



**CITY OF EL PASO DE ROBLES**  
*"The Pass of the Oaks"*

**CITY COUNCIL MINUTES**

**Tuesday, December 4, 2007 7:30 PM**

**MEETING LOCATION: PASO ROBLES LIBRARY/CITY HALL  
CONFERENCE CENTER, 1000 SPRING STREET**

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**PLEASE SUBMIT ALL CORRESPONDENCE FOR CITY COUNCIL PRIOR  
TO THE MEETING WITH A COPY TO THE CITY CLERK**

**7:30 PM – CONVENE REGULAR MEETING**

**CALL TO ORDER** – Downstairs Conference Center

**PLEDGE OF ALLEGIANCE**

**INVOCATION**

**ROLL CALL** Councilmembers John Hamon Gary Nemeth, Duane Picanco, Fred Strong, and Frank Mecham

**PUBLIC COMMENTS**

- Annie Robb, Director, Library and Recreation Services introduced Jannelle Watson, member of the 2007/2008 Youth Commission
- John Erwin, Salinas River and Larry Moore Park police patrol and irrigation
- Norma Moye, announcing various December events sponsored by the Downtown Main Street Association

**AGENDA ITEMS TO BE DEFERRED (IF ANY)** - None

**PRESENTATIONS**

By General Consent, Mayor Mecham pulled Item No. 6 from the Consent Calendar, and presented Walter Kauhn with a Certificate of Recognition for 34 years as a member of City staff.

## **PUBLIC HEARINGS**

### **1. Water User Rates – Commodity Option**

J. App, City Manager

The City Council to considered adoption of a commodity-based water rate structure to pay for the costs of providing water service, including Nacimiento Water.

Mayor Mecham opened the public hearing. Speaking from the public was Dale Gustin, Barry Ross, Tom Flynn, Carl R. Hansen, John Richardson, Kim Riedel, John Borst who distributed a letter addressed to Council, Cesear Corona, Dennis Smith, Rhody Bragg, David Hicks, Tom Roush, and Kathy Barnett. There were no further comments from the public, either written or oral, and the public discussion was closed.

Councilmember Strong, seconded by Councilmember Hamon, moved to introduce for first reading Ordinance No. 940. N.S. which repeals Ordinance No. 882 N.S. (adopted in 2004 establishing annual increments of \$6/month reaching \$36/month as of July 2010), to offset the estimated cost of the Nacimiento Water Project; and adopts phased Consumption-Based Water Fee Rates, and set December 20, 2007 for adoption.

## **CONSENT CALENDAR**

Mayor Mecham called for public comments on Consent Calendar items. There were no comments from the public, either written or oral, and the public discussion was closed.

### **2. Approve City Council minutes of November 20, 2007**

D. Fansler, City Clerk

### **3. Approve Warrant Register: Nos. 73874—73941 (11/16/07) and 73942—74130 (11/21/07)**

J. Throop, Administrative Services Director

### **4. Reschedule the first Regular Meeting of January 2008 to Wednesday, January 2, 2008 due to a conflict with the New Year's Day holiday observance.**

### **5. Receive and file Advisory Body Committee minutes as follows:**

Library Board of Trustees meeting of October 11, 2007

### **6. *(Pulled for Presentation before Public Hearing)***

### **7. Adopt Resolution 07-226 accepting the recordation of Parcel Map PR 05-0378, a two-unit condominium subdivision at 519 and 521 3<sup>rd</sup> Street (Conner). All conditions imposed by the Planning Commission have been satisfied. No annexation to the Community Facilities District is required since both residential units were built prior to the subdivision.**

R. Whisenand, Community Development Director

### **8. Adopt Resolution 07-227 accepting the recordation of Parcel Map PR 07-0008, a two-lot commercial subdivision located at 406 and 416 Spring Street (Pacific Management Development). All conditions imposed by the Planning Commission have been satisfied.**

Consent Calendar Items Nos. 2-5, and 7 and 8 were approved on a single motion by Councilmember Nemeth, seconded by Councilmember Hamon, with Councilmember Picanco abstaining on Warrant Register Items Nos. 075088, and Mayor Mecham abstaining on Item No. 074082.

Motion passed by the following unanimous roll call vote:

AYES: Hamon, Nemeth, Picanco, Strong, and Mecham

NOES:

ABSTAIN:

ABSENT:

## DISCUSSION

9. **Repeal of General Plan Amendment 07-002, Rezone 06-004, PD 06-024, CUP 06-011, PR 06-272 – 1450 Golden Hill Road APN 025-366-012 (Golden Hill Development LLC)**

R. Whisenand, Community Development Director

For the City Council to repeal prior approvals for the Golden Hill Senior Housing Project, and expansion of Covenant Presbyterian Church. The prior project for which various City entitlements were required has been withdrawn, and the applicant has submitted a revised application.

