



Livermore Area  
Recreation and Park District  
*An independent special district*

## Board of Directors

**Jan Palajac**  
Director

**David Furst**  
Vice Chair

**James E. Boswell**  
Chair

**Marylalice Faltings**  
Director

**Philip Pierpont**  
Director

### **Welcome to the Board of Directors' Meeting**

You are welcome to attend all Board of Directors' meetings. Your interest in the conduct of public business is appreciated. Any citizen desiring to speak on any item not on the agenda may do so under Item 2 "Public Comment" when the Chair requests comments from the audience.

If you wish to speak on an item listed on the agenda, please wait until the item is up for discussion, the opening staff or committee presentation has been made, and the Board has concluded its initial discussion. Then, upon receiving recognition from the Chair, please state your name, and tell whether you are speaking as an individual or for an organization. **Each speaker is limited to three minutes.**

Materials related to an item on this Agenda submitted to the Board of Directors after distribution of the agenda packet are available for public inspection in the District office, 4444 East Avenue, Livermore, during normal business hours.

Pursuant to Title II of the Americans with Disabilities Act and section 504 of the Rehabilitation Act of 1973, LARPD does not discriminate based on race, color, religion, national origin, ancestry, sex, disability, age, or sexual orientation in the provision of any services, programs, or activities. To arrange accommodation to participate in this public meeting, please call (925) 373-5725 or e-mail [Lvanbuskirk@larpd.org](mailto:Lvanbuskirk@larpd.org) by noon on the day before the meeting.

### **NOTICE OF REGULAR MEETING OF THE BOARD OF DIRECTORS**

**WEDNESDAY, JULY 26, 2023**  
**5:00 P.M.**

**ROBERT LIVERMORE COMMUNITY CENTER**  
**4444 EAST AVENUE, LIVERMORE, CALIFORNIA**  
**SYCAMORE ROOM**

### **AGENDA**

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

**2. PUBLIC COMMENT**

*During this comment period, any person is invited to speak on any topic that is not listed on this agenda. Action may not be taken on any matter raised during this public comment period until the matter is specifically listed on a future agenda. Those who wish to comment on an item that has been listed on this agenda may comment when that item has been opened up for consideration by the Board and before any action is taken.*

**3. PRESENTATION**

**3.1 LARPD FOUNDATION ANNUAL REPORT**

The Board will receive a presentation on the LARPD Foundation Annual Report.

**4. CONSENT ITEMS (Motion)**

4.1 Approval of the Minutes of the Regular Board Meeting on July 12, 2023.

**5. DISCUSSION AND ACTION ITEMS**

The LARPD Board of Directors will review and discuss taking appropriate action or inaction with respect to the following matters:

**5.1 MEMORANDUM OF UNDERSTANDING BETWEEN LIVERMORE AREA RECREATION AND PARK DISTRICT (LARPD) and THE LARPD FOUNDATION**

The Board of Directors will review and discuss the MOU between LARPD and the LARPD Foundation. (Resolution)

Resolution No.\_\_\_\_\_, authorizing the General Manager to execute the Memorandum of Understanding between LARPD and the LARPD Foundation 501(c)3.

**6. COMMITTEE REPORTS**

**7. MATTERS INITIATED/ANNOUNCEMENTS BY THE DIRECTORS**

**8. MATTERS INITIATED/ANNOUNCEMENTS BY THE GENERAL MANAGER**

**9. OPEN SESSION DISCLOSURE REGARDING CLOSED SESSION ITEMS PURSUANT TO GOVERNMENT CODE SECTION 54957.7**

**10. CLOSED SESSION**

**10.1 PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Pursuant to Government Code Section 54957  
Title: General Manager

**10.2 CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Significant exposure to litigation pursuant to paragraphs (2) and (4) of subdivision (d) of Section 54956.9 of the California Government Code: (1 Potential Case)

**11. RETURN TO OPEN SESSION; REPORT ON CLOSED SESSION – PURSUANT TO GOVERNMENT CODE SECTION 54957.1**

**12. ADJOURNMENT**



Livermore Area  
Recreation and Park District  
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## REGULAR MEETING of the BOARD OF DIRECTORS

### DRAFT MINUTES

WEDNESDAY, JULY 12, 2023

5:00 P.M.

