

## [Metropolitan News-Enterprise](#)

Tuesday, October 9, 2012

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### **Annexed Homeowners Must Pay Municipal Taxes, C.A. Rules**

*Justices Reject Claim That Initiative Bars Extending Levies to Voters Who Had No Say in Joining City*

By KENNETH OFGANG, Staff Writer

A provision of the state Constitution requiring voter approval for local taxes does not bar a city from extending previously enacted taxes to residents of areas that it annexes, even if the annexation did not require voter approval, the Fourth District Court of Appeal ruled Friday.

Div. Three rejected arguments by the litigating arm of the Howard Jarvis Taxpayers Association, sponsor of Proposition 218, that the initiative bars the City of Huntington Beach from extending its utility tax and “retirement property tax”—used to pay pension costs incurred prior to the passage of Proposition 13—to residents of Sunset Beach.

Huntington Beach annexed the 133-acre neighboring community of about 1,200 residents last September. The Orange County Local Agency Formation Commission approved the annexation under a provision of the Government Code that allows a city to annex a neighboring “island” of unincorporated territory without a public vote.

OC LAFCO, Justice William Bedsworth explained in Friday’s opinion, had encouraged the annexation as part of the county’s effort to rid itself of responsibility for providing municipal-type services, such as police and fire protection, to unincorporated areas. Annexation to Huntington Beach was ultimately determined to be more viable than the alternatives, such as annexation to Seal Beach or incorporation of Sunset Beach as a city unto itself.

#### **‘Special’ Taxes**

Before the annexation took effect, the Citizens Association of Sunset Beach sued to block it. Represented by attorneys from the Howard Jarvis Taxpayer’s Foundation, the association argued that the annexation should be blocked, or that Sunset Beach should be allowed to vote on the “special” taxes under Proposition 218.

The initiative, known as the Right to Vote on Taxes Act, was approved by statewide vote in 1996. It requires a majority vote of a locality in order to pass a “general” tax, or a two-thirds vote to impose a “special” tax, such as Huntington Beach’s utility and pension levies.

Orange Superior Court Judge Frederick P. Horn ruled that Proposition 218 did not supersede the right of a city to annex an unincorporated area of less than 150 acres

without a vote. And because the Huntington Beach taxes were already in effect, and state law extends local taxes to unincorporated territory, Proposition 218 does not give Sunset Beach voters the right to vote on those levies.

Bedsworth, writing for the Court of Appeal, said Horn was correct.

“We conclude Proposition 218 was never intended to require votes incident to annexations of territory by local governments,” the justice wrote. “It was intended to prevent politicians from trying to circumvent Proposition 13 by inventing so-called assessment districts which supposedly could impose taxes without any vote of the electorate. Nor does the text of Proposition 218, even liberally construed, require an election on tax differentials in connection with an annexation.”

### **Longstanding Law**

The justice noted that state law has allowed involuntary annexation of small communities by cities surrounding, or substantially surrounding, those communities since at least 1939, although Sunset Beach could not have been annexed in that manner prior to 2004, when the limit on the size of such a territory was increased from 75 to 150 acres.

He also noted that the statute expressly extending city taxes to annexed areas has been on the books since 1993, preceding the enactment of Proposition 218.

When a public vote is required for annexation, Bedsworth added, a simple majority vote is sufficient for approval, even when this results in extension to the annexed area of special taxes that required a two-thirds vote for the annexing city to adopt. The reason this seeming contradiction isn't addressed by Proposition 218, the justice said, is that “[i]ts proponents simply never intended it to apply to annexations.”

The case is *Citizens Association of Sunset Beach v. Orange County Local Agency Formation Commission*, 12 S.O.S. 5025.

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**Jobs**

October 2012

## **Growing Pains: Opposition Remains after Martinez's Annexation Plans Approved by LAFCO**

The annexation of the Alhambra Valley has been a hot topic in the city of Martinez, as the turf war has led to a strong backlash from residents who have been vocally opposed to the annexation effort and have made their opinions clear at meetings of the Planning Commission, City Council and LAFCO. Back in August the city decided to reduce the number of acres in its annexation application in order to avoid a referendum or potential litigation. Initially the city sought 393 acres but changed the amount to 316.4 acres in order to increase the likelihood of success. LAFCO ultimately approved the city's amended request.

From the city's perspective, it is already providing urban services to much of the developed area of Alhambra Valley, even areas outside the City's municipal boundary. A document from LAFCO states, "The Martinez General Plan includes a policy stating that all developed but presently unincorporated areas within the City's SOI should be annexed to the City to ensure an equitable tax distribution and cohesive neighborhood units for public service purposes."

The [Martinez Patch](#) notes that the land is lucrative to the city because the Alhambra Valley "is a prestigious community with a lot of wealth and power. Its rural, even pastoral landscape is something the city would be proud to claim for its own." Notably, the city first began the process of trying to annex the land in 1995.

A protest hearing will be held on [October 17th](#), so opponents of LAFCO's decision will have a chance to voice their criticism.

