governor within a year of the effective date of Proposition 26.[59] There are, however, no similar repeal provisions for existing local government fees and charges that may be deemed to be taxes under Section 1(e). Any new fees or charges or any increases to any existing fees or charges of a special district after the effective date of Proposition 26 must qualify under one of the seven exceptions or the fees or charges will be subject to the super-majority voter approval requirements of Article XIII C, section 2(d).

Conclusion

Special districts are restricted from imposing new or increasing certain types of fees and charges without voter approval as a result of Proposition 26. Particularly affected are (1) regulatory fees and charges imposed to mitigate adverse impacts on public health and safety and the environment or for purposes other than direct regulation; and (2) fees or charges imposed for a specific benefit conferred, privilege granted, or government service or product provided where discounts, fees waivers, or differential rates have been established and are subsidized by other fee payers. Fees in these categories may be reclassified as taxes following Proposition 26.

Future court interpretations of Proposition 26 and clarifying legislation will likely provide special districts with further guidance regarding the application of Proposition 26 to fees and charges. To avoid challenges to future fees and charges and increases to existing fees and charges, special districts should closely review:

(1) the purpose of the fee or charge proposed to be adopted and imposed;
(2) the basis upon which the fee or charge is calculated; and
(3) how revenues from the fee or charge are proposed to be expended.

A special district should be prepared to identify, preferably in the administrative record for the adoption of any fee or charge, why the fee or charge in question is not a tax within the meaning of Section 1(e).

Endnotes

1 Complete copies of the ballot initiative and ballot arguments submitted for and against Proposition 26 may be obtained at http://voterguide.sos.ca.gov/past/2010/general/propositions/26/index.htm.

2 "Local government" is defined in California Constitution article XIII C, section 1(a) to mean "any county, city, city and county, including a charter city or county, and special district, or any other local or regional government entity."

3 All taxes imposed by a special district are special taxes and must be submitted to the electorate and approved by two-thirds of the votes cast by the qualified voters voting on the proposition. Cal. Const. art. XIII C, § 2(d); Cal. Gov't Code § 53722; *Rider v. Cnty. of San Diego*, 1 Cal. 4th 1 (1991).

4 This Guide does not address in any length the impacts that Proposition 26 will have on the State. For an understanding of what impacts Proposition 26 may have on the State, reference may be made to the analysis of Proposition 26 by the Legislative Analyst's Office, which is available at http://www.lao.ca.gov/ballot/2010/26_11_2010.pdf.

5 *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, 22 Cal. 3d 208, 231 (1978).

6 Cal. Gov't Code § 50076 (emphasis added).

7 *San Francisco Taxpayers Ass'n v. Bd. of Supervisors*, 2 Cal. 4th 571, 574 (1992).

8 *City of Sacramento v. State*, 50 Cal. 3d 51, 59 n.1 (1990).

9 *Cnty. of Sonoma v. Comm'n on State Mandates*, 84 Cal. App. 4th 1264, 1282 (2000).

10 *Cnty. of Fresno v. State*, 53 Cal. 3d 482, 487 (1991) (citations omitted).

11 *Long Beach Unified Sch. Dist. v. State*, 225 Cal. App. 3d 155, 174 (1990) (emphasis removed).

12 Property-related fees and charges include water, sewer, solid waste, and storm water service fees and charges. *See Bighorn-Desert View Water Agency v. Verjil*, 39 Cal. 4th 205, 214-15 (2006); *Howard Jarvis Taxpayers Ass'n v. City of Salinas*, 98 Cal. App. 4th 1351 (2002).

13 *Sinclair Paint Co. v. State Bd. of Equalization*, 15 Cal. 4th 866 (1997). Significantly, if a fee or charge is classified as a regulatory fee or charge, a simple majority vote of both houses of the State Legislature, or the legislative body of the local government proposing to adopt the fee or charge, is required for approval of the fee or charge. If a fee or charge is deemed to be a tax, a two-thirds approval of both houses of the State Legislature is required.

14 *Id.* at 875-76. The court held that

> [f]rom the viewpoint of the general police power authority, [there was] no reason why statutes or ordinances calling on polluters or producers of contaminating products to help mitigate or cleanup efforts should be deemed less "regulatory" in nature than the initial permit or licensing programs that allowed them to operate. Moreover, imposition of "mitigating" effects fees in a substantial amount . . . also "regulates" future conduct by deterring further manufacture, distribution, or sale of dangerous products, and by stimulating research and development efforts to produce safer or alternative products.

Id. at 877.

15 The police power derives from the authority of a local government to promote the public health, safety, morals, and general welfare of the community. *See* Cal. Const. art. XI, § 7; *Cnty. of Plumas v. Wheeler*, 149 Cal. 758, 762 (1906); *Comty. Mem'l Hosp. v. Cnty. of Ventura*, 50 Cal. App. 4th 199, 206 (1996); *Kern Cnty. Farm Bureau v. Cnty. of Kern*, 19 Cal. App. 4th 1416, 1424 (1993); *Carlton Santee Corp. v. Padre Dam Mun. Water Dist.*, (1981) 120 Cal. App. 3d 14, 24 (1981).

16 *Sinclair Paint Co.*, 15 Cal. 4th at 877-78.

17 *Cal. Ass'n of Prof'l Scientists v. Dept. of Fish & Game*, 79 Cal. App. 4th 935, 946-50 (2000) (the cost of comprehensive environmental review far surpassed the amount of the fees generated and therefore was a legal use of regulatory fees); *see, e.g., Cal. Bldg. Indus. Ass'n v. San Joaquin Valley Air Pollution Control Dist.*, 178 Cal. App. 4th 120 (2009) (upholding indirect source rule fee to fund off-site projects that will reduce emissions); *City of Oakland v. Superior Court*, 45 Cal. App. 4th 740 (1996) (upholding regulatory fees charged to alcoholic beverage sale licensees to support project to address public nuisances associated with those sales); *Kern Cnty. Farm Bureau*, 19 Cal. App. 4th 1416 (upholding landfill assessment based on land use to reduce illegal waste haulers); *San Diego Gas & Elec. Co. v. San Diego Cnty. Air Pollution Control Dist.*, 203 Cal. App. 3d 1132 (1988) (upholding air pollution permit fees based on volume of pollutants emitted by permittee rather than cost of staff time devoted to issuance of permit as regulatory fees).

18 *Cal. Ass'n of Prof'l Scientists*, 79 Cal. App. 4th at 945. A local government need only "apply sound judgment and consider probabilities according to the best honest viewpoint of informed officials in determining the amount of the regulatory fee." *United Bus. Comm'n. v. City of San Diego*, 91 Cal. App. 3d 156, 166 (1979) (internal quotation marks omitted).

19 Proposition 26, § 1(e) (uncodified).

20 *Id.*

21 *Id.* § 1(f) (uncodified).

22 A tax is a general tax only if its revenues are placed into the general fund of a local government and made available for any and all governmental purposes. *See* Cal. Gov't Code § 53721. A general tax may not be imposed by a local government unless it is submitted to and approved by a majority of the qualified electors voting in the election on the general tax. Cal. Const. art. XIII C, § 2(b), Cal. Gov't Code § 53723.

23 "The revenues from any special tax shall be used only for the purpose or service for which it was imposed, and for no other purpose whatsoever." Cal. Gov't Code § 53724(e). A special tax may not be imposed by a local government unless it is submitted to and approved by a two-thirds vote of the qualified electors voting in the election on the issue. Cal. Const. art. XIII C, §2(d); Cal. Gov't Code § 53722. Article XIII C, section 2(a) provides that, to the extent that they possess the power to tax, "[s]pecial purpose districts or agencies, including school districts, shall have no power to levy general taxes." Any tax imposed by a special purpose district or agency, including school districts, is therefore a special tax.

24 The courts have previously acknowledged that the term

> "tax" has no fixed meaning, and that the distinction between taxes and fees is frequently 'blurred,' taking on different meanings in different contexts. In general, taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted. Most taxes are compulsory rather than imposed in response to a voluntary decision to develop or to seek other government benefits or privileges.