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

DIRECTORS ABSENT: Jan Palajac

STAFF MEMBERS PRESENT: Jill Kirk, Jeffrey Schneider, Michelle Kleman, Fred Haldeman, Linda VanBuskirk

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

OTHERS PRESENT: None

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

Chair Boswell called the meeting to order at 5:01 p.m. All Directors were present, except Director Jan Palajac. Chair Boswell led the Pledge of Allegiance.

#### 2. PUBLIC COMMENT: None.

#### 3. CONSENT ITEMS

- 3.1 Approval of the Minutes of the Regular Board Meeting on June 28, 2023;
- 3.2 General Manager's Monthly Update to the Board – July 2023

#### MOTION:

Moved by Director Pierpont, seconded by Director Faltings, approved the Consent Items, by the following roll call vote:

AYES: *Directors Pierpont, Faltings, Furst, and Chair Boswell (4)*  
NOES: *None (0)*  
ABSTENTIONS: *None (0)*  
ABSENT: *Palajac (1)*

#### 4. DISCUSSION AND ACTION ITEMS

##### 4.1 AFTER ACTION REPORT ON “SALUTE TO THE 4<sup>TH</sup> OF JULY” COMMUNITY FIREWORKS SHOW AT ROBERTSON PARK

The Board reviewed and discussed the results of the recently held community event “Salute to the 4<sup>th</sup> of July” and analyzed its overall success, challenges, lessons learned, and areas for improvement/recommendations for future events.

Parks and Facilities Manager (PFM) Fred Haldeman provided an overview of the “Salute to the 4<sup>th</sup> of July” Community Fireworks show at Robertson Park. LARPD initially had reservations but allowed the City of Livermore (COL) to host the event, for the first time since 2011, at Robertson Park under certain conditions. The COL took on fiscal responsibility and all liability for the event plus operation of the event, as well as maintaining the condition of the fields and facilities.

The setup was coordinated well, with parking services, food vendors, and entertainment provided. The event had a positive atmosphere, with families enjoying picnics and playing games.

The main complaints were related to parking congestion, a lack of restrooms, and restrictions on bringing chairs into certain areas.

The event was well-attended, attracting over 12,000 people, including visitors from outside LARPD’s service area:

Breakdown of Residence:

1. Livermore 40.4% (4.9k people)
2. San Ramon 7.3% (894 people)
3. Pleasanton 6.3% (767 people)
4. Dublin 6.3% (766 people)
5. Fremont 6.0% (741 people)
6. Oakland 5.5% (669 people)
7. Tracy 3.8% (462 people)
8. Danville 3.3% (403 people)
9. San Jose 2.8% (336 people)
10. Castro Valley 2.5% (305 people)

Board member comments included: Chair Boswell mentioned positive feedback was received about the event. Some issues were raised, including insufficient restroom facilities and a drone flying through the launch area during the fireworks show. The fire marshal also expressed satisfaction with the event. The condition of the fields after the fireworks show was reported to be fine with no damage. Director Pierpont mentioned gathering feedback from Livermore Downtown, Inc. and reporting further at the next Board meeting. Director Faltings shared comments from the public, including concerns about parking charges and some misunderstandings about ticket prices. Despite these issues, the overall tone was positive, with people expressing satisfaction and excitement about having the event back at Robertson Park.

Overall, the event was considered successful and well-received by attendees.

#### **ACTION:**

This was a discussion only and no Board action was taken.

**5. COMMITTEE REPORTS**

Chair Boswell announced that there were no standing committee or community outreach liaison meetings held since the Board Meeting of June 28<sup>th</sup> to report upon.