Mayor Mecham opened the public hearing. Speaking from the public was Bill Hawk, Chris Vinick, and Dale Gustin. There were no further comments from the public, either written or oral, and the public discussion was closed.

Councilmember Strong, seconded by Councilmember Hamon, moved to Adopt Resolution No. 07-228 repealing the Mitigated Negative Declaration, General Plan Amendment, Rezone, Conditional Use Permit, Planned Development, Tentative Parcel Map, and direct staff to file the necessary paperwork as may be required by law; or

Motion passed by the following unanimous roll call vote:

AYES: Hamon, Nemeth, Picanco, Strong, and Mecham

NOES:

ABSTAIN:

ABSENT:

10. **Determination of Historic or Architectural Significance and Request to Process Demolition Permit – 836 28<sup>th</sup> Street (Ventura)**

R. Whisenand, Community Development Director

For the City Council to authorize a demolition permit for a house located at 836 28<sup>th</sup> Street (also addressed as 2738 Park Street).

Mayor Mecham opened the public hearing. Speaking from the public was Dale Hiner. There were no further comments from the public, either written or oral, and the public discussion was closed.

Councilmember Hamon, seconded by Councilmember Strong, moved to authorize the demolition permit application to be processed, and to adopt Resolution No. 07-229 adopting a Negative Declaration.

Motion passed by the following unanimous roll call vote:

AYES: Hamon, Nemeth, Picanco, Strong, and Mecham

NOES:

ABSTAIN:

ABSENT:

**CITY MANAGER** - None

**CORRESPONDENCE** - None

**ADVISORY BODY COMMUNICATION** – None

**AD HOC COMMITTEE COMMUNICATION** - None

**COUNCIL COMMENTS (Including oral reports on conferences attended)**

Councilmember Strong reported on legislative briefing, presented by League of California Cities during week of November 30, 2007.

**ADJOURNMENT:**

- TO THE CITY'S EMPLOYEE CHRISTMAS PARTY AT 6:00 PM ON FRIDAY, DECEMBER 7, 2007 AT ROBERT HALL WINERY, 3443 MILL ROAD, PASO ROBLES
- TO THE ADJOURNED REGULAR CITY COUNCIL MEETING FOR ADVISORY BODY INTERVIEWS (PLANNING COMMISSION), AT 7:00 PM, THURSDAY, DECEMBER 13, 2007, AT THE LIBRARY/CITY HALL CONFERENCE CENTER, 1000 SPRING STREET
- to THE REGULAR MEETING AT 7:30 PM ON TUESDAY, DECEMBER 18, 2007, AT THE LIBRARY/CITY HALL CONFERENCE CENTER, 1000 SPRING STREET, PASO ROBLES

By unanimous voice vote, Council moved to adjourn from regular session at 9:30 PM.

Submitted:

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Deborah D. Robinson, Deputy City Clerk  
Approved: December 18, 2007

Item 1,

CYNTHIA HAWLEY  
ATTORNEY AT LAW

December 3, 2007

Mayor Frank Mecham  
City of Paso Robles  
1000 Spring Street  
Paso Robles, CA 93446

Dear Mayor Mecham:

I represent Concerned Citizens for Paso Robles, an association formed to ensure that rate increases imposed by the City of Paso Robles for municipal services conform to state and local laws including Proposition 218, California's Constitutional "right to vote on taxes act".

As you know, California's Constitution was amended by Proposition 218 and states at Article XIII D, Section 6(b):

(b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:

(1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.

.....

(3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.

Based on the following analysis, the increased water fee proposed by the City of Paso Robles for the purpose of generating revenue to pay for the Nacimiento Water Project is in violation of the above constitutional requirements.

The revenues generated by the proposed fee increase to pay for the Nacimiento Water Project exceed the funds required to provide water service to the charged parcels and the amount of the fee exceeds the cost of water service attributable to the parcels charged.

The City of Paso Robles has provided no data to show that a new source of water is required by current water customers. To the contrary, the City's August 7, 2007 staff report (Agenda Item no. 25) on the Paso Robles Water System and Water Supply, states that Paso Robles meets its water supply demand through pumping groundwater from the Salinas River and the "east side" Paso Robles Basin and that "[T]hese water supplies are expected to meet all future water demands through 2025." Based on these statements, it is clear that existing water resources and infrastructure provide current water customer parcels with a sustainable water service. In

addition, the Notice of Public Hearing Regarding Proposed Increase in Water Rates states that the use of groundwater is cost effective to the extent that “Paso Robles water rates have been among the very lowest in the State.” Since the City is not seeking a fee increase to pay for costs of treating and delivering water from existing groundwater supplies, it is assumed that the current revenues are adequate to provide for existing water services.

Paso Robles’ has an adequate and cost effective water supply for current customer parcels through the year 2025. Four thousand acre feet per year of new water from the proposed Nacimiento Water Project is not required to provide water service to the parcels of existing water customers.

