



Livermore Area
Recreation and Park District
An independent special district

**LIVERMORE AREA RECREATION AND PARK DISTRICT
REGULAR MEETING of the BOARD OF DIRECTORS**

DRAFT MINUTES

WEDNESDAY, NOVEMBER 9, 2022

7:00 P.M.

NOTICE: Coronavirus COVID-19

In accordance with the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963), as amended by Assembly Bill 361 (2021), members of the Livermore Area Recreation and Park District Board of Directors and staff participated in this meeting via teleconference (Zoom). In the interest of maintaining proper social distancing, members of the public also participated in this meeting electronically.

DIRECTORS PRESENT: Directors David Furst, Jan Palajac, Philip Pierpont,
Vice Chair James Boswell, Chair Maryalice Faltings

DIRECTORS ABSENT: None

STAFF MEMBERS PRESENT: Mathew Fuzie, Jeffrey Schneider, Jill Kirk,
Michelle Kleman, David Weisgerber, Julie Dreher,
Linda VanBuskirk, Lynn Loucks

DISTRICT COUNSEL: Rod Attebery and Thomas Terpstra, Jr. with Neumiller &
Beardslee

OTHERS PRESENT: Caroline Robinson, Cheryl Perry, Christine Foster,
Cperry415@aol.com, Gretchen Rutherford, Heather Day,
Jeremy Wallace, Joe Piazza, Lorrie W., Melissa Murphree,
Mike Ralph, Raiza Bettis,

1. CALL TO ORDER – ROLL CALL – PLEDGE OF ALLEGIANCE:

Vice Chair Boswell called the meeting to order at 7:05 p.m. All Directors were present via Zoom, except Chair Faltings, who arrived at 7:06 p.m. Vice Chair Boswell led the Pledge of Allegiance.

2. PUBLIC COMMENT:

Melissa Murphree spoke in support of the Sunken Gardens improvements.
Raiza Bettis spoke in support of the Sunken Gardens Park improvements.

General Counsel Rod Attebery informed members of the public that Item 2 “Public Comment” is intended for any topic that is not listed on this agenda. Those who wish to comment on the Pump Track CIP Project at Sunken Gardens, which is scheduled Item 4.1, may want to hold public comments until that item comes up for discussion.

Cheryl Perry (cperry415. . .) Addressed the Board as a founder of the Livermore High School Alumni Association, a nonprofit organization that uses a crab feed as its primary fundraiser. She had written a letter to the Board and General Manager (GM) Fuzie has responded to her concerns. She asked to have her issue placed on a future agenda.

- Chair Faltings referred the matter to the Facilities Committee. Staff will notify Ms. Perry when the item is placed on the agenda. Mr. Attebery added that all LARPD agendas are posted online, can be received and obtained online, as well as the calendar and schedule for each of the upcoming meetings.

3. CONSENT ITEMS

- 3.1 Resolution No. 2768 determining to conduct meetings of the LARPD Board of Directors using teleconferencing pursuant to Government Code 54953 as amended by AB 361;
- 3.2 Approval of the Minutes of the Regular Board Meeting of October 26, 2022;
- 3.3 General Manager’s Monthly Update to the Board – November 2022;
- 3.4 Resolution No. 2769 approving amendments to the District’s Conflict of Interest Code.

MOTION:

Moved by Director Palajac, seconded by Director Furst, approved the Consent Items, by the following roll call vote:

AYES: *Directors Boswell, Pierpont, Furst, Palajac, and Chair Faltings (5)*
NOES: *None (0)*
ABSTENTIONS: *None (0)*
ABSENT: *None (0)*

4. DISCUSSION AND ACTION ITEMS

4.1 PUMP TRACK CIP PROJECT – AUTHORIZATION TO APPROVE SPOHN RANCH AGREEMENT

The Board reviewed and discussed approval of the Price Proposal from Spohn Ranch to construct the Sunken Gardens Bicycle Pump Track Project. GM Fuzie provided the staff report. The total budgeted price for the project is \$839,344. Staff believes completion of this project can be accomplished within that budget. LARPD has worked with consultants on a Scope of Work and a Design. The District’s California Environmental Quality Act (CEQA) Notice of Exemption submission was endorsed by the Alameda County Clerk on September 20th and having received no public comment during the requisite 35-day period, staff are prepared to move forward with this project, with Board approval.

Recommendation: Staff recommended the Board authorize the General Manager to sign the Price Proposal from Spohn Ranch to construct the Sunken Gardens Bicycle Pump Track and to simultaneously issue a Notice to Proceed.