**6. MATTERS INITIATED/ANNOUNCEMENTS BY THE DIRECTORS**

None

**7. MATTERS INITIATED/ANNOUNCEMENTS BY THE GENERAL MANAGER**

Acting General Manager Jill Kirk announced that summer programs are in full swing and are getting positive feedback.

**8. OPEN SESSION DISCLOSURE REGARDING CLOSED SESSION ITEMS PURSUANT TO GOVERNMENT CODE SECTION 54957.7**

District Counsel Rod Attebery announced that the LARPD Board of Directors would be convening into Closed Session to discuss the items listed at 9.1 and 9.2 on the agenda. Open Session was adjourned at 5:28 p.m.

**9. CLOSED SESSION:**

**9.1 PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Pursuant to Government Code Section 54957  
Title: General Manager

**9.2 CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Significant exposure to litigation pursuant to paragraphs (2) and (4) of subdivision (d) of Section 54956.9 of the California Government Code: (1 Potential Case)

**10. RETURN TO OPEN SESSION; REPORT ON CLOSED SESSION – PURSUANT TO GOVERNMENT CODE SECTION 54957.1**

The Board came out of Closed Session at 6:32 p.m. District Counsel Rod Attebery announced that no reportable action had been taken in Closed Session.

**11. ADJOURNMENT:** The meeting was adjourned at 6:32 p.m.

APPROVED,

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James Boswell  
Chair, Board of Directors

ATTEST:

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

/lvb

# Livermore Area Recreation and Park District

## Staff Report

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TO: Chair Boswell and Board of Directors

FROM: Mat Fuzie, General Manager

PREPARED BY: David Weisgerber, Community Outreach Supervisor

DATE: July 26, 2023

SUBJECT: **Memorandum of Understanding Between LARPD and the LARPD Foundation**

ATTACHMENTS: MOU between LARPD and LARPD Foundation

Neumiller and Beardslee Review – April 21, 2023  
Finance Committee: Reviewed MOU – May 15, 2023 (Recommended with edits)  
Program Committee: Reviewed MOU – June 13, 2023 (Recommended with edits)  
LARPD Foundation Board of Trustees: Reviewed and Approved – June 5, 2023

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### RECOMMENDATION:

Staff recommends the Board of Directors adopt Resolution \_\_\_\_\_ authorizing the General Manager to sign the attached Memorandum of Understanding between the LARPD Foundation 501(c)3 and the Livermore Area Recreation and Park District.

### BACKGROUND:

This document was originally drafted in 2019 to direct remaining Foundation assets back to LARPD to ensure the proper allocation and utilization in the event of its dissolution. The draft agreement from 2019 was never executed because the distribution of assets was already directed to LARPD per the Articles of Incorporation.

The goal of the MOU is to formalize the relationship between the LARPD Foundation and the Livermore Area Recreation and Park District and outline mutual support for each organization's mission.





# **MEMORANDUM OF UNDERSTANDING BETWEEN LIVERMORE AREA RECREATION AND PARK DISTRICT AND THE LARPD FOUNDATION**

THIS AGREEMENT is made by and between the Livermore Area Recreation and Park District (LARPD), an independent special district created pursuant to Public Resources Code sections 5780 et seq., (hereinafter “LARPD”), and the Livermore Area Recreation and Park District Foundation, a nonprofit corporation organized pursuant to state and federal statutes, located in Livermore, California (hereinafter the “Foundation”).

WHEREAS, LARPD maintains the stated mission to provide the people of the Livermore area with outstanding recreation programs and a system of parks, trails, recreation areas, and facilities that promote enjoyment, lifelong learning, and healthy, active lifestyles;

WHEREAS, LARPD owns and/or maintains real estate, buildings and other recreational facilities and operates recreational and athletic programs in furtherance of this mission;

WHEREAS, the mission of the Foundation is to improve the quality of life throughout the Livermore Area Recreation and Park District through advocacy, collaboration, and financial assistance, primarily focused on providing recreation and wellness opportunities for the underserved and enhancing parks and open space;

WHEREAS, the Foundation wishes to support LARPD’s mission which will provide an opportunity to accomplish more than public funding alone allows;