Sinclair Paint Co. v. State Bd. of Equalization, 15 Cal. 4th 866, 874 (1997) (citations omitted).

25 Although there are minor language differences between them, Proposition 26 adds a similar definition of "tax" to Article XIII A, section 3 that will be applicable to taxes imposed by the State. For the State, however, the definition provides only five exceptions. Excluded from the definition of "tax" in Article XIII A, section 3(b) are fees imposed as a condition of property development and assessments and property-related fees imposed pursuant to Article XIII D.

26 It is worth noting that the drafters of Proposition 26 have used language almost identical to that used by the court in *Sinclair Paint Co.*: "In general, taxes are imposed for revenue purposes, rather than in return for a *specific benefit conferred or privilege granted.*" *Sinclair Paint Co.*, 15 Cal. 4th at 874.

27 Cal. Const. art. XIII C, § 1(e) (emphasis added).

28 A "charge" is generally synonymous with a "fee." The term "fee" is defined as a "fixed charge." *The Merriam-Webster Dictionary* 264 (11th ed. 2004). "Exaction" generally means a monetary exaction such as taxes, fees, rates, charges, assessments, and development fees. *See Apartment Ass'n of Los Angeles Cnty.*, 24 Cal. 4th at 839; *Ehrlich v. City of Culver City*, 12 Cal. 4th 854, 892 (1996) (Mosk, J., concurring); 70 Ops. Cal. Atty. Gen. 153 (1987).

29 The terms "levy" and "impose" may be used interchangeably. *Howard Jarvis Taxpayers' Ass'n v. Fresno Metro. Projects Auth.*, 40 Cal. App. 4th 1359, 1373 (1995).

30 *Bighorn-Desert View Water Agency v. Verjil*, 39 Cal. 4th 205, 212 (2006).

31 *Ponderosa Homes, Inc. v. City of San Ramon*, 23 Cal. App. 4th 1761 (1994).

32 *Id.* at 1770 (citation omitted) (quoting *Webster's Third New International Dictionary* 1136 (1970)). Similarly, the Merriam-Webster online dictionary defines to "impose" as "to establish or apply by authority," such as to impose a tax, impose new restrictions, or impose penalties. *Definition of "Impose,"* Merriam-Webster, http://www.merriam-webster.com/dictionary/impose (last visited July 16, 2012). As an example, the dictionary provides: "The judge *imposed* a life sentence." Synonyms include "assess," "charge," "exact," "fine," and "levy."

33 *City of Madera v. Black*, 181 Cal. 306 (1919).

34 *Id.* at 310-11 (citations omitted); *see also Howard Jarvis Taxpayers' Ass'n*, 40 Cal. App. 4th at 1373 (stating that "impose" is synonymous with "levy," which means to impose, levy, or collect a tax, tribute, fine, or other payment); *Dare v. Lakeport City Council*, 12 Cal. App.3d 864, 868 (1970) (using the word "impose" to refer to a tax, fee, or burden imposed by ordinance or other legislative action).

35 *Richmond v. Shasta Cmty. Servs. Dist.*, 32 Cal. 4th 409 (2004).

36 *Id.* at 416.

37 *Black's Law Dictionary* defines "benefit" to mean an "advantage or privilege," and defines "privilege" to mean a special legal right granted to a person or class of persons. *Black's Law Dictionary* 178 (9th ed. 2009). "A privilege grants someone the legal freedom to do or not do a given act." *Id.* at 1316; *see also The Merriam Webster Dictionary* 573 (11th ed. 2004) (defining "privilege" to mean "a right or immunity granted as an advantage or favor especially to some and not others).

38 Although fees for gas and electrical services are specifically exempted from the substantive and procedural requirements of Article XIII D, these same fees are not exempted from the provisions of Article XIII C or the provisions of Section 1(e). *See* Cal. Const. art. XIII D, § 3(b). Because Section 1(e)(2) is applicable to services and products provided directly to a fee payer, public agencies that provide gas and electrical service will likely be required to ensure that fees provided for those services do not exceed the reasonable cost of providing the service and comport with the provisions of Section 1(e)(2) and California Government Code section 50076.

Fees imposed by a city for gas and electric utility services were the subject of a recent post-Proposition 26 challenge in the City of Redding. *See Citizens for Fair REU Rates v. City of Redding*, No. CV-11-171377 (Cal. Super. Ct. 2011), *available at* http://media.redding.com/media/static/REU_Decision.pdf. The City of Redding operates an electric utility and imposes a payment in lieu of taxes ("PILOT") on the utility. The City's electric utility revenues are accounted for separately from the City's general fund revenues. The PILOT was established at the rate of one percent of the electric utility's total fixed assets, as if the utility were paying property taxes on them. The revenues from the PILOT are transferred to the City's general fund and used for general purposes of the City. In December 2010, after the adoption of Proposition 26, the City approved a rate increase to its electric service fees. No change, however, was made to the rate of the PILOT. A group of citizens challenged the City's electric service fees as a tax. They asserted that the passage of the resolution adopting the rate increases incorporated the PILOT. Because the PILOT is not attributable to any costs incurred by the utility or the City for providing electric service, the citizens' group claimed that the fees exceeded the cost of providing the service and were therefore taxes within the meaning of Section 1(e)(2). The City argued that the transfer was approved legislatively and occurred as a part of its budget process, and was therefore not an increase to its electric service fees. At the time of publication of this Guide, the City of Redding was successful in defeating the challenge, but an appeal is likely. The ultimate outcome of this case may provide guidance on which types of fees fall within the penumbra of Section 1(e)(2).

39 Wholesale water service fees are not property-related fees because they are not imposed as an incident of property ownership. Consequently, water service fees are not subject to the provisions of California Constitution article XIII D, section 6. However, water service fees may qualify as fees for a service or product and may therefore be subject to the provisions of Section 1(e)(2).

ENDNOTES CONTINUED

40 *Ponderosa Homes, Inc. v. City of San Ramon*, 23 Cal. App. 4th 1761, 1770-72 (1994) (discussing what it means "to impose" a charge in the context of the Mitigation Fee Act). For further discussion of what it means to impose a fee or charge, see the discussion under the heading "When Are Fees and Charges Imposed?"

41 Cal. Const. art. XIII C, § 1(e)(3). Proposition 26 provides a similar limitation in Article XIII A, section 3(b)(3). The State currently funds most of its environmental programs through such regulatory fees and will be significantly impacted by the amendment.

42 Examples of regulatory fees that may be impacted include fees for permits and licenses for fire, building, and other health and safety related permits.

43 Regulatory fees imposed to raise general fund revenues are already deemed to be special taxes pursuant to California Government Code section 50076.

44 Cal. Const. art. XIII C, § 1(e)(4). Examples include fees for use of park district playing fields, park entrance fees, community services district golf green fees, entrance fees for a community services district aquatic center, rental of tennis racquets at a park district tennis and racquet facility, and rental payments to a cemetery district for locating a cell tower on its property.

45 Cal. Const. art. XIII C, § 1(e)(5). Examples include local government administrative fines and penalties for violations of water district rules and regulations or fire district policies and procedures.

46 Cal. Const. art. XIII C, § 1(e)(6). Examples include development impact fees and construction permit fees.

47 Cal. Const. art. XIII C, § 1(e)(7). Examples include assessments imposed pursuant to the Landscape and Lighting Act of 1972 and water, sewer, and solid waste service fees.

48 Section 1(e)(4) does not distinguish between a local government's real and personal property. Consequently, the term "property" in Section 1(e)(4) includes both real and personal property. Because fees imposed for use of local government property are not otherwise restricted, the district may provide the discount.

49 *City of Oakland v. Burns*, 46 Cal. 2d 401, 407 (1956).

50 See the discussion under the heading "Burden of Proof."

51 *See* Cal. Gov't Code §§ 66000-66025.

52 *See Id.* § 66001.