Consequently, revenues derived from the proposed fee increase to fund the unneeded project are not required to provide adequate and sustainable water service to current customer parcels. Pursuant to the court in *Howard Jarvis Taxpayers Association v. City of Fresno (127 Cal.App. 4<sup>th</sup> 914)* where a fee is “not required to provide the property related service” it exceeds the cost to provide the service pursuant to Article XIII D, Section 6(b)(1). Thus, the proposed fee increase to existing customer parcels to pay for the costs of unneeded water delivery infrastructure and a new unneeded water source will produce revenue in excess of that required to provide water service to the those parcels, and the amount of the fee will exceed the cost of water service attributable to the charged parcels in violation of Proposition 218.

Even if the proposed fee increase could be construed to represent the cost of water service to existing customer parcels, it would be in violation of Proposition 218 for two reasons.

First, according to the October 2, 2007 report on Reconsideration of Water Rate Options by City Manager James App, the total annual cost of the Nacimiento Water Project for the City of Paso Robles will be approximately \$6.8 million and the fees per customer parcel are based on this total amount. Since current fees already include increases pursuant to Ordinance No. 882 to pay for the “construction costs” of the Nacimiento Water Project, the currently proposed second fee increase to pay for the same construction costs would appear to levy redundant revenues in excess of those required to fund construction to the extent that Ordinance 882 fees have generated and will continue to generate revenues for the same purpose.

If the currently proposed fee increase takes revenues generated by Ordinance No. 882 into account so the proposed fee increase will not generate revenues in an amount calculated to pay for the total costs of construction of the Nacimiento Water Project, please provide my office with the calculations that demonstrate that accounting.

Second, the fee increase is charged to existing water customers only and no calculation is provided to account for costs attributable by new water service applicants and to sewer rates. In his August 3, 2004 report on Sewer and Water Development Impact Fees, City Manager James App stated that because a “sharp rise in fees is attributable to the inclusion of Nacimiento Water (including the treatment facility for same) and additional water storage capacity for new development”, 50% of the cost of Nacimiento Water would be allocated to new development and “given the water quality issue as it relates to existing wastewater discharges”, “current and future sewer users” would be required to “pick up the remaining 50% cost.” (Emphases added) Based

on the City's own conclusion, the cost of the Nacimiento Water Project is not attributable at all to current water customers but to new water service applicants and to sewer rates – and is certainly not applicable to water customers at a rate that reflects consumption of water, much of which is used for irrigation and never reaches the sewage treatment system. This conclusion is supported by the court in *Fresno* as cited above which confirmed that revenues from the fee must not be used “for a purpose other than that for which the fee or charge was imposed” pursuant to Article XIII D, 6(b)(2).

The revenues generated by the proposed fee increase exceed the funds required to reduce salts and total dissolved solids in sewage effluent discharged into the Salinas River and the amount of the fee exceeds the cost of that service.

The Notice of Public Hearing Regarding Proposed Increase in Water Rates attempts to justify the Nacimiento Water Project as a needed method of reducing salt from water softeners and TDSs in sewage effluent. However, no discussion is offered to support how the results would be accomplished and information provided by the City indicates that more established, cost effective methods of purifying sewage effluent are available.

The idea that blending Nacimiento water into existing well water will “reduce the need for in-home water softening” and improve the quality of sewage effluent discharged into the Salinas River is entirely speculative – unsupported by data or information of any kind. In addition, it is questionable whether the levy of water fees to achieve higher quality sewage effluent conforms to the Section 6(b)(2) requirement that revenues shall not be used for any purpose other than that for which the fee is imposed – fees for water service must be used for the purpose of providing water service to the parcel charged, not for sewage treatment.

Even without considering the applicability of Section 6(b)(2), to justify increased consumption-based water service fees to provide a method for enhancing the quality of sewage effluent the City must demonstrate the efficiency and cost effectiveness of the method in relation to alternatives.

According to Table 3-11 “Cost Summary for Alternatives that Address Primary Project Criteria” from the Paso Robles “Water Quality Strategy Report”, a number of options for treating sewage effluent are drastically less costly than the Nacimiento Water Project including “industrial and commercial discharge quality control” the costs of which are, according to the report, “negligible in relation to the costs of other alternatives considered”. Even the more costly alternative of desalination of sewage effluent at an annual cost of \$1.04 million offers a far less expensive alternative to the \$6.8 million annual cost of importing Nacimiento water for blending. Even if properly charged to water rates instead of sewer rates, revenues from existing water customers to pay for the cost of the Nacimiento Water Project to provide for higher quality effluent will exceed the funds required to ensure the proper quality of sewage effluent and the amount of the proposed fee will exceed the cost of that service attributable to the charged parcels in violation of Proposition 218 requirements.