Director Questions/Comments:

- Director Palajac had a number of questions regarding the proposal which she spoke with staff about earlier in the week for clarification. All her questions have been answered satisfactorily.
- Director Furst expressed his support for the Pump Track project. In response to one of the public comments, he mentioned that the former Springtown Golf Course – now the Springtown Open Space - is owned by the City of Livermore. LARPD has an interest in developing that area, but until the City begins to move on that, LARPD cannot do anything out there.

Chair Faltings opened public comment.

Melissa Murphree addressed the Board regarding the need for lighting at the Sunken Gardens Park and again expressed her support for the Pump Track Project.

Raiza Bettis spoke in support of the Pump Track Project.

C Perry spoke in support of the Pump Track Project.

Heather Day spoke in support of the Pump Track Project.

Jeremy Wallace spoke in support of the Pump Track Project.

Tyler Wallace spoke in support of the Pump Track Project. Both Tyler and Jeremy Wallace echoed the comments regarding the need for lights.

Mike Ralph spoke in support of the Pump Track Project.

Caroline Robinson spoke in support of the Pump Track Project.

GM Fuzie took the opportunity, while so many public members were on the webinar, to remind everyone that the City of Livermore is currently going through its General Plan process. He encouraged the public to participate in that process and to be vocal regarding their desires for the future of the City. This is a critical time to speak up about the recreation needs in our community.

BSM Schneider commented that as a result of the questions that Director Palajac forwarded to staff for clarification, staff has created some modest adjustments to the agreement that GM Fuzie will eventually sign, with the Board's approval. One item was to adjust the language with respect to the retention payments, to be paid upon LARPD's acceptance 30 days after the acceptance of the project is complete. Also, there was language about bonding that the original version of the document stated was excluded, when in fact it was included, and there is an expense line item in the agreement for this. Lastly, there is a modest change in the overall price with Spohn Ranch. The number has increased modestly by \$3,400, so the version that GM Fuzie will sign is modestly different than what the Board received in the packet.

Chair Faltings closed the public comment period.

MOTION:

Moved by Director Palajac, seconded by Director Faltings, to move forward with the agreement to get the Pump Track built, by the following roll call vote:

AYES: *Directors Pierpont, Boswell, Furst, Palajac, and Chair Faltings (5)*
NOES: *None (0)*
ABSTENTIONS: *None (0)*
ABSENT: *None (0)*

4.2 2023 HOLIDAY SCHEDULE

The Board reviewed and discussed options for the 2023 Holiday Schedule. GM Fuzie and Human Resources Officer (HRO) Michelle Kleman provided the staff report.

Recommendation: Staff recommended the Board recognize the newly designated federal holiday of Juneteenth to be added to the District's recognized list of federal holidays, changing the total number of holidays afforded employees to 16, with 10 recognized holidays and six floating holidays.

Director Questions/Comments:

- Director Boswell mentioned that both he and Director Furst reviewed this topic when it was presented to the Personnel Committee at its November 8, 2022 meeting. The Committee proposed that the adoption of an additional federal holiday be brought to the full Board with a recommendation for approval of the change.

No further Board questions/comments were received.

Chair Faltings opened public comment. There were no public comments. Chair Faltings closed the public comment period.

MOTION:

Moved by Director Boswell, seconded by Director Furst, approved the 2023 Holiday Schedule as outlined by the General Manager, by the following roll call vote:

AYES: *Directors Palajac, Pierpont, Furst, Boswell, and Chair Faltings (5)*
NOES: *None (0)*
ABSTENTIONS: *None (0)*
ABSENT: *None (0)*

4.3 FUTURE BOARD MEETING PROTOCOLS

Chair Faltings stated the Board would review and discuss new legislation regarding conducting meetings of the LARPD Board of Directors using teleconferencing in 2023. GM Fuzie reminded the Board that this topic was discussed at the October Board meeting. He and District Counsel Rod Attebery have been gathering information on this item to provide the legal parameters to the Board so that it may

offer opinions on how the Board would like to conduct its business within those parameters.

District Counsel Rod Attebery commended his associate, Thomas Terpstra, who has been part of a public agency working group within Neumiller & Beardslee's (N&B) office that meets on major issues, such as AB 361 and now AB 2449. In the past, the Board has received a Brown Act Guide from N&B [included in the back of your Board Policy Manual]. He stated the Board will receive something similar this year as well as a lengthy memorandum because of the nuances of the new legislation which will identify what can and cannot be done in terms of virtual attendance at meetings.