53 Cal. Const. art. XIII D, § 6(b)(3), *Bighorn-Desert View Water Agency v. Verjil*, 39 Cal. 4th 205 (2006).

54 *See* Cal. Pub. Res. Code § 40059(a)(2) ("The authority to provide solid waste handling services may be granted under terms and conditions prescribed by the governing body of the local governmental agency by resolution or ordinance.")

55 Cal. Const. art. XIII C, § 1(e).

56 *San Diego Gas & Elec. Co. v. San Diego County Air Pollution Control Dist.*, 203 Cal. App. 3d 1132, 1145-46 (citations omitted); *see also Sinclair Paint Co.*, 15 Cal. 4th at 878.

57 *Calif. Farm Bureau Fed'n v. State Water Res. Control Bd.*, 51 Cal. 4th 421

58 *Calif. Farm Bureau Fed'n*, 51 Cal. 4th at 438.

59 Cal. Const. art. XIII A, § 3(c).

Special thanks to our contributor and Best Best & Krieger LLP

Kelly J. Salt

Kelly J. Salt is a partner in the Public Finance Practice Group of Best Best & Krieger LLP., currently working in the firm's San Diego office.

For the past ten years she has specialized in public finance law and has served as bond, disclosure, and issuer's counsel to public agencies throughout California for the financing of major public infrastructure and improvement projects through the issuance of certificates of participation, revenue, lease revenue, assessment district, and community facilities district bonds. In addition to her bond and municipal finance work, Salt's practice areas include rate setting and compliance with Proposition 218 and Proposition 26, and drought management and water conservation programs.

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Item 8.4 Cover sheet – Reconsideration of decision to refuse donation of PG&E Property at Bell and New Airport Roads due to Board decision being based on incorrect information regarding legal requirements for maintenance of property left in its natural state

Auburn Area Recreation and Park District Acquisition and Development Committee September, 2017; October 2017; Board of Director's meeting November, 2017; Acquisition and Development Committee December, 2017; Board of Directors Meeting December, 2017; Board of Directors meeting January, 2018

The Issue

Shall the Auburn Area Recreation and Park District (ARD) reconsider its decision to refuse donation of PG&E Property at Bell and New Airport Roads due to Board decision being based on incorrect information regarding legal requirements for maintenance of property left in its natural state? Director Ainsleigh requested that this item be reconsidered.

Background

ARD opted to have no further pursuit of obtaining and developing the Bell Rd. property at the December, 2017 Board of Directors meeting. The information in blue below is the information that was on the cover sheet at that point:

ARD creates a Project List each year and updates its 5 – 10 year Capital Improvement Project List (CIP) at that time.

ARD has had discussions about three large scale, million dollar-plus projects:

Improvements to the 24 acres
Acquiring and improving the Bell Rd. property
Working with Bowman School to develop the property next to the school for ballfields

The only one of these projects on the current CIP is the Bell Rd. property. Recent discussions with the Stewardship Council (the organization tasked with transferring title of these lands to agencies like ARD), revealed that the Stewardship Council has less money available for improvements than it previously projected, and that, at best, would only be able to provide matching funds for any improvements. This matching fund criteria was first shared with ARD in 2016, however it is now a reality.

The ARD Board of Directors considered this item at the November 30, 2017 Board of Director's meeting. The Board decided at that time to defer the item to the December Board meeting.

One question that was posed during the discussion at the 11/30/17 Board meeting regarded the status of the property should ARD abandon its actions to acquire it. Jessica Daugherty, Director of Land Conservation with the Stewardship Council, stated that "*It would remain in PGE ownership, but the good news is it would be permanently protected with a conservation easement held by PLT* (Placer Land Trust)."

Jessica Daugherty, Director of Land Conservation with the Stewardship Council, reminded ARD staff that accepting the property also means accepting a conservation easement to be held by the Placer Land Trust. The purpose of this conservation easement is to protect the Beneficial Public Values (BPV) of the property. Once that conservation easement is recorded, there will be a certain level of maintenance responsibility associated with it. This may include fuel load reduction and clean-up of the property, particularly the clean-up of transient camps.

Steve Schweigerdt, Senior Project Manager with the Stewardship Council sent staff the following statement:

> "The Stewardship Council mandate from the Settlement and Stipulation and purpose of the Land Conservation and Conveyance Plan (LCCP) is to ensure permanent protection of the beneficial public values (BPVs), including habitat, scenic character, and cultural resources. The Stewardship Council board recommendation for ARD to receive fee title interest was based on the Land Stewardship Proposal submitted by ARD which included Baseline and Enhanced Land Management that ARD would pursue on the property as well as the organizational and financial capacity of ARD to own and manage the property to protect the BPVs. The Stewardship Council board will need to make a finding in the LCCP process that the donation preserves and/or enhances the BPVs.
>
> The LCCP document (which remains to be drafted for the Bell Road property) contains an objective to preserve and enhance habitat in order to protect special biological resources. For example the Christian Valley LCCP states "ARD proposes to maintain the majority of the property identified to be donated in its natural state and therefore preserve habitat values as they exist. The conservation easement will permanently protect habitat by restricting development and limiting the landowner's uses to those that are consistent with the protection of the BPVs on the property." The Stewardship Council expectation is that habitat is maintained to at least the current level of weed control and fire safety for the donation to be viable.
>
> With a conservation easement in place on the property, Placer Land Trust (as the easement holder) will conduct annual monitoring to ensure that the terms and conditions in the conservation easement are met. PLT may also be contacted by members of the pubic who are interested in the protection of the BPVs. Any potential significant impairment of the BPVs could trigger notice from PLT to ARD to address the degradation of BPVs. Significant impairment is a greater than negligible adverse impact for more than a transient period. Substandard maintenance that allows fuels to build up and create fire risk or invasive weeds that choke out native flora could be considered significant impairment of the habitat and trigger action by Placer Land Trust."

Staff spoke with Pat Cabulagan, Administrator for CAPRI (the insurance risk pool that ARD is a member of). Pat stated that the Bell Rd. property and other similar, non-maintained properties do have immunity from liability (Natural Conditions Immunity), and that it is a pretty strong immunity. That said, Pat also stated that if a property owner knows of a hazard on that property, they should correct it as long as they are not altering the "natural condition" because the "Natural Conditions Immunity" doesn't prevent a claim from being filed. The "Natural Conditions Immunity" protects the District for claim alleging knowledge of a dangerous condition or failure to warn, but claims still are filed and can be costly to defend. Pat further stated that CAPRI just

settled out of court on a case in which natural conditions immunity was asserted by the park district involved. In the end, CAPRI determined that it was best to pay on the claim as there were questions about possible negligence on the part of the park district.

Recommendation for the Board of Directors

Review and provide direction.

Staff still recommends not moving forward with acquiring the property for the following reasons:

1) As previously stated, ARD does not have the money to move forward with all of the large development projects listed above. Staff's recommendation is to focus on the 24 acre property development.
2) The statements from the Stewardship Council indicate that some level of maintenance would be required.
3) Irrespective of the comments from the Stewardship Council and CAPRI, staff feels that ARD would be obligated to maintain the property to a minimum standard while we waited for funding to come along. This would include fuel reduction and general clean-up, including transient camps. This obligation is borne more from a sense of doing the right thing and being responsive to the neighbors and the community, not based on a legal obligation.

The following information was the recommendation from December, 2017: The A&D Committee and staff recommend removing the Bell Rd. project from the CIP list and begin to focus its energy and attention on developing the 24 acres. This will be a multi-year and possibly multi-phased project, dependent heavily on grants and donations.

Staff also recommends sending a letter to the Stewardship Council, informing them of ARD's decision to not move forward.

Fiscal Impact

The estimated cost for each project is included in the attachment labeled ARD Possible Property Improvements Comparison.

The **estimated** man hours to maintain the Bell Rd. property to a minimum standard is 100 – 400 hours per year. This could be higher or lower depending on several factors, including weather, transient activity and input from the community.