The annexation has even become fodder for the five candidates who are vying for two City Council seats this November. The candidates were asked whether it was appropriate for the city to edit the annexation boundaries in order to minimize the possibility that residents can force a vote on the plan and if all residents in the valley should vote on the annexation of the entire territory.

Mercury News reports that this is how the candidates responded:

- **Avila Farias**: I understand why the city took the approach that they did, as it was an expedient path to enforcing annexation agreements. There is long-standing opposition by many residents in the valley to the prospect of incorporation; and the likelihood of the city prevailing in a valley-wide annexation effort is probably negligible at best. Nevertheless, creating patchwork communities with arbitrary boundaries does not seem reasonable either, and I support the right of people to vote on these critical matters of community identity.
- **Arsenio Escudero**: This is completely undemocratic and I would fight the annexation from day one. It is obvious that our current leaders have been bought off by real estate special interests because several independent studies have already stated that the annexation will create a fiscal burden on the city. Vote or no vote, the annexation is wrong for our city.
- **Dylan Radke**: I do not support the annexation of the Alhambra Valley because annexation of the proposed area will result in a negative impact on the city's budget, and a substantial number of people in the area to be annexed will not be able to vote on the annexation. To the extent that the city is interested in annexing the Alhambra Valley, it should include all the residential areas in the valley and allow all residents in the area to vote.
- **(incumbent) Mark Ross**: I strongly believe the whole valley should vote on annexation. As someone with the great luck to have been raised in the valley, I view the area as part of Martinez; but it is the opinion of all those folks today that matters. The current plan, if successful, still leaves an odd governance in play for police and other public services due to the gerrymandered boundaries."

# Santa Rosa nudged to eliminate unincorporated 'islands'

By [KEVIN McCALLUM](#)  
THE PRESS DEMOCRAT

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It will be more difficult for Santa Rosa to avoid annexing small islands of unincorporated county land inside its borders under a policy adopted Wednesday by the agency responsible for setting the local government boundaries.

The city no longer will be allowed to annex only a portion of small islands, defined as those with fewer than 12 registered voters, according to rules adopted Wednesday by the Sonoma County Local Agency Formation Commission.

Instead, new annexation requests will be approved by the commission only if the entire island is brought under city jurisdiction.

The new policy will likely apply to only about a quarter of the 52 such islands in the county, 51 of which are in Santa Rosa. It will not affect the future annexation of the largest island, the 3,500 acres of Roseland that remain outside city's southwest boundary.

"I think it'll provide more clarity and certainty that we can eliminate some of the smaller islands and provide better police and fire service to those areas," said Richard Bottarini, executive director of the commission.

The 11 members of the commission are representatives of the public, the county, and its nine cities and 54 special districts. Their role is to regulate the formation and expansion of government agencies to promote efficient government.

The commission views county islands as an unfortunate consequence of rapid city growth that need to be eliminated to limit confusion and inefficient delivery of services, such as sewer, water and public safety.

The policy shift is a compromise between the status quo, which encourages annexations of entire islands whenever possible but doesn't require it, and a tougher stance some favored to require annexations of entire islands up to 150 acres.

Supervisor Efren Carrillo said he favored the tougher option because he saw it as the commission's role to "push as hard as we could" for a policy that eliminates all the islands.

"The intent is for us to encourage the cities to annex all island of unincorporated territory," Carrillo said.

Chuck Regalia, Santa Rosa's director of community development, pushed back against the "entire island annexations" proposal. He contended that policy would have the opposite of its intended effect because it would impose so many additional costs on property owners that they wouldn't seek annexation.

"When a single applicant is responsible for doing a significant or sophisticated environmental review, it's very expensive," Regalia said.

The city can initiate annexations on its own, but that is a costly, time-consuming proposition that city leaders historically have avoided, he said.

"Numerous councils have not wanted to force annexation on people that weren't committed to it," Regalia said.

Carrillo expressed frustration with that position, suggesting the city should do more than just "sit on its laurels and wait for folks to request annexation."

The 5th District supervisor, who represents parts of the city's west side, said the city needs to do more than just have a policy supporting annexations -- it needs to have a plan.

"I don't think the city has done an honest job in at least identifying what their long-term trajectory is," Carrillo said.

Supervisor David Rabbitt, who encouraged commission staff to craft a compromise, called it a "middle ground" that would provide an incentive to cities to "nip around the edges" of more annexations while also keeping costs down.

The costs of the smaller annexations are lower because they don't require environmental review, and because they don't trigger elections, Bottarini said.

For islands with fewer than 12 registered voters, only property owners get a say in the annexation, not residents. Such small annexations are harder to block because opponents have to represent more than 50 percent of the assessed value of the land proposed for annexation.

Carrillo expressed disappointment that discussion has stalled between the county and the city about how to transition Roseland from county to city control.

"It feels like its Groundhog Day," he said.

Regalia said the only realistic way such a large annexation is going to happen is if the two agencies work closely together and share planning and environmental costs he estimated at \$500,000.

"At this stage of life in California, we don't have that kind of money floating around," Regalia said.