The revenues generated by the proposed fee increase exceed the funds needed to provide quality drinking water and the amount of the proposed fee exceeds the cost of providing drinking water to charged parcels.

While the Notice of Public Hearing Regarding Proposed Increase in Water Rates bases the need for the proposed Nacimiento Water Project in part on improving drinking water quality, the City has not established a need to improve the quality of its drinking water. In fact, the City's August 7, 2007 staff report (Agenda Item no. 25) on the Paso Robles Water System and Water Supply, states that the quality of Paso Robles' groundwater "meets existing regulatory requirements." Again, to justify levying a new fee for the purpose of improving drinking water quality, the City must first demonstrate a need to improve water quality. Where there is no demonstrated need, revenues levied to pay for the that which is not needed would categorically exceed the funds required to provide the service of drinking water to customer parcels and would necessarily be in excess of the cost of water service to charged parcels in violation of Proposition 218.

In addition, even if the City of Paso Robles did establish a need to enhance the quality of drinking water for its customer parcels, it would be required to justify the cost effectiveness of the Nacimiento Water Project as a method of enhancing water quality against alternative methods of direct water treatment in order to demonstrate that revenues levied from the fee do not exceed the funds required to provide the service.

The revenues generated by the proposed fee increase exceed the funds needed to provide water during summer peak demands and the amount of the proposed fee exceeds the cost of providing water during peak demands to charged parcels.

The September 2007 Draft Urban Water Management Plan for the City of Paso Robles confirms that high water demands for landscape irrigation during hot summer months strains the City's capability to satisfy water needs. However, the Plan states that these high demands "can be reduced effectively through water-saving landscaping and irrigation practices, or satisfied with recycled water."

The goal of meeting high summer water demands can be effectively reduced or satisfied completely with significantly with methods less costly than the Nacimiento Water Project and pursuant to the court in *Fresno*, as stated above, where a fee is not required to provide the service, it exceeds the cost to provide the service and is in violation of Article XIII D, Section 6(b)(1).

In her October 18, 2007 letter to Paso Robles residents John Borst and Pascual Padilla, Attorney Iris Yang attempted to justify the legality of the proposed rate increases to existing customer parcels by stating that "[D]ue to declining water availability and water quality, construction of the pipeline is required to allow the City to continue to provide on-going water service..". Ms. Yang's statement is disproved, however, by the above cited and quoted data and conclusions provided by the City regarding water availability and quality from existing sources. Additionally, to be required, the Nacimiento Water Project would have to be analyzed along with other alternatives and found to be the only feasible way of meeting the water availability and water quality needs of charged parcels. In her letter Ms. Yang bases her analysis of the legality

of Paso Robles' proposed water rate increase on pre-Proposition 218 case law that has been replaced by Proposition 218 and the court decisions that have interpreted it.

Based on the information provided by the City of Paso Robles and the above analyses, the proposed rate increase is unlawful as a violation of, among other laws, Article XIII D of the California Constitution, Proposition 218. Current customer parcels which the City identifies to be charged for the total costs of the Nacimiento Water Project will not benefit from the Project because those parcels are already provided with, and pay fees for water service based on adequate available water quantity and quality. To justify any water rate increase to pay for the proposed Nacimiento Water Project the City must calculate and account for the costs of the project attributable new water service applicants and sewer fees and must propose water service rates that reflect those proportional allocated costs.

Since the new water source and infrastructure for its delivery into the existing system are not needed by current customer parcels and will provide water for new water service applicants in the future, a levy on current customer parcels is properly characterized as an assessment and must be levied by assessment pursuant to the substantive and procedural requirements for assessments within Proposition 218. As was emphasized by the court in Fresno (above), the burden of demonstrating compliance with Proposition 218 is on the governmental entity which must offer evidence or argument to demonstrate the validity of a fee or charge.

In closing, my clients urge you to rescind the proposed water service fee increase. Any future fee increases should conform to Proposition 218 by generating revenues consistent with the funds required to provide the service and by charging fees for water services that reflect the actual costs of the service to charged parcels.

Best regards,



Cynthia Hawley

cc: James App

**Using Jim Apps' Methodology (deduced from his Oct. 2 and Dec. 4, 2007 staff report and calculations) to get expected/actual water unit charge (rate) for 2010 and 2011**

Jim App's Methodology:

$$\frac{\text{Total Costs (Expenditures) + Debt Service}}{\text{Total city units of water used per year}}$$

--Using App's Oct. 2 or Dec. 4 numbers from FY 2008 to calculate for FY 2010

$$\frac{\$10,630,300}{3,319,000 \text{ units}}$$

equals **\$3.20** per unit charge to the water customer

Mr. App adds 25% to \$3.20 for good measure to get his \$4.00. His report provides no documentation to support his rationale for adding 25%. (Note. Likewise, *no* calculations for 2008 or 2009 water rates are given in his report.)