Attachments

ARD Possible Property Improvements Comparison
Proposed letter to the Stewardship Council re: not moving forward on Bell Rd.
Priscilla Avedon vs. State of California information
San Diego Union Tribune article re: Cedar Fire
Natural Conditions information

ARD Possible Property Improvements Comparison

Regional Park "24 Acres"

Acreage added: +/- 20 acres
Possible amenities: Walking trails, playground, picnic shelter, dog park, open-turf play area, bathrooms, parking lot
Estimated cost to ARD to develop: $2.425 million
Pros:

- ARD owns the property and does not have another agency/organization to work with
- Close to Regional Park maintenance shop
- General support from the public
- Not on anyone else's timeline for development
- Possible money from Timberline
- Grants possible

Cons:

- All money for development from ARD

Bell Rd. Property

Acreage added: 26 acres
Possible amenities: Walking trails, playground, picnic shelter, open-turf play area, bathrooms, parking lot
Estimated cost to ARD to develop: $1.325 million +
Pros:

- Moderate support from the public
- Possible ability to leverage up to 50% match from Stewardship Council
- Land donation
- Grants possible

Cons:

- Must work with several different agencies to develop the property
- On possible timeline for development
- Must work and abide by PLT Conservation Easement
- Stewardship Council reports less money available than previously thought

Bowman School Property

Acreage added: 6 acres
Possible amenities: Multipurpose sports field, bathrooms
Estimated cost to ARD to develop: $2.6 million
Pros:

- Possible ability to add a sports field
- Land donation to ARD
- Possible donation from user groups

Cons:

- Must work with Bowman school on timeline
- Must work around Bowman School for scheduling times
- Less of a chance for grants

AUBURN AREA RECREATION AND PARK DISTRICT

December 14, 2017

Pacific Forest and Watershed Lands Stewardship Council
Attn: Heidi Krolick, Executive Director
3300 Douglas Blvd. Suite 250
Roseville, CA 95661

Dear Heidi,

The Auburn Area Recreation and Park District (ARD) has regretfully decided to forego any further interest in acquiring or developing the +/- 26-acre property commonly referred to as the "Bell Road" property (Placer County Assessor's Parcel Number 052-050-014). This decision was not made lightly, however we feel that it is in the best interest of ARD and the community.

We appreciate the support and guidance that the Stewardship Council has provided during this process, both with the Bell Rd. property and the Christian Valley Park property.

Please feel free to contact me with any questions. I can be reached at (530) 537-2186 or at kmuscott@auburnrec.com

Sincerely,

Kahl Muscott
District Administrator

☐ Customer Service: 123 Recreation Drive • Auburn, California 95603-5427 530 • 885-8461 FAX 530 • 823-0872
☐ District Office: 471 Maidu Drive, Suite 200 • Auburn, California 95603-5774 530 • 885-8461 FAX 530 • 885-0703

PRISCILLA AVEDON v. STATE OF CALIFORNIA

Court of Appeal, Second District, California.

PRISCILLA AVEDON et al., Plaintiffs and Appellants, v. STATE OF CALIFORNIA, Defendant and Respondent.

B217827

Decided: July 26, 2010

Engstrom, Lipscomb & Lack, Walter J. Lack, Richard P. Kinnan, Edward P. Wolfe; Girardi & Keese, Thomas V. Girardi; Devitt & Chelberg and James "Jay" Devitt for Plaintiffs and Appellants. Edmund G. Brown Jr., Attorney General, David Chaney, Chief Assistant Attorney General, James M. Schiavenza, Assistant Attorney General, Marsha S. Miller, Elizabeth S. Angres and Paul C. Epstein, Deputy Attorneys General for Defendant and Respondent.

CERTIFIED FOR PUBLICATION

Property owners whose homes were destroyed or damaged in the 2007 Corral Canyon fire sued the State of California on theories of dangerous condition of public property and nuisance. The trial court sustained the State of California's demurrer without leave to amend and dismissed the action. We affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

On the night of November 23, 2007, some individuals built a bonfire inside a cave in Malibu Creek State Park. In the early hours of the following morning, the bonfire ignited chaparral on the surrounding hillsides, and spread through Corral Canyon toward the ocean. The fire burned almost 5,000 acres, destroyed more than 50 homes, and damaged many others.

Appellants, whose homes were destroyed or damaged by the fire, filed timely claims with the California Victim Compensation and Government Claims Board, in compliance with Government Code section 910.[1] When those claims were rejected, they brought this action against the State of California (the State). According to the allegations of the second amended complaint, the charging pleading, Malibu Creek State Park is owned, maintained and operated by the State. The main park entrance is on Las Virgenes Road in Calabasas. There are several other road entrances; some are controlled by locking gates, others are uncontrolled.

One uncontrolled road entrance is along Corral Canyon Road, which leads in a generally northern direction from Pacific Coast Highway, through Corral Canyon, and dead-ends inside Malibu Creek State Park. Approximately one mile into the park, Corral Canyon Road intersects with Mesa Peak Motorway, an unpaved fire road leading east. About a quarter of a mile after this intersection, Corral Canyon Road dead-ends in an unpaved parking lot. A short distance from the intersection with Corral Canyon Road, Mesa Peak Motorway passes a cave in a rock outcropping, and then continues east. The northern side of the cave looks out over Malibu Creek State Park, and all other sides are enclosed by rock walls.

According to appellants, the cave and the surrounding area have been popular for late-night parties and bonfires for decades. Appellants allege that "Graffiti covers all interior rock surfaces of THE CAVE, and there is an abundance of litter in and around THE CAVE. Broken beer bottles completely cover the ground outside THE CAVE'S open north side. The ceiling is blackened with soot from fires inside THE CAVE." Residents of Corral Canyon allegedly notified the State on multiple occasions in the years and months preceding the Corral Canyon fire of the danger created by the parties and bonfires in that area, but the State did not take any measures to restrict access to the top of Corral Canyon or to the cave. The cave was pinpointed by authorities as the origin of the Corral Canyon Fire, and five adults were prosecuted for recklessly igniting the fire.

In their first cause of action for dangerous condition of public property, appellants alleged that "[b]y allowing easy and unrestricted access to the top of Corral Canyon and THE CAVE via Corral Canyon Road, as well as a parking lot within a quarter of a mile of THE CAVE, THE STATE maintained its property in such a way that it created a substantial risk of injury and damage to surrounding properties. By eliminating access, such as by buikling a gate along Corral Canyon Road at the boundary of its property, THE STATE would more likely than

not have eliminated the area's use by late-night partiers." They also alleged the State maintained a dangerous condition by allowing access to the cave, when it could have placed bars or other barriers to block the entrance.

The second cause of action alleged that the State created the nuisance of a severe fire hazard by allowing unrestricted and easy access to the top of Corral Canyon Road and the cave, resulting in the fire damage to appellants' property.

The court sustained the State's demurrer to the first amended complaint with leave to amend, and sustained the demurrer to the second amended complaint without leave to amend. The court entered judgment dismissing the action with prejudice, and appellants filed this timely appeal.

DISCUSSION

I

Appellants claim their second amended complaint sufficiently stated a cause of action for dangerous condition of public property.

Under section 835, "a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and [that]: [¶] (b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition."

Section 830 defines "dangerous condition" as "a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used."

Appellants alleged respondent maintained its property in a dangerous condition by allowing easy and unrestricted vehicular access to the top of Corral Canyon and to a parking lot within a quarter of a mile of the cave. They alleged that if respondent had eliminated vehicular access, "such as by building a gate along Corral Canyon Road at the boundary of its property, THE STATE would more likely than not have eliminated the area's use by late-night partiers. Even if partiers climbed over a gate at the Park's boundary, they would have to hike more than a mile and a quarter to THE CAVE up a steep hill, at night, while carrying firewood and alcohol. It is more likely than not that they would not do so. If there were no place to park outside such a gate, the hike would be even longer up Corral Canyon Road just to reach the gate. The only other way to reach THE CAVE is by hiking more than three miles through the Park along the rugged Backbone Trail from the main entrance. It is more likely than not that the partiers would decline to take that alternate route."