Mr. Attebery advised the Board that AB 361 will remain in place. AB 361 says that the Board may conduct meetings virtually during a state of emergency. The governor has indicated that February 28, 2023 is the date in which California's State of Emergency is due to expire. Unless there is some change or difference, February 28th will be the last time LARPD can use AB 361 for a virtual meeting without all the traditional requirements that must be complied with according to the Brown Act. Although AB 361 is still in place, it is only effective during a state of emergency, so unless there is another declaration of a state of emergency, AB 361 does not add anything to the Brown Act. AB 361 also is due to sunset as of January 2024. The legal community anticipates that it will remain, so every time there may be another state of emergency, we do not need to wait for the legislation to do something for districts to be able to meet during a state of emergency. What AB 2449 does, is it amends the Brown Act again to say that all district meetings will have a physical location and a quorum must be present at that physical location. For this board, that is three members. Without a quorum present at the District, the meeting would need to be cancelled. AB 2449 limits the number of times which you could attend a meeting virtually. For LARPD, that will total four meetings (because you meet twice a month and you get 20% of the total number of meetings). The other catch is that you can't just ask for it – you have to have a justification. In 20 words or less, you must prepare a note to the Board to ask permission of the Board to attend that meeting virtually. The three members (quorum) at the physical meeting will vote on it and decide whether that member may attend on an emergency basis. There are definitions associated with what the two requirements are. It is "just cause" and an "emergency" and they have different meanings with specific parameters associated with that. There will be very limited circumstances for which you can use this exception. In addition, if any member does participate virtually and we offer a hybrid meeting, there are six additional meeting requirements that you now must follow: You must provide a participation platform; you have to include the participation platform information in the meeting notice; much of what was in AB 361 carried over into AB 2449 with respect to the meeting requirements with the exception of if there is any delay or timing issues or technical difficulties, the meeting will be cancelled. Whether it is on their side or your side – it does not matter. You cannot take any public comments in advance. You must have both platforms available on both sides so the person that is sitting out virtually can be seen by the member of the public as well that will be signing in to the platform. The requirements are extremely complex, and will prove to be a financial hardship on any district that wanted to do this, especially for a smaller district.

- We will be back in person, a physical location has to occur as of March. There are some abilities for emergencies and for just cause for you to have a virtual meeting, but there are additional hoops to jump through;
- The old language that we are familiar with in terms of teleconferencing is back in play and can still be utilized.

Mr. Terpstra added that if you are holding an AB 2449 meeting, the quorum does need to be in the physical location within LARPD's jurisdiction, but for the person participating under just cause or under an emergency, you do not need to post the teleconference location on the agenda, and you don't have to post the agenda outside your door. There are exceptions to that. These events are more exceptions to the rule and the real thrust of this legislation is to get people back in person so the people can interact with you, the Directors, in person.

Director Questions/Comments:

- Director Boswell commented that the complexity of this between AB 361 and AB 2449 and the Brown Act is in some ways juxtaposed against one another and not directly aligned. There are a lot of working groups looking at these bills, and even those people are perplexed. The logistical aspects of trying to conform with and implement this as we move forward is going to be difficult at best, and in some ways might even be untenable, but all we can do is do our best.
- Director Boswell asked legal counsel if there is a date when their memorandum of guidelines will be ready so we can take a look and try to do our best to figure out how this is going to work? *[Mr. Attebery stated they are anticipating December for most of their agency clients, January at the latest.]*
- Director Boswell asked if there is any feeling afoot from your interaction with your core group internally and externally as to any future potential proposed modifications to the bill at all? *[Mr. Attebery confirmed that it is passed and adopted so will go into effect as of January 1, 2023. Whether they will amend or add an additional provision, there still is discussion and suggestions on that.]*

Chair Faltings opened public comment. There were no public comments. Chair Faltings closed the public comment period.

The Board of Directors had no further comments or questions. This was information only and no Board action was taken.

5. INFORMATIONAL ITEMS (No Action Required)

5.1 GENERAL FINANCIAL UPDATE

GM Fuzie reported that the District continues to do well financially. Results were better than expected through the summer on revenue and costs.

BSM Schneider added that results through October, 2022 (month four of the new Fiscal Year) are not ready yet. Those will be reviewed with the Finance Committee later this month, then the schedules will be sent out to the full Board.

The Board of Directors had no further comments or questions. This was information only and no Board action was taken.

5.2 COVID-19 PROGRAM UPDATES

GM Fuzie shared that there is nothing new to report at this time. We continue to monitor employees, programs, and any county requirements.