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## Measure Q a battle between Contra Costa fire services, pension reforms

By Lisa Vorderbrueggen *Contra Costa Times* *Contra Costa Times*

Posted:

Sunday, October 14, 2012  
ContraCostaTimes.com

When a neighboring shop's soiled rags caught fire in early October, Walker's Auto Body owner Gigi Walker was terrified it would spread into her family's North Concord business.

Contra Costa Fire District firefighters quickly stamped out the blaze. But the close call left Walker worried.

She's counting on the passage of Measure Q on Nov. 6, which would bail out the financially ailing fire district through a temporary \$75-a-year tax on single family homeowners and a tiered fee system for shops.

Without the roughly \$17 million a year the tax would generate toward its \$100 million budget, fire officials say they must shutter up to 10 of the district's 28 stations and lay off a third of its firefighters.

"I know people are concerned about the cost of public employee pensions but you can't fix everything with one measure," Walker said. "I don't want my business to burn down because the closest fire station closed and firefighters had to drive here from further away.

"And this is the Bay Area. We have earthquakes. It's crazy to talk about cutting emergency services," she added.

Measure Q's most outspoken opponent doesn't want anyone's business or home to go up in flames.

But Contra Costa Taxpayers Association Director Kris Hunt says a temporary tax infusion will delay critical pension and service model reforms and jeopardize fire service over the long haul. Retirement costs, for example, consume a quarter of the agency's budget this fiscal year and the percentage is expected to grow, she said.

"Our concern about Measure Q from the outset is that it doesn't solve the problem," Hunt said during a televised debate. "It isn't about firefighting services. Everyone agrees this is a critical service and should be provided. However, it has to be at a cost that is affordable (to) the residents and sustainable."

The women perfectly illustrate voters' Measure Q conundrum: How does the county reverse unsustainable costs in a key public service without suffering catastrophic losses of life and property?

With 265 sworn personnel for 600,000 residents, the district is already staffed at half the industry standard recommended by the International City/County Management Association. In Contra Costa, only East Contra Costa and the Rodeo-Hercules fire agencies have lower staffing levels.

The 304-square-mile district includes Antioch, Bay Point, Clayton, Concord, El Sobrante, Lafayette, Martinez, Pacheco, Pittsburg, Pleasant Hill, San Pablo, Walnut Creek and additional unincorporated areas.

Closing more fire stations and laying off firefighters will push the district to the bottom and it will have negative consequences, Contra Costa fire Chief Daryl Louder has repeatedly warned.

Fewer stations and firefighters will mean longer response times and lead to greater fire damage, more severe injuries and higher numbers of deaths, the chief has said.

Among his examples: A structure fire doubles in size every two minutes and an oxygen-deprived brain suffers damage in 4 to 6 minutes.

Hunt doesn't dispute the chief's analysis but strenuously objects to what she calls an "invented crisis."

"They have known this day was coming for years but they did almost nothing and now they want the taxpayers to rescue them," Hunt said. "It's not good government and it's not good for the community."

The board of supervisors, which manages the fire district, may have made mistakes but local leaders, firefighters and residents didn't cause the recession, countered Vince Wells, president of United Professional Firefighters of Contra Costa County Local 1230.

Despite 10 percent pay cuts, a lower pay scale for new hires and deferred equipment repair and purchases, the district started burning through its reserves in 2008. It points to four crippling financial punches:

- Property tax receipts -- the source of most of its money -- plummeted along with housing values in the economic downturn. The district estimates it lost \$32 million between 2008 and 2012.
- The recession devastated pension investment portfolios and the agency had to put in more cash each year to pay for more generous retirement benefits awarded in 2002.
- Health care costs skyrocketed nationwide.
- The retirement system altered the way it allocated costs after other member agencies argued they were unfairly subsidizing the benefit-rich fire districts. The shift increased the fire district's contribution rate.

While critics focus on pensions, Measure Q has no impact on retirement benefits, Wells has said.

So far, the courts have consistently said employers cannot take away current employees' vested benefits, although there are several pending cases stemming from June ballot measures in San Jose and San Diego.

Local 1230 had been negotiating a less expensive retirement package for new firefighters, but pension legislation signed by Gov. Jerry Brown made those discussions moot.

The law reduces retirement benefits for public safety employees hired after Jan. 1, 2013, and requires all workers to pay half of their pension costs.

Contact Lisa Vorderbrueggen at 925-945-4773, [Twitter.com/lvorderbrueggen](https://twitter.com/lvorderbrueggen) or [wFacebook.com/lvorderbrueggen](https://www.facebook.com/lvorderbrueggen).

#### MEASURE q

What it would do: Levy an annual \$75 fire safety parcel tax on single-family homes, \$37.50 for condominiums, and establish a tiered fee for commercial, industrial and other properties in the Contra Costa Fire District. The Contra Costa board of supervisors placed the measure on the ballot in order to avert closure of up to 10 of the district's 28 fire stations

Votes to pass: Two-thirds

Supporters: United Professional Firefighters of Contra Costa County Local 1230, Contra Costa fire Chief Daryl Louder, American Medical Response, Contra Costa County Fire Advisory Commission, Contra Costa Sheriff David Livingston and Public Employees Union Local One.