Appellants also claimed respondent maintained the property in a dangerous condition "by allowing entry to THE CAVE, which was known to attract partiers who then lit bonfires inside. THE CAVE is only accessible through a narrow opening in one rock side of only approximately two feet across. By placing bars or other barriers across this entrance, THE STATE could have eliminated access to THE CAVE and thereby eliminated THE CAVE as the attraction for the partiers. THE STATE'S failure to bar access to THE CAVE directly affected the conduct of the partiers who lit bonfires inside THE CAVE because if the partiers had been unable to enter THE CAVE, it is more likely than not that they would not have lit any bonfire at the top of Corral Canyon."

These allegations involve the wrongful conduct of third parties on public property. "[T]hird party conduct by itself, unrelated to the condition of the property, does not constitute a 'dangerous condition' for which a public entity may be held liable." (Peterson v. San Francisco Community College Dist. (1984) 36 Cal.3d 799, 810.) But "[i]n appropriate circumstances, a public entity may owe members of the public a . duty not to maintain public premises in a dangerous condition and, specifically, not to maintain its premises in a condition that will increase the reasonably foreseeable risk that criminal activity will injure such individuals. [Citations.]" (Zelig v. County of Los Angeles (2002) 27 Cal.4th 1112, 1133 (Zelig).)

In Zelig, a woman was shot and killed by her ex-husband at a courthouse where she was awaiting a hearing in their dissolution proceedings. Her minor children asserted the county maintained the courthouse in a dangerous condition by failing to install barriers or utilize other safety measures including metal detectors, posted warnings, and searches. The Supreme Court held that plaintiffs could not establish a dangerous condition of public property because they were unable to show the necessary causal connection between the physical condition of the property and the shooting. The court emphasized that liability should be imposed "only when there is some defect in the property itself and a causal connection is established between the defect and the injury." (27 Cal.4th at p. 1135.) While in some instances a public entity may be required to alter its property to provide a physical barrier against danger presented by third parties, the Zelig court concluded that the addition of a physical barrier, by itself, would not have had any effect on the risk of harm faced by the decedent or other persons using the courthouse. The court also concluded that other screening methods would have required additional security personnel, which would implicate the provision of police services, an allocation of resources for which public entities are immune. (27 Cal.4th at pp. 1139-1140; § 845.)

The allegations in our case, like those in Zelig, suggest no inherent defect in the property itself. Appellants make no claim that the cave, the fire road, or the parking lot was unsafe. The dangerous conditions alleged are the lack of barriers to prevent vehicular access and parking near the cave, and the lack of a barrier to prevent entry into the cave itself. The purpose of these barriers was not to protect individuals from any danger or defect of the property, but to prevent third parties from lighting bonfires in the cave. Barring the

entrance to the cave might have prevented third parties from building a bonfire inside the cave, but it would not have prevented them from building a bonfire outside the cave, thereby presenting the same (or even greater) risk of a brush fire. Similarly, blocking nearby vehicular access with a gate might have impeded entry from that particular location, but it would not have prevented individuals from entering the park, or from bringing firewood and alcohol into the park. As in Zelig, the absence of barriers did not increase or intensify the risk of injury. And as in Zelig, more zealous efforts to reduce the risk would have required increased policing of the area; public entities are immune from liability for failure to provide sufficient police services. (See § 845.)

Also instructive is City of San Diego v. Superior Court (2006) 137 Cal.App.4th 21. In that case, an illegal street race on a particular stretch of public road that had been the frequent scene of street races for 10 years resulted in the death of two nonrace participants and serious injuries to another. Plaintiffs 2 asserted that the straight, quarter-mile length of road, with no traffic controls, speed bumps or natural conditions that would deter street racing, constituted a dangerous condition of public property. They also asserted that the danger was increased because poor lighting made it difficult for nonracing drivers to see or gauge the speed of cars racing on the street. The Court of Appeal concluded there was no inherent defect in the roadway where the accident occurred. "It was undisputed the road is straight and level, and has few intersections and no sight line obstructions. While it is true that the very safety and sense of security these features create encourage drivers-those involved in street racing and others-to exceed the speed limit, this does not establish a dangerous physical condition for purposes of section 835. If it did, we would have to conclude every straight, level, unobstructed but unlighted freeway or road would be in an unsafe physical condition if drivers exceeded the speed limit, causing accidents." (Id. at pp. 30-31.) The court rejected the claim that inadequate lighting made the property defective because there was no evidence that previous accidents had been caused by poor lighting, and when faced with a street that is otherwise safe if properly used, "it is not possible to say how much, if any, lighting is necessary to protect all drivers from speeding vehicles." (Id. at p. 31.) In addition, there was no evidence that the racers were influenced by the absence of street lights. On the undisputed evidence before it, the court concluded there was no dangerous condition of public property, and directed the trial court to enter summary judgment in favor of the City. (Id. at pp. 31-32.)

Appellants rely heavily on Swaner v. City of Santa Monica (1984) 150 Cal.App.3d 789. In Swaner, two individuals on a beach at 2:00 a.m. were struck by a vehicle which entered the beach from an adjacent parking lot. The beach and parking lot were owned by public entities. Plaintiffs sued the public entities, alleging that the absence of a fence or barrier between the parking lot and the beach constituted a dangerous condition of public property. They also alleged that defendants knew that other vehicles had entered the beach from that parking lot, that such vehicles were racing on the beach, and that people on the beach had been injured as a result. Defendants asserted that the beach was dangerous solely as a result of the third party's conduct, and that lack of a barrier did not constitute a condition of the property. The court rejected that argument, and held that plaintiffs' allegations, "if proved, may provide a sufficient level of foreseeability so as to render the condition of the beach a proximate cause of appellants' injuries." (150 Cal.App.3d 789, 806.)

In Rodriguez v. Inglewood Unified School Dist. (1986) 186 Cal.App.3d 707, 719, the same court explained that the holding in Swaner "was based on its unique facts, and a line is thereby drawn. It appears all the relevant cases are substantially controlled by their distinct factual situations. The physical condition of the public property under scrutiny in Swaner was the parking lot's lack of a fence or other barrier to prevent vehicles from gaining access to the beach." In contrast, the allegations in Rodriguez were that the school district failed to prevent students and other persons from bringing weapons onto school grounds "when such precautions could have been taken by defendants at a minimal expense of money and time ," and failed to prevent persons without legitimate business on the campus from gaining access to the school grounds. (Id. at p. 719.) The court observed that if Swaner had involved armed criminals walking onto the beach from the parking lot at 2:00 a.m. and assaulting beach users, the result would not have been the same because "[n]o simple fence or barrier separating beach and parking lot 'at a minimal expense of money and time' would have prevented such persons from gaining access to the beach. The latter situation presents the issue of providing police protection service for which a public entity is immune under section 845." (Ibid.)

The dangerous condition alleged in this case is access to a cave at the top of Corral Canyon in Malibu Creek State Park where third parties have been known to light bonfires. But appellants do not allege facts to establish a defect in the cave itself or in the nearby vehicular access to that area of the park. In the absence of a defect in the property, appellants cannot allege facts establishing a causal connection between the defect and the injuries sustained. (See Zelig, supra, 27 Cal.4th at p. 1135.) Appellants have failed to state a cause of action for dangerous condition of public property.

II

Appellants also claim the court erred in sustaining the demurrer to their second cause of action for nuisance.

In their nuisance cause of action, appellants first incorporated the allegations in support of their claim based on a dangerous condition of public property under section 835. They then alleged that "THE STATE allowed the dangerous condition of the State property as described herein to persist as a severe fire risk threatening surrounding private property owners. This severe fire risk, and its ultimate result, THE CORRAL FIRE, were harmful to Plaintiffs' health and interfered with their ability to comfortably enjoy their property." The other allegations in this cause of action are also predicated on the "dangerous condition of the State property as described herein."

Civil Code section 3479 defines nuisance as "[a]nything which is injurious to health, including but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the

free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance."