Director Palajac suggested that this topic be removed from the agenda moving forward because by February the state of emergency will be removed and for the past several months the District has not had much to report due to COVID-19, so it may be time to take it off the agenda. GM Fuzie is comfortable with removing items 5.1 and 5.2. Both items are covered at the committee level and we report out on financials on a regular basis to the Board.

- Chair Faltings suggested removing Item 5.2 COVID-19 Program Updates and to keep the General Financial Update for a while.

6. COMMITTEE REPORTS

- a) Director Furst reported his attendance, along with Director Palajac, at the November 3, 2022 Facilities Committee meeting. The Agenda was included in the Board's Agenda packet.
- b) Director Furst reported his attendance, along with Director Boswell, at the November 8, 2022 Personnel Committee meeting. The Agenda was included in the Board's Agenda packet.
- c) Director Furst reported his attendance at the November 2, 2022 Chamber of Commerce Business Alliance meeting.
- d) Director Furst reported his attendance at the November 2, 2022 Livermore Cultural Arts Council meeting where he filled in as an alternate for Director Palajac. The LCAC is doing a major revision of its bylaws. Director Palajac will lead a discussion on this topic at the December Board meeting.
- e) Chair Faltings reported her attendance at the November 7, 2022 LARPD Foundation meeting.
- f) Chair Faltings reported her attendance, along with Director Furst, at the November 9, 2022 ACSDA membership meeting, hosted by EBMUD.

7. MATTERS INITIATED/ANNOUNCEMENTS BY THE DIRECTORS

- a) Director Boswell announced that he has been contacted a number of times by multiple parents and teachers regarding the Right to School and the LARPD ESS program. The contact has been about the displeasure that the parents and teachers have with the Right to School program that exists and its implementation. As a result, they've stated they would like ESS to come back with the ability to address some of their needs.
 - Director Boswell and Chair Faltings suggested that GM Fuzie and CSM Kirk contact the coordinator at LVJUSD to open dialogue about this matter.
- b) Director Pierpont invited everyone to come join several Livermore Downtown retailers plus Alden Lane Nursery for the 31st Annual Holiday Open House on Friday, Saturday, and Sunday November 11, 12 and 13, 2022. This event is designed to celebrate the beginning of gift giving season with some great discounts and gives you a chance to win \$200 in gift cards. Get 25% OFF* one item from each participating retailer!

How To Participate:

- 1) Pick up a Passport from any participating location
- 2) Use coupon for your shopping needs!

- 3) Collected a stamp** from each location
 - 4) Leave your completed passport at any participating retailer for you to have a chance to win \$200 in gift cards
- **no purchase necessary to collect stamp

Participating Retailers Include:

Alden Lane Nursery, 981 Alden Lane, Livermore, CA 94550, (925) 447-0280
Bodega Boheme, 2080 1st Street (Downtown), (925) 583-5158
Therapy, 2200 1st Street, (925) 583-8573 (Downtown)
Main Street Designs, 2196 1st Street, (925) 449-8573 (Downtown)
Sunrise Mountain Sports, 2184 1st Street (Downtown), (925) 447-8330
Mozart Einstein & Me, 2156 1st Street (Downtown), (925) 443-1244
The Holiday, 2323 1st Street (Downtown), (925) 583-5225
The Olive Oil Pantry #2, 2053 1st Street (Downtown), (925) 583-5976

8. MATTERS INITIATED/ANNOUNCEMENTS BY THE GENERAL MANAGER

GM Fuzie made the following announcements:

- a) He and Director Boswell met at Olivina with the Crohare family, CDF, and Livermore Pleasanton Fire to discuss fire preparations, safety, communication, and working together. There were some decisions made out there at a lower staff level to stop prescribed burns that was not communicated to management from a previous employee. We have cleared up some of those things and this entire group is now working together well to get grants for fire preparedness, both at Sycamore Grove Park, Olivina, and surrounding properties.
- b) In response to Director Boswell's comments at 7(a) above, Staff had made an assumption Day 1 when LARPD was asked to vacate campuses that we might need to come back. To that end, staff has had a rebound plan in place, and has been in discussions with the former and current Superintendent of Schools expressing our desire to be able to be a part of the solution if the current situation does not work out, including co-locating and implementation and their specific ask of us. We will keep you posted on this progress at committee meetings and by emails.

9. ADJOURNMENT: The meeting was adjourned at 8:24 p.m.

APPROVED,

Maryalice Summers Faltings
Chair, Board of Directors

ATTEST:

Mathew L. Fuzie
General Manager and
Ex-officio Clerk to the Board of Directors

/lvb