WHEREAS, the private nature of the Foundation also provides the added advantage of dedicated donor services;

WHEREAS, LARPD wishes to assist and enhance the operation of, and appropriately recognize, the Foundation;

WHEREAS, LARPD wishes to support the fundraising activities of the Foundation and promote a positive relationship with their staff and volunteer members; and,

WHEREAS, the Foundation wishes to assure LARPD that it will operate effectively and responsibly with the reasonable expectations of both public and private interests, on behalf of LARPD and the Community;

# MEMORANDUM OF UNDERSTANDING BETWEEN LIVERMORE AREA RECREATION AND PARK DISTRICT AND THE LARPD FOUNDATION

THEREFORE, based on the foregoing, the parties enter into the following Agreement.

## **Section 1. Foundation Representations**

The Foundation represents and acknowledges the following regarding its operation, creation and purpose:

1. The Foundation is created and operated primarily in support of LARPD's mission and goals and their work will be compatible with these interests and goals;
2. The Foundation will have as its primary purpose to secure, manage, and invest private and business support for the benefit of LARPD and the Community;
3. The Foundation will operate as a private legal entity separate from LARPD;
4. The Foundation will use sound fiscal and auditing procedures;
5. The Foundation will not direct day-to-day LARPD operations; and
6. The Foundation has obtained and will maintain status as a tax-exempt, charitable organization under state and federal income tax laws to ensure that gifts and bequests received may qualify as deductible, charitable contributions for the donor.

## **Section 2. Foundation Documents**

The Foundation will keep on file and make available to the LARPD updated copies of all enabling documents including the Articles of Incorporation, Bylaws and any amendments to these documents. The LARPD General Manager or designee will review these documents as needed.

## **Section 3. Foundation Enabling Documents – Required Provisions**

The Articles of Incorporation for the Foundation shall maintain language that is substantially similar to the following:

1. In the event of its dissolution, the Foundation's assets and records will be distributed to LARPD, or if LARPD chooses not to receive those assets and

# MEMORANDUM OF UNDERSTANDING BETWEEN LIVERMORE AREA RECREATION AND PARK DISTRICT AND THE LARPD FOUNDATION

records, to a qualified charitable organization operating in the Livermore area.

## **Section 4. Insurance**

The Foundation will obtain and maintain general liability and directors' and officers' liability insurance in a reasonable and appropriate amount as determined by the Foundation Board. The Foundation will make documentation of its compliance with this Section available upon request.

## **Section 5. Accountability and Stewardship**

As LARPD and the Foundation want to maintain the highest levels of accountability and stewardship, LARPD and the Foundation agree to share information with each other, as reasonably requested, develop reporting processes and institute compliance and auditing procedures that ensure donated funds are accounted for, expenditures are made in accordance with donors' wishes and all applicable provisions of State and federal law, and reports are made to donors on the use of such funds.

The Foundation agrees the LARPD General Manager or their designee should attend all regular Foundation meetings and provide input and comment, as appropriate, during these meetings. In addition, the Foundation agrees that the LARPD Board may appoint a LARPD Board member to attend all regular Foundation meetings and provide input and comment, as appropriate, during these meetings. Neither of these positions will have voting rights.

## **Section 6. Donor Solicitation**

### **Donor Communication**

The Foundation agrees to communicate the following to prospective donors:

1. The Foundation is a separate, legal and tax entity organized primarily for the purpose of encouraging voluntary, private gifts, trusts, and bequests for the benefit of LARPD;
2. Responsibility for governance of the Foundation, including investment of

# MEMORANDUM OF UNDERSTANDING BETWEEN LIVERMORE AREA RECREATION AND PARK DISTRICT AND THE LARPD FOUNDATION

gifts and endowments, resides in the Foundation's Board;

3. Checks for charitable gifts to LARPD programs should be made payable to the Foundation; and

## **Conditions of Gift Acceptance**

The Foundation agrees that in accepting gifts of all kinds, it will:

1. Advise donors that any restrictive terms and conditions they attach to gifts for LARPD are subject to LARPD approval;
2. Receive prior concurrence in writing from the General Manager or their designee for any gift, grant, or contract that includes a financial or contractual obligation binding upon LARPD. The General Manager may predefine classes of gifts, grants, or contracts in advance so that any such obligation in that class is preapproved;
3. Ensure that gifts are promptly reported to and approved for acceptance by the LARPD General Manager or designee in accordance with LARPD policies and delegations of authority; and,
4. Coordinate their funding goals, programs, and campaigns with LARPD.