"Given 'the broad definition of nuisance,' the independent viability of a nuisance cause of action 'depends on the facts of each case.' (El Escorial Owners' Assn. v. DLC Plastering, Inc. (2007) 154 Cal.App.4th 1337, 1348.) 'Where negligence and nuisance causes of action rely on the same facts about lack of due care, the nuisance claim is a negligence claim.' (Id. at p. 1349.)" (Melton v. Boustred (2010) 183 Cal.App.4th 521, 542.)

Here, the nuisance claim is premised on respondent's maintaining a dangerous condition of public property which allowed a severe fire risk to persist. Appellants base this claim on respondent's failure to prevent access to the park and to the cave-the identical theory and the identical facts alleged in support of the cause of action for dangerous condition of public property. Having concluded that appellants cannot proceed on their claim for dangerous condition of public property, it follows that the nuisance claim which mirrors that cause of action also cannot proceed. (El Escorial Owners' Assn. v. DLC Plastering, Inc., supra, 154 Cal.App.4th at p. 1348.)

This cause of action also is precluded by Civil Code section 3482, which provides: "Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance." Respondent is authorized to operate Malibu Creek State Park under Public Resources Code section 5001 et seq. Under section 5003, "The department shall administer, protect, develop, and interpret the property under its jurisdiction for the use and enjoyment of the public." Section 5001 gives the Department of Parks and Recreation control of the state park system. Respondent's operation of the park, including its decision to allow access to the cave and to the road near the cave, fall squarely within its statutory authority. A nuisance claim cannot be predicated on these actions.

DISPOSITION

The judgment is affirmed. Respondent to have its costs on appeal.

CERTIFIED FOR PUBLICATION.

We concur:

FOOTNOTES

FN1. All statutory references are to the Government Code.. FN1. All statutory references are to the Government Code.

FN2. Plaintiffs were the injured passenger and the parents of the deceased passenger.. FN2. Plaintiffs were the injured passenger and the parents of the deceased passenger.

MANELLA, J. SUZUKAWA, J.

Cedar fire victims considering appeal of lawsuit's dismissal

By SCOTT MARSHALL - Staff Writer

NOVEMBER 30, 2005

NORTH COUNTY —— Victims of the deadly Cedar fire who filed a $100 million lawsuit against the county and the state are likely to appeal a judge's decision to dismiss the case, but still are considering their options, two people involved with the lawsuit said Tuesday.

Chicago-based attorney Mark Grotefeld, who represented the residents who filed the lawsuit, said in a voice mail message Tuesday morning that he and his clients will spend the next week considering what to do, but that an appeal is likely.

In a separate voice mail message, Diane Knuepfer, a Julian resident who lost her home in the 2003 blaze, said the fire's victims are "looking forward to an appeal."

"This was the largest wildfire in California history," Knuepfer said. "To dismiss it without any attempt to look at the government's response is unfair to the Cedar fire victims."

Knuepfer and Grotefeld could not be reached for comment beyond the statements they made in their messages.

Deputy Attorney General Michael Cayaban, who represented the state, said Tuesday that he was "very satisfied" with the court's ruling. Chief Deputy County Counsel Nate Northup, the county's attorney, said Monday that the ruling was a "relief."

The Cedar fire, the largest in acreage in California history, began Oct. 25, 2003, in the Kessler Flats area of the federally owned and managed Cleveland National Forest just east of Ramona. Fueled by dry vegetation and hot Santa Ana winds, the blaze killed 15 people, destroyed more than 2,400 homes and burned a swath that stretched from Ramona and Julian to Interstates 8 and 15 and included portions of Poway and Scripps Ranch.

Fifteen people sued the county and the state, and asked the court to certify the case as a class-action lawsuit on behalf of all Cedar fire victims.

The residents alleged that the county and state did not properly manage the brush on the rural federal land where the fire began. They also charged that both the county and state failed to dispatch emergency workers to the fire quickly enough, and that 911 operators gave false assurances that help was on the way.

Superior Court Judge Lillian Y. Lim said in a written ruling Monday that neither the county nor the state owned or controlled the federal forest land, and that state law says no public agency or employee can be held liable for injuries caused by "a natural condition of any unimproved public property."

Lim also ruled that state laws provide legal immunities that protect the government from lawsuits alleging a failure to dispatch help promptly —— even if a failure to provide firefighting service is willful or reckless. Cayaban said there was no willful or reckless failure to provide service in the Cedar fire.

The allegations in the Cedar fire lawsuit also failed to overcome legal immunities protecting 911 emergency dispatchers, Lim ruled.

Diane Conklin, a Ramona resident who is not part of the lawsuit, but who organized a citizens group called the Committee for Full Accountability on the Cedar Fire, was critical Tuesday of several parts of Lim's decision and said she hopes that the fire victims who filed the lawsuit will appeal.

Conklin said that the group she organized is continuing its investigation of the fire and is assembling a timeline of what happened that it hopes to publish on a Web site in the spring.

"It takes time," Conklin said. "We are patient, but we are not patient with court rulings that do not give victims of the Cedar fire an opportunity to seek justice."

Northup said Monday that the county is "sympathetic," but that state lawmakers have set out clearly when the government can and cannot be held liable.

"This is one of those circumstances that the government is on the cannot-be-liable side of the line," Northup said.

Staff writer Teri Figueroa contributed to this report. Contactstaff writer Scott Marshall at (760) 631-6623 or smarshall@nctimes.com .

1110.Affirmative Defense—Natural Conditions (Gov. Code, § 831.2)

A public entity is not responsible for harm caused by a natural condition of an unimproved public property. If [name of defendant] proves that [name of plaintiff]'s injury was caused by such a condition, then it is not responsible for the injury.

New September 2003
Sources and Authority
• Natural Condition of Unimproved Public Property. Government Code section 831.2.
• Public Beaches. Government Code section 831.21.
• "The immunity provided by section 831.2 is absolute and applies regardless of whether the public entity had knowledge of the dangerous condition or failed to give warning. The legislative purpose in enacting section 831.2 was to ensure that public entities will not prohibit public access to recreational areas due to the burden and expense of defending against personal injury suits and of placing such land in a safe condition." (Goddard v. Department of Fish & Wildlife (2015) 243 Cal.App.4th 350, 360 [196 Cal.Rptr.3d 625], internal citations omitted.)
• "The natural condition immunity applies even 'where the public entity had knowledge of a dangerous condition which amounted to a hidden trap.' As a consequence, courts have held there is no liability for failure to warn of a known dangerous condition when the danger is a natural condition of unimproved public property." (Alana M. v. State of California (2016) 245 Cal.App.4th 1482, 1488 [200 Cal.Rptr.3d 410], internal citation omitted.)
• "The statutory immunity extends to 'an injury caused by a natural condition of any unimproved public property.' The use of the term 'caused' is significant. Here, although the injury occurred on improved property, that is, the paved parking lot, it was caused by the trees, native flora located near—and perhaps superadjacent to—the improved parking lot, but themselves on unimproved property." (Meddock v. County of Yolo (2013) 220 Cal.App.4th 170, 177 [162 Cal.Rptr.3d 796], original italics, footnote and internal citations omitted.)
• "[T]o qualify public property as improved so as to take it outside the immunity statute 'some form of physical change in the condition of the property at the location of the injury, which justifies the conclusion that the public entity is responsible for reasonable risk management in that area, [is] required to preclude application of the immunity.' " (Meddock, supra, 220 Cal.App.4th at p. 178 [162 Cal.Rptr.3d 796], original italics.)
• "It is also the rule that 'improvement of a portion of a park area does not remove the immunity from the unimproved areas.' 'The reasonableness of this rule is apparent. Otherwise, the immunity as to an entire park area improved in any way would be demolished. [Citation.] This would, in turn, seriously thwart accessibility and enjoyment of public lands by discouraging the construction of such improvements as restrooms, fire rings, campsites, entrance gates, parking areas and maintenance buildings.' " (Alana M., supra, 245 Cal.App.4th at pp. 1488–1489.)