Opponents: Contra Costa County Taxpayers Association



Money: The Committee to Protect Contra Costa Fire and Emergency Services had raised \$83,719 for Measure Q as of Sept. 30. Most of the money came from firefighters; opponents have not raised or spent any money

#### ELECTION PREVIEW 2012

Watch the hourlong round-table debate on the Contra Costa Fire District's fire safety parcel tax:  
Public access television -- Channel 27: 8 p.m. on Oct. 14, 21, 28, 30 and Nov. 4. Channel 28 in Walnut Creek: 2 p.m. on Oct. 14, 21, 28 and Nov. 4. Channel 28 in Concord: 3:30 p.m. on Sept. 29, Oct. 20, 26, 27, 28, Nov. 2, 3, 4 and 5  
Online anytime -- [contracostatimes.com/elections](http://contracostatimes.com/elections) or <http://bcove.me/5wtncxi01>

## **Pleasant Hill recreation district may borrow to buy furniture for new teen, senior and community centers**

*By Lisa P. White Contra Costa Times San Jose Mercury News*

*Posted:*

Monday, October 15, 2012  
ContraCostaTimes.com

PLEASANT HILL -- With fundraising falling far short of the \$1.3 million goal, Pleasant Hill Recreation and Park District leaders may take out a loan to furnish the new senior, teen and community centers.

Board members are considering borrowing \$300,000 through the California Special Districts Association. The recreation district would repay the loan over seven years at 4.25 percent interest with annual payments of \$50,500.

The board is scheduled to discuss the loan proposal at the Oct. 24 meeting.

"I've thought all along that we were going to need a bridge loan until we get all the money in," said Dennis Donaghu, board chairman. "When we set out to do the fundraising, we allowed people to spread their contributions over five years. So when it comes to buying the furniture, we're obviously going to have a cash-flow problem."

If the board agrees to borrow the money, the district would use the funds to buy the furniture now and continue to fundraise to repay the loan, he added.

"We have three new buildings coming and they need to look correct and not do it as-you-go," Donaghu said.

The grand opening for the teen center is Oct. 20 and the senior center is scheduled to open in December. The community center is under construction and slated to open in fall 2013.

In 2009, voters approved a \$28 million bond to build the three centers, upgrade the fields at Pleasant Oaks Park and remodel restrooms at several parks. Since the bond funds can be used only for buildings, the board must raise \$1.3 million to buy furniture and equipment. Thus far, the district has collected \$398,467 of the \$539,388 secured through foundation grants, donations and naming opportunities for rooms in the new buildings.

Rather than borrow \$500,000 at 4.75 percent interest, the board agreed last month to take a total of \$200,000 from the district's capital projects, building and reserve funds. The sale of a three-bedroom house on Gregory Lane that had been part of the old senior center is expected to generate an additional \$250,000. However, if board members approve the loan, they'll still need to raise more than \$250,000 to meet the \$1.3 million target. Upcoming fundraisers include "celebrity" bingo on Oct. 23 and a wine tasting soiree on Nov. 11.

Initially, the district's fundraising consultants focused on foundations, with the goal of bringing in about \$500,000 in grants, according to Bob Berggren, general manager of the recreation district. But other than a \$64,270 matching grant from the Danville-based Hedco Foundation for the teen center, that strategy didn't pan out, he said. In many cases, Pleasant Hill's middle-class population and the district's focus on recreation didn't match foundations' interests.

"We were counting on a couple of others and they did not come through and those were some of the big-ticket items," Berggren said.

In late July, the district canceled the contract with the consultants, who were paid about \$85,000. Berggren said his staff realized that it was more important to solicit people living in and around Pleasant Hill who are

familiar with the recreation district and the services it provides. Berggren said cultivating those donors is time consuming -- he described multiple meetings spent coaxing people to open their checkbooks -- but he hopes to sign a few soon.

Lisa P. White covers Martinez and Pleasant Hill. Contact her at 925-943-8011. Follow her at [Twitter.com/lisa\\_p\\_white](https://twitter.com/lisa_p_white).