## **Section 7. Financial Procedures**

### **Standards**

The Foundation will manage funds on a sustainable basis. For this purpose, they should ensure that the following standards are applied:

1. Prudent Practices. In general, Foundation investment procedures should be conducted consistent with all applicable State and Federal laws and in accordance with prudent, sound practices to ensure that gift assets are protected and enhanced, that a reasonable return is achieved, and with due regard for the fiduciary responsibilities of the Foundation's Board. The investments must be consistent with the terms of the gift instrument.
2. Administration of Income. Income from investments, net of administrative fees, should be administered in accordance with pertinent Foundation policies, and will be utilized to support the Foundation mission.

# **MEMORANDUM OF UNDERSTANDING BETWEEN LIVERMORE AREA RECREATION AND PARK DISTRICT AND THE LARPD FOUNDATION**

3. Annual Report. The Foundation will prepare an annual report at the end of each fiscal year to LARPD that summarizes the funds distributed to LARPD each year. LARPD and the Foundation will provide each other with other reports necessary to ensure proper financial oversight.

## **Section 8. LARPD - Accountability of Funds**

Consistent with good stewardship, LARPD is responsible both to account for any funds transferred to them in accordance with LARPD policies and procedures, and to notify the Foundation on a timely basis regarding the use of such funds. The Foundation in consultation with LARPD will determine who will be responsible for reporting to the donor regarding the use of such funds.

## **Section 9. Financial Commitments Consistent with LARPD Mission**

The Foundation should carry out financial commitments and expenditures consistent with pertinent policies, plans, and budget approved by the Foundation's governing board and consistent with LARPD's mission and objectives. The Foundation will refer any questions regarding consistency of any proposed expenditures with LARPD's mission and objectives to the LARPD General Manager or their designee for a final determination.

## **Section 10. Financial Statement**

The Foundation should maintain books in accordance with generally accepted accounting principles, and should annually provide a financial review by an independent party. Copies of the financial review and a current list of Foundation officers, directors or trustees, will be made available to the LARPD General Manager or designee.

## **Section 11. Inspection of Foundation Records**

Because private funds are raised to support public projects, the Foundation will permit authorized LARPD officials or their designees to inspect all Foundation books and records.

## **Section 12. Compliance Reviews**

LARPD may conduct periodic compliance reviews of the use of donated funds. These reviews may be conducted by LARPD or a mutually agreed upon independent auditor on an annual basis. Their purpose will be to ensure that dispositions of donated funds have complied with the purposes and restrictions set

## **MEMORANDUM OF UNDERSTANDING BETWEEN LIVERMORE AREA RECREATION AND PARK DISTRICT AND THE LARPD FOUNDATION**

forth by the donors and/or the Foundation. The scope of the review and extent of testing will be mutually agreed upon in advance by LARPD and the Foundation. A written report of the results of such review shall be provided to the Foundation.

### **Section 13. Designation as a Gift**

Funds received by LARPD shall only be accounted for as gifts where the appropriate donative intent is present. Amounts received solely in exchange for services or property shall not be accounted for as gifts.

### **Section 14. LARPD Assistance to the Foundation**

LARPD will assist the Foundation in the following manner:

1. Allow the Foundation to use the name and images of LARPD, with prior approval by LARPD staff;
2. Allow the Foundation to use LARPD space, facilities, equipment, digital and record storage, website, and staff in the performance of the Foundation's activities, with prior review by LARPD staff, and as practical;
3. Assist the Foundation by suggesting and recommending donors and contributions to the Foundation;
4. Assist the Foundation by suggesting and recommending projects and programs for the Foundation to support; and
5. Assist the Foundation by allowing mutually agreed upon member benefits to promote the LARPD Foundation membership program. Benefits must be approved in advance by the General Manager or their designee.