--Using SLO County Financing Authority official numbers on page A-26\* and A-21\* for FY 2010

$$\frac{\$4,017,400 + 0}{3,499,542.4 \text{ units}} \quad (8,032 \text{ acre ft.} \times 435.7; 1 \text{ acre ft.} = 435.7 \text{ units})$$

equals **\$1.14** per unit charge to the customer (not \$4)

**Note.** There is NO debt service or Nacimiento operational and maintenance cost in FY 2010. App nonetheless in his Oct. 2 and Dec. 12 report has figured in \$4,378,700 (ave.) debt service and \$2,416,600 Nacimiento operational and maintenance costs (pipeline and treatment facility) unnecessarily for FY 2010 in his FY 2008 Total Costs. This amounts to an overcharge in FY 2010 of \$6,795,300 (potentially \$20,385,900 over FY's 2008-2010).

--Using SLO County official numbers on page A-26\* and A-21\* for FY 2011

$$\frac{\$6,429,300 + \$1,587,995}{3,604,456 \text{ units}} \quad (8,273 \text{ acre ft.} \times 435.7; 1 \text{ acre ft.} = 435.7 \text{ units})$$

$\frac{\$8,017,295}{3,604,456 \text{ units}}$  equals **\$2.22** per unit charge to the customer (not \$4)

\*Source: SLO County Financing Authority Nacimiento Water Project Revenue Bonds, 9/10/07.

## Projected Water Deliveries

Paso Robles currently estimates that water deliveries for the current and next five fiscal years will be as follows:

**Table 22**  
**Paso Robles**  
**Projected Water Deliveries In Acre Feet Per Year**

| <i>Fiscal Year Ending</i><br><u>June 30</u> | <u>Total</u> | <u>Increase</u> |
|---|--------------|-----------------|
| 2008  | 7,571        | N/A             |
| 2009  | 7,798        | 3.00%           |
| 2010  | 8,032        | 3.00            |
| 2011  | 8,273        | 3.00            |
| 2012  | 8,521        | 3.00            |
| 2013  | 8,777        | 3.00            |

Source: Paso Robles

**Table 25**  
**Paso Robles**  
**Paso Robles Water System**  
**Projected Operating Results and Debt Service Coverage**  
**As of June 30**

|   | <u>2008</u>        | <u>2009</u>         | <u>2010</u>         | <u>2011</u>         | <u>2012</u>         |
|---|--------------------|---------------------|---------------------|---------------------|---------------------|
| <b>Revenues</b>                                   |                    |                     |                     |                     |                     |
| Charges for sales & service                       | \$6,610,000        | \$8,706,900         | \$10,526,200        | 12,413,000          | \$12,773,600        |
| Interest Income                                   | 530,000            | 620,000             | 710,000             | 800,000             | 755,000             |
| Connection Fees                                   | 1,591,200          | 2,012,600           | 2,433,800           | 2,433,800           | 2,531,100           |
| <b>Total Revenues</b>                             | <u>\$8,731,200</u> | <u>\$11,339,500</u> | <u>\$13,670,000</u> | <u>\$15,646,800</u> | <u>\$16,059,700</u> |
| <b>Expenses</b>                                   |                    |                     |                     |                     |                     |
| Operation and Maintenance                         | 3,804,000          | 3,749,700           | 4,017,400           | 4,045,300           | 4,006,600           |
| Nacimiento Operation and Maintenance              | --                 | --                  | --                  | 2,384,000           | 2,479,400           |
| <b>Total Expenses</b>                             | <u>\$3,804,000</u> | <u>\$3,749,700</u>  | <u>\$4,017,400</u>  | <u>\$6,429,300</u>  | <u>\$6,486,000</u>  |
| <b>Net Revenues Available<sup>(1)</sup></b>       | <b>\$4,927,200</b> | <b>\$7,589,800</b>  | <b>\$9,652,600</b>  | <b>\$9,217,500</b>  | <b>\$9,573,700</b>  |
| <b>Nacimiento Debt Service<sup>(2)</sup></b>      | <b>--</b>          | <b>--</b>           | <b>--</b>           | <b>\$1,587,995</b>  | <b>\$4,224,589</b>  |
| <b>Projected Nacimiento Debt Service Coverage</b> | <b>--</b>          | <b>--</b>           | <b>--</b>           | <b>5.80</b>         | <b>2.27</b>         |

<sup>(1)</sup> Excludes available reserve balances that may be applied towards Nacimiento debt service for coverage purposes.

<sup>(2)</sup> Reflects net debt service figures which include capitalized interest through September 1, 2010.

Source: Paso Robles.