## Abbott & Kindermann Land Use Law Blog

LAND USE, ENVIRONMENTAL, AND REAL ESTATE LAW IN CALIFORNIA



# Abbott & Kindermann Land Use Law Blog

Posted at 7:55 AM on **October 16, 2012** by Abbott & Kindermann

## Two Recent Decisions Highlight the Special Powers Held By LAFCo

By William W. Abbott

While perhaps not surprising news to LAFCo wonks like Peter Detwiler, two recent decisions illustrate the special role that local agency formation commissions play in influencing local government and special district activities. The first decision, [Citizens Association of Sunset Beach v. Orange County Local Agency Formation Commission](#) (October 5, 2012, G045878) \_\_\_ Cal.App.4th \_\_\_, wrestles with the intersection of Proposition 218 voting requirements with LAFCo's ability to order island annexations. ([Government Code section 56375.3](#)) Originally developed in 1904, Sunset Beach is a small, unincorporated enclave located adjacent to Huntington Beach. Confined to less than 134 acres, [Sunset Beach](#) is home to roughly 1200 permanent residents. As authorized by the Government Code, Orange County LAFCo ("OC LAFCo"), upon review of the location, size and status of Sunset Beach, concluded that the area met the qualification for an island annexation, and ordered it annexed to the agent city of Huntington Beach. At the time, existing property owners within the city limits of Huntington Beach paid two taxes that their adjacent neighbors in Sunset Beach did not pay: a five percent utility tax and a pre-Proposition 13 retirement property tax. LAFCos approval of the island annexation thus triggered the following question: did Proposition 218 give the Sunset Beach voters the right to vote on the taxes as a condition to the annexation going forward. Voters within Sunset Beach filed suit. The trial court decided that 218 voting requirements did not extend to LAFCo compelled island annexations completed under the authority of Government Code section 56375.3. The appellate court reached the same conclusion. In so deciding, the appellate court reviewed the history to voter enacted tax reform starting with Proposition 13 (1978). The appellate court reasoned that had the voters intended to apply the vote requirement to the then existing statutory scheme which authorized island annexations, the voters would have drafted the measure to expressly do so. Failing the ability to find that legislative objective in Proposition 218, the appellate court declined to read the proposition in a manner to reach a result not reasonably read into the adopted text.

The second case, although primarily a CEQA decision, also illustrates LAFCo's potential range. In [Voices for Rural Living v. El Dorado Irrigation District](#), (October 4, 2012, C064280) \_\_\_ Cal.App.4th \_\_\_, affected parties filed suit, challenging El Dorado Irrigation District's ("EID") approval of a Memorandum of Understanding (MOU) with a tribe, the effect of which was to increase the amount of water delivered by EID to the tribe for a casino operation. In 1989, the County LAFCo had approved an annexation request by EID to serve the tribal property. LAFCo imposed a condition which limited the water service for residential purposes and accessory uses, serving not more than 40 residential lots. Neither the tribe nor LAFCo ever challenged the validity of the limitation. A little more than ten years later, a casino was proposed for the property. This casino in turn necessitated the increase in water deliveries as well as construction of an on off ramp on Highway 50. The affected agencies prepared the required NEPA and CEQA documents. The water limitation proved problematic, and eventually EID become convinced that the LAFCo restriction was an improper limitation on EID serving a sovereign nation. EID then entered into the MOU with the tribe providing for water deliveries substantially in excess of those authorized under the LAFCo condition. Adjacent owners filed suit, alleging CEQA grounds along with the violation of the LAFCo restriction. [We address the CEQA issues in a separate blog: see [Class 3 CEQA Exemption: Unusual Circumstances Exception Becoming Less Unusual?](#)] The appellate court concluded that EID lacked the authority to unilaterally void the LAFCo limitation even in circumstances in which it thought the limitation was unconstitutional. This authority rests with the LAFCo or courts, not the agency charged with implementing the restrictions previously

imposed. The appropriate course of action for EID was to go back to LAFCo (as it expressly had retained jurisdiction) and file a request for an amendment. In circumstances in which the LAFCo declined the amendment request, EID could then seek judicial review.

LAFCOs are not exactly the new sheriff in town; they have been broadly empowered for years. As these agencies become more confident in their independence and legal authority, expect them to take a seat at the table where important decisions are made regarding community growth and municipal organization.

**[William W. Abbott](#) is a partner at Abbott & Kindermann, LLP. For questions relating to this article or any other California land use, real estate, environmental and/or planning issues contact Abbott & Kindermann, LLP at (916) 456-9595.**

*The information presented in this article should not be construed to be formal legal advice by Abbott & Kindermann, LLP, nor the formation of a lawyer/client relationship. Because of the changing nature of this area of the law and the importance of individual facts, readers are encouraged to seek independent counsel for advice regarding their individual legal issues.*

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## Discovery Bay gives town seal and logo a fresh look

By Paul Bugarino Contra Costa Times Contra Costa Times

Posted:

Tuesday, October 16, 2012  
ContraCostaTimes.com

DISCOVERY BAY -- The town's logo has a new, more vibrant look.

The town's Community Services District is changing its rope-trim insignia with a navy blue steamboat in the middle to a brighter-colored seal and logo with a gold and orange sunset scene, steamboat on sky-blue water and a silhouette of Mount Diablo.

Other organizations such as the Chamber of Commerce and real estate agencies use the old logo, board Vice President Kevin Graves said.

"(The original logo) has been adopted by everybody, so we wanted something that stands independently," he said.

"I think it gives us a bit more of our own identity, and more of a town logo," added director Jim Mattison. "It's not drastically different, but it's more colorful. We wanted to pizazz it up a little bit."

The logo includes the phrase "est. 1998," which marks when Discovery Bay's community services district was established.

Graves said the steamboat on the logo likely comes from the Hofmann Development office being located on a vessel when it first started building homes in the Delta community.

"We kept it because we didn't want to lose that tradition," he said. "At the same time, we're trying to move the image of the town forward."