• "It is now generally settled that human-altered conditions, especially those that have existed for some years, which merely duplicate models common to nature are still 'natural conditions' as a matter of law for the purposes of Government Code section 831.2." (Tessier v. City of Newport Beach (1990) 219 Cal.App.3d 310, 314 [268 Cal.Rptr. 233].)
• "Immunity under section 831.2 exists even where the public entity's nearby improvements together with natural forces add to the buildup of sand on a public beach." (Morin v. County of Los Angeles (1989) 215 Cal.App.3d 184, 188 [263 Cal.Rptr. 479].)
• "The statutory immunity is fully applicable to manmade lakes and reservoirs. Moreover, section 831.2 has been broadly construed to provide immunity even where a natural condition has been affected in some manner by human activity or nearby improvements." (Goddard, supra, 243 Cal.App.4th at p. 361, internal citations omitted.)
• "The mere attachment of a rope on defendant's undeveloped land by an unknown third party did not change the 'natural condition' of the land." (Kuykendall v. State of California (1986) 178 Cal.App.3d 563, 566 [223 Cal.Rptr. 763].)
• "Essentially, [plaintiff]'s position is she was entitled to a campsite in the forest safe from falling trees, but this 'is exactly the type of complaint section 831.2 was designed to protect public entities against.' " (Alana M., supra, 245 Cal.App.4th at p. 1493.)
• "Given the intent of the Legislature in enacting section 831.2, we hold that wild animals are a natural part of the condition of unimproved public property within the meaning of the statute." (Arroyo, supra, 34 Cal.App.4th at p. 762.)
Secondary Sources
5 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 250, 256
Haning, et al., California Practice Guide: Personal Injury, Ch. 2(III)-D, Liability For "Dangerous Conditions" Of Public Property, ¶ 2:2825 et seq. (The Rutter Group)
2 California Government Tort Liability Practice (Cont.Ed.Bar 4th ed.) §§ 12.82–12.87
5 Levy et al., California Torts, Ch. 61, Particular Liabilities and Immunities of Public Entities and Public Employees, § 61.03 (Matthew Bender)
40 California Forms of Pleading and Practice, Ch. 464, Public Entities and
DANGEROUS CONDITION OF PUBLIC PROPERTY CACI No. 1110
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Officers: California Government Claims Act, § 464.85 (Matthew Bender)
19A California Points and Authorities, Ch. 196, Public Entities, §§ 196.12, 196.214 (Matthew Bender)
CACI No. 1110 DANGEROUS CONDITION OF PUBLIC PROPERTY
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0018

SECTION: 9.0 ITEMS FOR DISCUSSION AND INFORMATIONAL ITEMS

1. Review of Committee Meeting assignments and Board and Committee Meeting Schedule for 2018.

2. A review of Auburn Area Recreation and Park District (ARD) Board Procedures and Responsibilities and Robert's Rules of Orders.

3. County Mitigation Fund, current balance $389,982.

List of Committee Meeting Assignments 2018

Program, Personnel, Policy, Fee & Legal Review Committee – Directors Holbrook & Ferris

Standing Finance Committee Meeting – Directors Ainsleigh & Lynch

Acquisition & Development Committee Meeting – Directors Gray & Lynch

501 c 3 Advisory Committee – Director Lynch

501 c 3 Board meeting - Director Gray, Director Ainsleigh, Director Holbrook, Director Ferris, Director Lynch

Schedule of Committee and Board of Directors Meetings for 2018
All meetings will be held at the Canyon View Community Center Board Room, 471 Maidu Drive, Auburn, California

January, 2018

Directors Holbrook & Ferris
Program, Personnel, Policy, Fee & Legal Review Meeting, Wednesday, January 17, 2018, 2:00 p.m.

Directors Ainsleigh & Lynch
Standing Finance Meeting, Wednesday, January 17, 2018, 3:00 p.m., 501 c 3 Advisory Committee at 3:30 p.m.

Directors Gray & Lynch
Acquisition & Development Meeting, Wednesday, January 17, 2018, 4:00 p.m.

Board of Directors/ "Friends of ARD" Meeting, Thursday, January 25, 2018, 6:00 p.m.

February, 2018

Directors Gray & Lynch
Acquisition & Development Meeting, Monday, February 12, 2018, 4:00 p.m.

Directors Ainsleigh & Lynch
Standing Finance Meeting, Wednesday, February 14, 2018, 1:00 p.m.

Directors Holbrook & Ferris
Program, Personnel, Policy, Fee & Legal Review Meeting, Wednesday, February 14, 2017, 2:00 p.m.

Board of Directors Meeting, Thursday, February 22, 2017, 6:00 p.m.

March, 2018

Directors Gray & Lynch
Acquisition & Development Meeting, Monday, March 19, 2018, 4:00 p.m.

Directors Ainsleigh & Lynch
Standing Finance Meeting, Wednesday, March 21, 2018, 1:00 p.m.

Directors Holbrook & Ferris
Program, Personnel, Policy, Fee & Legal Review Meeting, Wednesday, March 21, 2018, 2:00 p.m.

Board of Directors Meeting, Thursday, March 29, 2018, 6:00 p.m.

April, 2018

Directors Gray & Lynch
Acquisition & Development Meeting, Monday, April 16, 2018, 4:00 p.m.

Directors Ainsleigh & Lynch
Standing Finance Meeting, Wednesday, April 18, 2018, 1:00 p.m., 501 c 3 Advisory Committee at 1:30 p.m.

Directors Holbrook & Ferris

Program, Personnel, Policy, Fee & Legal Review Meeting, Wednesday, April 18, 2018 at 2:00 p.m. p.m.

Board of Directors/ "Friends of ARD" Meeting, Thursday, April 26, 2018, 6:00 p.m.

May, 2018

Directors Gray & Lynch
Acquisition & Development Meeting, Monday, May 14, 2018, 4:00 p.m.

Directors Ainsleigh & Lynch
Standing Finance Meeting, Wednesday, May 16, 2018, 1:00 p.m.

Directors Holbrook & Ferris
Program, Personnel, Policy, Fee & Legal Review Meeting, Wednesday, May 16, 2018, 2:00 p.m.

Board of Directors Meeting, Thursday, May 31, 2018, 6:00 p.m.

June, 2018

Directors Gray & Lynch
Acquisition & Development Meeting, Monday, June 18, 2018, 4:00 p.m.

Directors Ainsleigh & Lynch
Standing Finance Meeting, Wednesday, June 20, 2018, 1:00 p.m.

Directors Holbrook & Ferris
Program, Personnel, Policy & Fee Meeting, Wednesday, June 20, 2018, 2:00 p.m.

Board of Directors Meeting, Thursday, June 28, 2018, 6:00 p.m.

July, 2018

Directors Gray & Lynch
Acquisition & Development Meeting, Monday, July 16, 2018, 4:00 p.m.

Directors Ainsleigh & Lynch
Standing Finance Meeting, Wednesday, July 18, 2018, 1:00 p.m., . 501 c 3 Advisory Committee 1:30 p.m.

Directors Holbrook & Ferris
Program, Personnel, Policy, Fee & Legal Review Meeting Wednesday, July 18, 2018, 2:00 p.m.

Board of Directors/ "Friends of ARD" Meeting, Thursday, July 26, 2018, 6:00 p.m.

August, 2018

Directors Gray & Lynch
Acquisition & Development Meeting, Monday, August 20, 2018, 4:00 p.m.

Directors Ainsleigh & Lynch
Standing Finance Meeting, Wednesday, August 22, 2018, 1:00 p.m.

Directors Holbrook & Ferris
Program, Personnel, Policy, Fee & Legal Review Meeting, Wednesday, August 22, 2018, 2:00 p.m.

Board of Directors Meeting, Thursday, August 30, 2018, 6:00 p.m.

September, 2018

Directors Gray & Lynch
Acquisition & Development Meeting, Monday, September 17, 2018, 4:00 p.m.

Directors Ainsleigh & Lynch
Standing Finance Meeting, Wednesday, September 19, 2018, 1:00 p.m.