## CONSTITUTIONAL LIMITATIONS ON APPROPRIATIONS AND CHARGES

### Article XIII B

Article XIII B of the State Constitution limits the annual appropriations of the State and of any city, county, school district, authority or other political subdivision of the State to the level of appropriations of the particular governmental entity for the prior fiscal year, as adjusted for changes in the cost of living and population. Paso Robles is of the opinion that charges for Water Service do not exceed the costs it reasonably bears in providing such services and therefore are not subject to the limits of Article XIII B. Paso Robles has covenanted in the Water Delivery Contract that it will establish, fix

**Council Comment**  
**Councilman Fred Strong**  
11/30/07

- I was in San Jose this week attending a League of California Cities' legislative briefing. The packet was small which was good news because it means that cities fared well in this legislative year.

Annual updates for the year included legislation regarding Administrative Services, Employee Relations, Environmental Issues, Housing, Public Safety, Revenue and Taxation, Telecommunications, Transportation and Public Works. A total of 185 Bills and changes were covered.

What I see as of interest to Paso Robles at this time are the following:

- **Budget allocations for city booking fees paid to counties; \$238 million in COPS/Juvenile Justice Grants and a confirmation that in 2008-09 and beyond we will receive almost double the sales tax revenue from gasoline for street and road improvements.**
- **Spill over money from the disproportionate amounts between general sales taxes and gasoline sales taxes will be allocated to public transit. However, the guarantees in that area are found in the Constitution in a vague manner and have previously been allocated to school buses only.**
- **Bond money is being allocated but is still in flux as to total allocations for what years. It is important to watch the timelines for applications, rules of applications and release of fund dates. Transportation funds will be accessed by electronic template which should be available to cities by January. Once received it is important to ACT QUICKLY. More information is, and will be, available on the State Treasurer's web site + "/infrastructure". Infill infrastructure money may be available for our First Five cooperative project and could help with recent infrastructure problems at the North end of town. It could also be available, if we act quickly, for the new master plan implementation and transit improvements and increase in services.**

**The legislature granted major concessions to firefighters in AB220 which establishes a “Firefighters Procedural Bill of Rights (FBOR) which parallels POBOR but has some significant differences because of Government Code Section 11500. A separate, more detailed, paper on this will be provided.**

**Water conservation incentives and new regulations for new construction are coming down the stream now and will be available and/or in effect by no later than 2017. A look now could put us ahead of the curve.**

- **Illegal dumping will now carry fines of \$100 - \$200 per incident to the jurisdiction in which the incident takes place.**
- **A bill opposed by the League did pass which imposes liability on cities that allow first time construction in flood plains that subsequently flood.**
- **New planning legislation requires that our Housing Element update include measures to address homeless populations. The City will be required to provide zoning for at least one homeless shelter within the City.**
- **AB 1019, by Assemblyman Blakeslee, requires that we increase our low income housing allocation when we annex new unincorporated land into the City.**
- **Any project that will have an effect on fish or wildlife will be required to pay a fee to Fish and Game for its review of environmental documents. The fee is projected to be \$2,500.**
- **The City may now seize, for 30 days, any vehicle involved in a defined exhibition of speed or speed contest that involves reckless driving.**
- **New regulations have been authorized, including heavy penalties, for possession or use of ANY illegal fireworks in the State, no matter how small the quantity.**
- **New re-entry facility (prisons) will only be sited in jurisdictions which approve that use of existing, or new, facilities. The Paso Robles Youth Authority facility is being considered for that possible use.**

- **The State is providing NO cost recovery for the requirement upon local jurisdictions to use GPS tracking for life of all paroled sex offenders.**
- **Back to the budget. \$10.5 million has been allocated, through the Office of Emergency Services, for anti-gang efforts. An additional \$5.3 million is available through DOJ for costs related to Gang Suppression Enforcement Team Programs. The deadline for submission of gang suppression grants is December 10, 2007.**
- **AB1260 clarified and supplemented the rules under Proposition 218 related to fee notices in response to recent court decisions. One such clarification is that notice of a proposed increase may be provided in the regular billing statement or any other mailing sent to the address where the bill is sent OR to the address where the service is provided. When counting protests the agency must count one protest per parcel whether files by the owner or tenant.**
- **Use of Community Facilities Districts was expanded to include lighting maintenance, street and road maintenance and snow removal.**
- **Bids that are allowed to be submitted electronically must be receipted electronically by immediate transmission or by providing the contractors with access to an electronic file that contains the receipt.**
- **Disabled parking places must have highly visible paint and signage must include a statement of the minimum fine for violation.**
- **School Zone speeds may be reduced by local ordinance to 15 m.p.h. within 500 feet of a school, passing a school when children are entering or leaving school grounds and during noon recess.**

**Alerts regarding 2008 include to be careful about counting on Proposition 42 funding as it may be subject to a State raid to pay State deficits.**

**Also. Gang crime and health care will be two of the major items on the State agenda next year.**

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**A separate paper will be submitted to staff containing the Bond Funding programs and lead agency contacts. I will also make this available to any members of the City Council or Planning Commission who would like to have it.**



November 12, 2007

**League of California Cities  
Firefighters AB 220 (Bass)<sup>1</sup>**

**Firefighters Procedural Bill of Rights Act (FBOR)**

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**Overview**

On January 1, 2008, the provisions of Assembly Bill 220 (Bass) commonly referred to as the Firefighters Procedural Bill of Rights Act (FBOR) will take effect.<sup>2</sup> FBOR attempts to outline formal procedures for investigations, interrogations, administrative appeal processes, as well as delineate political-activity rights. FBOR affects firefighters employed by a public agency including firefighters who are paramedics or emergency medical technicians, but excludes firefighters during probationary periods.