Though the new logo already adorns town letterhead, the town's website and its meeting agenda, it will be formally adopted at Wednesday's board meeting. The board will also consider a near \$4,500 contract for street pole banners with the new insignia, with the money coming out of its lighting and landscaping zone account.

Contact Paul Bugarino at 925-779-7164. Follow him at [Twitter.com/paulbugarino](https://twitter.com/paulbugarino).

## **Kensington police chief, officer cleared of wrongdoing by District Attorney's Office**

*By Rick Radin For the Contra Costa Times Contra Costa Times*  
Posted:

Wednesday, October 17, 2012  
ContraCostaTimes.com

KENSINGTON -- The police chief and a police officer in this West Contra Costa town have been cleared of criminal wrongdoing by the county District Attorney's Office over allegations made by a member of the police department's governing board.

The investigation into the allegations of improper credit card charges made by police Chief Greg Harman was prompted by a request from Kensington Police Protection and Community Services District board member Cathie Kosel.

Kosel also asked for the District Attorney's Office to investigate an incident in which she claimed Kensington police Sgt. Ricky Hull tried to intimidate her by driving his patrol car at her at a high speed while she was walking on the street.

In a pair of Oct. 8 letters to Kosel, District Attorney Mark Peterson said there was "insufficient evidence" to support the allegations about improper credit card charges or Kosel's claims in the alleged incident involving Hull.

In the letter regarding the allegations against Hull, Peterson noted that five witnesses were interviewed during the inquiry, including Kosel and Hull, and that some "either tend to undercut or specifically contradict the allegations." Police dispatch recordings and logs were also reviewed as part of the inquiry, according to the letter.

Kosel said the only witnesses interviewed other than her were police officers.

Harman said the charges were part of a long string of unfounded complaints made against him by Kosel and fellow board member Mari Metcalf.

Earlier this year, Kosel and Metcalf disputed about \$28,000 in charges made on the district's credit cards for expenses and travel at training sessions and conferences, Harman said.

They said Harman, who also serves as general manager of the CSD, took his wife to a conference and charged the travel and entertainment expenses for her to the card.

Harman said he has charged about \$7,000 to district credit cards for various expenses over his four years as chief. He said he reimbursed the district for about \$400 he charged for a plane ticket for his wife.

"The problem is that the board has nothing in the way of policies detailing what Mr. Harman can or cannot spend," Kosel said.

The letter from Peterson noted that his office's inquiry was "solely for evidence of criminal wrongdoing. Our office is not qualified to opine, and therefore offers no opinion, as to best accounting practices or propriety of any internal controls."

Kosel said she thinks Harman's \$236,000 annual compensation is out of line with what many older, retired Kensington residents can afford.

Measure G, a parcel tax passed in 2010, imposed a \$200-per-parcel annual levy for police services.

Kosel and Metcalf represent a two-vote minority on the board that consistently opposes board President Chuck Toombs, Vice President Tony Lloyd and member Linda Lipscomb.

Kosel is running for re-election this fall against Toombs and challengers Pat Gillette, Jim Hausken and Kim Zvik, with two board seats at stake.

## Pittsburg City Council delays decision on Ambrose Park pool renovation

By Eve Mitchell Contra Costa Times Contra Costa Times

Posted:

Wednesday, October 17, 2012

ContraCostaTimes.com

PITTSBURG -- Plans to build a children's activity pool to replace an aging lap pool at Ambrose Park have been delayed as result of an appeal of the Planning Commission's approval of the project's design.

Ambrose Park, located near Highway 4 and Bailey Road, is within Pittsburg city limits, but the park is owned and maintained by Bay Point's Ambrose Recreation and Park District, which previously held public meetings that resulted in the adoption of a master plan for the pool project and other improvements to the park; Pittsburg is acting as the project manager, while the park district has final approvals for the new pool.

The existing eight-lane lap pool was closed in 2008 for safety reasons.

Some Bay Point residents have pushed for rebuilding the existing pool or having the new pool be a lap pool instead of the 18-inch deep, irregularly shaped children's pool called for in the master plan. Children's pools bring in more revenue and are less expensive to operate than lap pools, say district officials.

As a result of the appeal filed by Bay Point resident Michael Kerr, City Council members on Monday continued until Nov. 19 a decision to award a construction contract for the new pool that would have cleared the way for the project to move forward.

The two public workshops the district had in 2009 amounted to "brainstorming sessions," and people did not have a chance weigh in on a master plan that was developed later, Kerr said.

"They are trying to get rid of the pool in Ambrose Park and replace it with a water playground," he said.

"We were never given the opportunity to discuss the master plan that was developed in the workshops."

Steve Hoagland, chairman of the district's board of directors, said the public hearing process was adequate.

"Every citizen has a right to file an appeal if they are not happy. The problem is the reason they are giving -- that is wasn't vetted through our agency -- is factually wrong," he said.

The original timeline called for the new pool to open as early as July 2013.