### **Section 15. Notice of Non-compliance – Opportunity to Cure**

In the event of serious non-compliance with any provision of this Agreement, either party shall notify the other in writing of the event or practice that does not comply with this Agreement. The notified party shall, within ninety (90) days from receipt of the notice of non-compliance, either correct the non-compliance or show cause to the other party that it is in compliance. The parties will continue to meet in good faith until the non-compliance issue is cured, or the MOU is modified to address the issue.

**MEMORANDUM OF UNDERSTANDING BETWEEN LIVERMORE AREA RECREATION AND PARK DISTRICT AND THE LARPD FOUNDATION**

**Section 16. Termination**

This agreement will continue for an indefinite duration until one or both parties seek a substantial change in their working relationship. Either party may terminate this Agreement by delivering written notice of termination to the non-terminating party at least one year prior to the effective date of any termination. Any vote to terminate the agreement from the Foundation must be passed by at least a 2/3rds super majority vote. In the event of termination, the Foundation shall provide LARPD with an accounting of all funds in its possession and transfer those receipts, along with any restrictions thereon, to LARPD or if LARPD is not eligible or chooses not to receive those assets and records, to a qualified charitable organization operating in the Livermore area.

**Section 17. Entire Agreement and Amendment**

This Agreement represents the parties’ entire agreement with respect to the matters specified herein. Any future amendment to this agreement must be approved by both the LARPD Foundation Board of Trustees and the LARPD Board of Directors.

**Section 18. Governing Law and Venue**

It is understood that this Agreement shall be governed by and construed under and in accordance with the laws of the State of California. Venue for any actions arising under this Agreement shall be Livermore, California or appropriate court location in the County of Alameda.

**Section 19. Severability**

Any provision of the Agreement that is prohibited or unenforceable shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof.

This Agreement is hereby executed by the duly authorized representatives of the parties as of \_\_\_\_\_, 2023.

LARPD By:

\_\_\_\_\_

**MEMORANDUM OF UNDERSTANDING BETWEEN LIVERMORE AREA  
RECREATION AND PARK DISTRICT AND THE LARPD FOUNDATION**

Print Name

Title

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Signature

LARPD FOUNDATION By:

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Print Name

Title

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Signature



<b>COMMITTEES SINCE BOARD MEETING</b>		
<b>OF JULY 12, 2023</b>		
<b>STANDING COMMITTEES</b>		
<b>Date</b>	<b>Committee</b>	<b>Chair &amp; Member</b>
	Program	Faltings/Furst
7/17 (Cancelled)	Finance	Pierpont/Boswell
	Facilities	Palajac/Furst
	Intergovernmental-LARPD/City/LVJUSD	Boswell/Furst
	Personnel	Boswell/Palajac
<b>AD HOC COMMITTEES</b>		
<b>Date</b>	<b>Committee</b>	<b>Chair &amp; Member</b>
	Ad Hoc re: MPA	Furst/Palajac
<b>COMMUNITY OUTREACH LIAISON</b>		
<b>Date</b>	<b>Committee</b>	<b>Member</b>
	Ala. Co. Special Districts Assn.	Boswell
	Chamber of Commerce Business Alliance	Furst
	Community Gardens	Faltings
	LARPD Foundation	Palajac
	Livermore Cultural Arts Council	Furst
7/18	Livermore Downtown, Inc.	Pierpont
7/17	Ala. Co. Agricultural SubComm. for Trails	Palajac
7/26	Visit Tri-Valley Destination Strategic Planning Steering Committee	Pierpont
<b>OTHER</b>		
7/13	New Campaign Contribution Regulations	Furst
		AGENDA ITEM NO. 6