Although FBOR provisions surrounding the investigations of firefighters are new, with a few exceptions, the provisions mirror the Public Safety Officers Procedural Bill of Rights Act (POBOR). The courts have developed a large body of law interpreting POBOR and because FBOR is similar to POBOR it is likely that the same legal principles developed under POBOR may also apply to FBOR. Additionally, many of the difficulties local agencies faced with regard to implementing POBOR may also apply to FBOR and is a reason we recommend you consult with your City Attorney.

*Previous legislation*

This measure was hotly contested in the Legislature, and previous iterations of the bill were defeated in prior legislative sessions. Debate surrounding this measure came to fruition after firefighters recognized their exclusion from POBOR, which was passed by the Legislature in 1996. While arson investigators were caught under the umbrella of "peace officer", firefighters were excluded. Other legislative attempts to enact similar provisions include, AB 1411 (Longville) of 2000 and AB 2857 (Bass) of 2006. Both bills were defeated before making it to the Governor's desk for signature, in part due to the argument that firefighters had adequate access and processes for employment related recourse.

*Supporting and opposing arguments*

Supporters of FBOR argue that, like peace officers, firefighters at times are under immense pressure when it comes to being in the field and for that reason they too deserve the protections afforded to peace officers. Those that opposed FBOR, including the League of California Cities, argued that the number of investigations fire departments carry out are far fewer than that of

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<sup>1</sup> This document is designed for informational purposes only. The League recommends that you consult with your City Attorney for specific concerns regarding particular provisions of this measure.

<sup>2</sup> Chapter 591, Statutes of 2007, codified at Government Code Sections 3250 et seq.

police departments. Therefore, to enact such a bill is not only needless, but also imposes significant costs on local agencies.

### *Costs*

According to the Senate Appropriations Committee, in fiscal year 2004-05 POBOR claims submitted by local agencies statewide totaled approximately \$21 million. It is likely that because FBOR has many of the same provisions as POBOR local agencies will incur significant costs to comply with the measure.<sup>3</sup> However, it is likely that FBOR costs will be much lower than POBOR costs for the following reasons: a) there are fewer firefighters than peace officers; and, b) the number of investigations of peace officers is much higher than firefighters. According to the Assembly Appropriations Committee, it is estimated that costs associated with statutory compliance could reach in the range of \$1.3 million annually to local agencies statewide.<sup>4</sup>

### *Discussion outline*

- 1) Punitive action
- 2) Timeline of investigation
- 3) Interrogation rights
- 4) Administrative appeals process
- 5) Personnel files
- 6) Political rights
- 7) Employer penalties

### **Punitive action**

When an employer takes punitive action the FBOR provisions are triggered. "Punitive action" is broadly defined as: a) dismissal; b) demotion; c) suspension; d) reduction in salary; e) written reprimand; or, f) transfer for purposes of punishment. Punitive action does not apply to counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other firefighter.

### **Interrogation rights**

#### *Prior to interrogation*

Under FBOR, a firefighter must be informed of the rank, name, and command of the person in charge of the interrogation and all other participants and must also be informed of the nature of the investigation.

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<sup>3</sup> Maureen Ortiz, Senate Appropriations Committee Fiscal Summary: AB 220 (Bass). Senate Appropriations Committee, California State Senate, 8/30/2007.

<sup>4</sup> Karon Green, Assembly Floor Analysis: AB 220 (Bass). Assembly Public Employees, Retirement & Social Security Committee, California State Assembly, 9/12/2007.

### *Conditions for interrogation*

A firefighter may not be compelled to answer incriminating questions before receiving a formal grant of immunity. When an employing agency investigates a firefighter, which may lead to punitive action, and where the firefighter is subject to interrogation, the interrogation shall be conducted at a reasonable hour preferably when the firefighter is on duty. When a firefighter is off duty, the agency must compensate him or her accordingly and the compensation shall not be reduced for any work missed. No more than two interrogators at a time may ask questions. The interrogation must be for a reasonable period of time, which depends on the gravity and complexity of the investigation. The firefighter must be given reasonable breaks during the interrogation. The firefighter cannot be subjected to offensive language or threats, nor may he or she be promised a reward as an inducement to answer questions.