Filing the appeal will lead to several months of project delays, he said. If the city had taken action on Monday, the district would have taken action at its Thursday meeting that would allow it to open bids very soon so that construction could start. It is possible a four-lane lap pool could be included in the project, which also includes restrooms, an office, a snack bar and pool equipment building, if the bid amount for the children's pool comes in lower than expected.

The Ambrose pool replacement project is estimated to cost \$2.3 million. Project funding comes from \$1.13 million from the East Bay Regional Park District's Measure WW, a voter-approved bond measure; \$600,000 in park fees paid by city developers; \$98,000 from the district; and \$473,000 in county developer fees. The county fees were turned over to the district from a lawsuit settlement to help the district pay for the new pool.

In other action, council members approved a sales tax-sharing proposal to help offset remodeling costs to bring a new Ford dealership to the Century Auto Mall at the site where Mazzei's former Pontiac, Cadillac and GMC dealerships were located before closing three years ago.

The vacant dealership was later vandalized and is in need of repairs.

The proposal calls for Thomas Nokes, owner of Antioch Auto Center, to move the Diablo Ford dealership he purchased on Railroad Avenue in Pittsburg over to the auto mall. The new dealership would be called All-Star Ford.



Under the proposal, Pittsburg will share with All-Star Ford one-fourth of sales tax revenues the city receives from the dealership's car sales for up to a 10-year period, with the total amount not to exceed \$1.85 million over 10 years.

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## Discovery Bay enters into escrow on possible community center site

By Paul Bugarino Contra Costa Times San Jose Mercury News

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ContraCostaTimes.com

DISCOVERY BAY -- A long-awaited community center may be one step closer to reality.

The town's Community Services District, along with Delta Community Presbyterian Church entered into an agreement recently with Pilati Farms to purchase a 10.24 acre site on the northeast corner of Discovery Bay Boulevard and Willow Lake Road.

The transaction is now going through the escrow process, which should take about 90 days, district general manager Rick Howard said at Wednesday night's board meeting.

The district's portion of the property is about 7.4 acres and includes the Discovery Bay Athletic Club building.

The combined, all-cash price for the transaction is \$1.2 million.

The district will have an appraiser look at the property, along with an environmental consultant to check for contaminants in the soil, Howard said. The district plans to file a notice of exemption with the county Thursday, saying the transaction won't have any environmental impact, he said.

Discovery Bay has talked about building a community center for the past three decades, with progress stopping each time because of questions about location, negotiations with developers, bureaucracy or lack of funding.

The site was recommended last December by a committee formed to examine where the center should be located and funded, along with residents that filled out a survey distributed by the committee.

For updates, check back to [ContraCostaTimes.com](http://ContraCostaTimes.com).

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## Discovery Bay will look at other sites for board meetings

By Paul Bugarino Contra Costa Times San Jose Mercury News

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Thursday, October 18, 2012  
ContraCostaTimes.com

DISCOVERY BAY -- In hopes of freeing up office space so its employees can be in a single location, the town's Community Services District will explore leasing property elsewhere in town.

The district's Board of Directors directed General Manager Rick Howard Wednesday night to look into leasing office space on 1520 Discovery Bay Boulevard.

The former bank building could be used for board meetings and conferences, leaving extra space in the existing office currently used for meetings, board vice president Kevin Graves said.

"I think that would alleviate a lot of the problem, or the questions of 'what happens if,'" Graves said.

Fellow board members agreed with the idea, noting it would give it a fall back in case the property owner finds another potential tenant willing to pay more.

Resident Rich Kier spoke in favor of Graves' idea, saying parking at the meetings sometimes "spills over into the (Delta Community Presbyterian Church)" parking lot.

Since being formed as an independent special district in 1998, Discovery Bay Community Services District staff has grown from two to 12 -- including seven since the district moved into its modular office on 1800 Willow Lake Road in 2003.

Town staff now works at three sites and it would be beneficial to have them consolidated under one roof, Howard said.

The estimated lease rate for the 5,475 square foot site would be about \$1.40 per square foot, though Howard said that is a "very preliminary" figure. All God's Christian School has also expressed interest in leasing the site's 2,595 square feet in office space, which would lower some of the cost, he said.

For updates, check back to [ContraCostaTimes.com](http://ContraCostaTimes.com).

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# Contra Costa sets out fire station shutdown plan

[By Lisa Vorderbrueggen](#)

[Contra Costa Times](#)

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MARTINEZ -- Contra Costa's largest fire agency will shutter four fire stations in January, close up to six more by 2015, and stop responding to low-priority incidents if voters reject a \$75 annual parcel tax on the general election ballot.

"We are planning for the worst and hoping for the best, hoping we will not have to implement this service-reduction plan," Contra Costa Fire Chief Daryl Louder told the county Board of Supervisors on Tuesday. The board governs the 600,000-resident central Contra Costa County fire district.

Measure Q, the fire district's seven-year parcel tax proposal, needs a steep two-thirds approval at a time when recession-weary voters face a plethora of new tax proposals from cash-starved state, school and local agencies.

Ballot measure opponents have repeatedly said the fire district is holding taxpayers hostage, threatening service losses while refusing for years to reform firefighter pensions or seriously evaluate alternative ways to fight fires and respond to medical emergencies.