Directors Holbrook & Ferris
Program, Personnel, Policy, Fee & Legal Review Meeting, Wednesday, September19 2018, 2:00 p.m.

Board of Directors Meeting, Thursday, September 27, 2018, 6:00 p.m.

October, 2018

Directors Gray & Lynch
Acquisition & Development Meeting, Monday, October 15, 2018, 4:00 p.m.

Directors Ainsleigh & Lynch
Standing Finance Meeting, Wednesday, October 17, 2018, 1:00 p.m., 501 c 3 advisory committee 1:30 p.m.

Directors Holbrook & Ferris
Program, Personnel, Policy Fee & Legal Review Meeting, Wednesday, October 17, 2018, 2:00 p.m.

Board of Directors/ "Friends of ARD" Meeting, Thursday, October 25, 2018, 6:00 p.m.

November & December meetings will be scheduled at the October 2018 Board meeting because of holiday schedules.

Item 9.0 Cover sheet – Discussion Item #2: Board Procedures/ Responsibilities and Roberts Rules of Order

Auburn Recreation District Board of Director's meeting January, 2018

The Issue

A review of Auburn Area Recreation and Park District (ARD) Board Procedures and Responsibilities and Robert's Rules of Orders. Director Lynch requested this review.

Background

The ARD Board Procedures and Responsibilities Manual contains information regarding gaining the floor and interruptions of a Board Member. Director Lynch has requested that these policies and procedures be reviewed.

Recommendation for the Board of Directors

Review and discuss

Fiscal Impact
N/A

Attachments

Information from ARD Board Procedures and Responsibilities Manual and Robert's Rules of Order

Board Procedures and Responsibilities April 2014 [Page 6 & 7]

CHAIRPERSON – POWERS AND DUTIES. The Chairperson shall act as the Presiding Officer and shall assume his/her place and duties, as such, immediately following his/her election.

He/she shall preserve order and decorum at all Board meetings, state questions coming before the Board, announce its decision on all subjects and decide all questions of order; subject, however, to appeal by a Board Member to the Board as a whole, in which event the majority shall govern and conclusively determine such questions of order.

GAINING THE FLOOR. Every Board Member desiring to speak shall first address the chair and gain recognition by the Presiding Officer. Such member shall confine himself/herself to the question under debate, avoiding reference to character and indecorous language. Every Board Member desiring to question the District staff shall, after recognition by the Presiding Officer, address their questions to the District Administrator, who shall be entitled to answer either for themselves or designate a member of the staff or other for that purpose.

INTERRUPTIONS OF A BOARD MEMBER. A Board Member, once recognized, shall not be interrupted while speaking unless called to order by the Presiding Officer, or unless a point of order or personal privilege is raised by another Board Member, or unless the speaker chooses to yield to a question by another Board Member. If a Board Member, while speaking, is called to order, he/she may not proceed. A Board Member, when speaking, shall speak to the subject matter of the item on the floor and shall keep his/her remarks to a reasonable length. If a Board Member fails to do so, he/she may be called to order by a point of order.

Meetings of the Board of Directors shall be conducted by the Chairperson in a manner consistent with the policies of the District. Roberts Rules of Order, Newly Revised may be used as a general guideline for meeting protocol. District policies shall prevail whenever they are in conflict with Robert's Rules of Order, Newly Revised.

Robert's Rules of Order

Making motions

"Before a member in an assembly can make a motion or speak in *debate*...he must *obtain the floor*, that is, he must be recognized by the chair as having the exclusive right to be heard at that time. "

Roberts Rules of Order, 10th Edition, page 28.

"Before a member in an assembly can make a motion or speak in debate, he must ...be recognized by the chair. "

Roberts Rules of Order, 10th Edition, page 364.

Mike Lynch
Registered Parliamentarian (Retired)

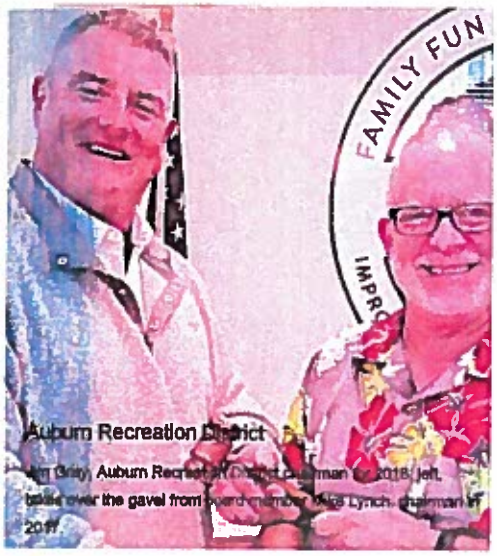
Auburn Journal

Tuesday Jan 02 2018 | 0 comments 0

Local outlook upbeat for 2018

Optimism in the air as Placer County, Auburn approach the new year

By: Gus Thomson, Reporter/Media Life columnist



Jim Holmes, Placer County Supervisor for District 3, including part of North Auburn

"Placer County is in good shape. We're a good place to live. Auburn is a good place to live. We're very fortunate. And the outlook is very positive.

Near term, we're very close to hiring a new county executive officer. Our offer is in and it looks promising that we'll have a new CEO Jan. 9. He's from outside the state with plenty of county experience.

We're also closer to having a Placer County Government Center master plan finished, with one of the things we're looking at, affordable housing.

With good revenues coming in again, we've been really paying down on the county OPEB obligations (Other Post Employment Benefits for retired workers). It's about 80 percent funded and we're far ahead of many jurisdictions.

I'm optimistic about the future. I keep remembering where we live — in one of the best places in the world."

Kathleen Shaffer, Auburn Chamber of Commerce president
"Things have really started to look up in the last half of 2017. At the chamber, we're getting out a lot more, particularly to support restaurants and drinking establishments in recent months, boosting our profile. At the same time, we've had a spike in membership. Even with money tight for startup businesses, they're showing confidence that the chamber can help them.
Another good sign. Contractors are totally booked.
And Jerry Kopp, the unofficial mayor of Downtown, said his sign business is starting to look up. If we can get that out of Jerry, it's happening."

Bridget Powers, Auburn mayor for 2018
"The outlook is awesome. There are so many great things, with new businesses opening and a lot of people investing their time and money in their local community.
We should have reason for optimism. First and foremost, we hired economic development director Mora Rowe and have a tourism campaign. We anticipate it will be successful because everything she does is successful.
The city is working on another new airport entrance sign on Locksley Lane. Hopefully it will be completed by next year. And the Auburn Air Show is Sept. 29. We're going to try to take it to the next level.
And we're keeping within our budget while doing more road improvements. The struggles continue with unfunded pension obligations.
Also at the airport, we're waiting for PG&E to have a ribbon cutting on its location there. It appears that 2018 is going to be fantastic."

Jim Gray, Auburn Recreation District 2018 chairman
"I am excited for 2018 and look forward to many positive improvements, including construction of the Auburn Bike Park, a new playground at Regional Park and several infrastructure improvements to ball fields and swimming pools. Our budget is solid and we have a great group of employees to serve the recreation needs of our community."

Einar Maisch, general manager, Placer County Water Agency
"One of our priorities looking forward to 2018 is to try to do some cooperative projects with Placer County.
One could help sustain Western Placer agriculture and rice farmers.
We've finally passed through water rates from PG&E so we're charging our West Placer agriculture customers $42 an acre foot, including rice farmers who are pretty marginal on their costs. Studies from U.C. Davis say a charge of $30 an acre-foot would be sustainable. But, under Proposition 218, we can't subsidize one group of ratepayers at the expense of others. We're looking at the county's conservation plan to find way to help rice growers.

Water security for rural residents is another priority in 2018. We're looking at possible joint funding with the county to ensure water supply security for rural residents. Many developments with their own small water treatment systems are having trouble sustaining costs. The key is to aggregate them into large systems so they have a better economy of scale — but there are larger infrastructure costs. The county Health Department is the regulator and we think the county might have some interest in solving these problems.