Recording devices may be used during an interrogation but the recordings must be made available to the firefighter prior to further proceedings or interrogations. A firefighter is entitled to a transcribed copy of any notes made by a stenographer and/or reports, or complaints made by investigators or other persons, excluding those that are required by law to be confidential. A firefighter may bring their own recording device and record all proceedings. If it is contemplated during or prior to the investigation that the firefighter may be charged with a criminal offense, he or she must be informed immediately of his or her constitutional rights.

### *Representation*

Upon filing formal charges or when a proceeding may lead to punitive action, firefighters, upon request, may seek a representative of their choosing. The representative may be present at all times during the proceedings.

### **Investigation timeline**

#### *One-year limitation*

An employer generally has one year to complete its investigation of acts, omissions, or other allegations of misconduct. Otherwise, punitive action or the denial of a promotion cannot be taken on any grounds other than merit. See the statute for exceptions to the one-year timeline.

#### *Notification*

If after an investigation and any predisciplinary response or procedure, an employer decides to impose disciplinary action, the employer must notify the firefighter in writing of the employer's decision to impose discipline within 30 days of its decision, but not less than 48 hours prior to imposing discipline.

## **Privacy rights**

### *Media*

An employer cannot subject a firefighter to visits by the press without their written consent. Likewise, a firefighter's photograph and personal contact information cannot be given to the press or made public without the firefighter's written consent.

### *Personal financial information*

A firefighter cannot be required to disclose information pertaining to his or her financial profile or that of any family member including: property, income, assets, source of income, debts, or expenditures.

### *Polygraph tests*

A firefighter cannot be compelled to submit to a polygraph test and comments cannot be entered anywhere, including the investigator's notes, to the effect that a firefighter refused to take a polygraph test. Any testimony to the effect that a firefighter refused or was subjected to a polygraph test is inadmissible in court.

### *Work area/locker*

A firefighter's locker or personal storage space that is provided by the employing agency may not be searched unless one of the following is met: a) the firefighter is present; b) the firefighter has given express consent; c) there is a valid search warrant; or, d) the firefighter has been informed.

## **Administrative appeals**

If an employer seeks punitive action or denies a promotion, a firefighter who has passed the probationary period must be afforded an opportunity for an administrative appeal. *The FBOR administrative appeals process is notably different than the process outlined in POBOR, and requires that administrative appeals instituted by a firefighter be conducted consistent with the rules and procedures adopted by the employer that are in accordance with Government Code Section 11500. BE SURE TO CONSULT YOUR CITY ATTORNEY TO DETERMINE HOW THIS PROVISION APPLIES IN YOUR CITY.*

## **Personnel file**

### *Adverse Comments*

A comment adverse to a firefighter's interest cannot be entered into the firefighter's file without allowing the firefighter the option to read and sign the document. If the firefighter refuses to sign the document, that fact shall be noted and the firefighter must sign or initial to that effect. A

Firefighter has 30 days to respond to adverse comments. The written response must be attached to the adverse comment.

### *Employee request to view their file*

Upon request, employers must make available a firefighter's personnel file that is used to determine employment, promotion, additional compensation, termination, or other disciplinary action, upon request if the request is made during normal business hours. Employers must keep employees' personnel files or copies of them so that they can be provided in a reasonable amount of time.

### *Disputing material in a file*

If a firefighter believes there is a mistake in his or her personnel file or that documentation has been placed in their file unlawfully, he or she may request in writing that the disputed document be removed. A firefighter must provide a written statement describing the corrections and this statement becomes part of the personnel file. Employers have 30 days to approve or deny requests by firefighters to correct mistakes in their personnel file. If, however, an employer denies a request to correct any portion of the personnel file, the employer is required to make a statement in writing to the effect of the denial and is also required to make the statement part of the employee's personnel file.

### **Political rights**

FBOR provides that firefighters cannot be prohibited or required, while in uniform, to participate in political activity. A Firefighter cannot be prohibited from seeking election or serving on a governing board in a city, county, or special district where they are not employed.

### **Employer penalties for violating FBOR**

Firefighters may seek injunctive relief or other extraordinary relief for employer violations of FBOR. Firefighters may also seek civil penalties up to \$25,000 for every malicious violation where it is found there was intent to injure the firefighter. Additionally, the court can order sanctions against the party filing the lawsuit, the party's attorneys, or both, if the court determines the suit was brought in bad faith.

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## **FBOR Resources**

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### ***Training Workshops***

Fire Chiefs Leadership Seminar  
League of California Cities  
December 6

FBOR Training  
Liebert Cassidy & Whitmore  
December 11-13

### ***Web sites***

[www.cacities.org](http://www.cacities.org)  
[www.lcwlegal.com](http://www.lcwlegal.com)

### ***Telephone numbers***

League of California Cities, (916) 658-8214  
Liebert Cassidy & Whitmore, (310) 981-2000