But no matter which argument the voters ultimately endorse, the math is indisputable: Without Measure Q's roughly \$17 million a year in additional property tax proceeds, the fire district will burn through its reserves in a matter of months and must cut expenses.

The reductions have consequences, Louder said.

Losing 10 of its 28 stations will lead to longer response times, more fire damage, greater chance of injury or death for emergency patients, and reduced participation in the regional and state mutual aid system, he predicted.

The agency hasn't yet identified the stations within its nine cities and unincorporated communities targeted for closure.

Operational staff is working on a closure priority list and will consider factors such as proximity to other fire stations, refineries or other high-risk facilities, busy freeways and call volumes.

But in neighborhoods where stations remain open, the firefighters must absorb the extra calls and extend their staff and equipment further, the chief said.

"The call volume isn't going to go down, it will just be redistributed to the open stations," Louder said. "No part of the district will escape the impacts."

However, no firefighters will lose their jobs in the initial shutdown in January, Louder said.

Instead, the district will eliminate the overtime that has allowed those stations to remain open even with reduced staffing levels.

It takes a minimum of two firefighters and one firefighter-paramedic to operate each engine or ladder truck. While many firefighters want and rely on overtime to augment their salary, the district is increasingly mandating overtime in order to meet the staffing requirements, Louder said. Eliminating overtime means no staff is available to operate those engines and trucks.

Fire service cutbacks will also impact the county's ambulance service, Emergency Medical Services Director Patricia Frost told county supervisors Tuesday.

While the county's contract with American Medical Response, or AMR, mandates maximum transport times, ambulance personnel rely heavily on firefighters trained and equipped to extricate people from wrecked cars, burning buildings or even from behind locked doors.

Fire station closures may lead to more incidents in which ambulance staff is first on the scene and unable to get access to the most critical patients, such as those in trauma situations or in cardiac arrest, Frost said.

"Fire is a critical link," she said. " ... What we're talking about are fundamental changes in our service capabilities that are unprecedented."

If Measure Q fails, the Board of Supervisors will likely make station closure decisions at a public hearing in early December.

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## NOVEMBER BALLOT

### Police issues key in Kensington election

Board candidates sharply divided on top cop's contract and expenses

**By Rick Radin**

*Correspondent*

POSTED: 10/24/2012

KENSINGTON — The division on the board that oversees this West Contra Costa town's Police Protection and Community Services District is shaping the race for two seats at stake Nov. 6.

Two incumbents, Chuck Toombs and Cathie Kosel, who have been on different sides of a rift among board members regarding the performance of the district's top administrator, are running for re-election. Two other candidates, Pat Gillette and Jim Hausken, are allied with Toombs and Kosel, respectively. A fifth candidate, Kim Zvik, says she is a "moderate" who doesn't belong to either faction.

Toombs has served as president of the board the past three years. He and his two allies on the board, Linda Lipscomb and Greg Lloyd, have consistently supported the police chief and Community Services District general manager, Greg Harman, amid questions and criticisms from Kosel and a fifth board member, Mari Metcalf.

Lipscomb, Lloyd and Metcalf are in the middle of four-year terms and not up for re-election.

The consistent 3-2 split in voting, especially on issues concerning Harman and his contract, have made for heated board meetings this year.

Kosel says she is only acting on her concerns about Harman's pay and the costs of the police department as a whole. The chief signed a two-year contract extension in July that pays him \$148,000 in salary, along with \$88,000 annually in pension and health benefits. She said she's also concerned about credit-card charges Harman has made for lodging and meals at conferences and training sessions. Toombs said two external audits of the spending uncovered no improper charges on Harman's part.

Kosel also asked the Contra Costa District Attorney's Office to look into the spending, but the DA found no criminal wrongdoing.

"When our employees have gone out of town and spent a couple hundred dollars a night at a hotel, \$220 for dinner for wine and beautiful meals, there is nothing in our rules that says they can't," Kosel said.

"I don't understand the attitude of my colleagues on the board, just don't get it," she added. "How are you spending our money? That's a question that's in the public domain." Toombs disputes the amount of spending Kosel claims and points to the series of investigations that he says backs his view. "Ms. Kosel has consistently raised private issues about the chief's (personnel) file," Toombs said, in defending his use of the gavel to control discussion at board meetings. "If you harm the

chief's reputation, you may make the district liable for civil damages. The chief could potentially sue."

Gillette said she is running to try to restore decorum to the board, which she argues has been ruined by Kosel's and Metcalf's constant criticism of Harman and the police force. She said the controversy is not what the majority of Kensington residents want.

"I have lived in Kensington for 34 years, and I have never seen such divisiveness," she said. "Cathie has done everything she can to undermine the police chief, asking that investigations be conducted, not letting go of issues."

Gillette said she thinks concerns about the cost of the police department are overblown and cites Measure G, a 2010 parcel tax measure that authorized a \$200-a-year levy on homeowners for police services. The tax passed with about a 70 percent majority.

"(Kosel) voted for the police officers' contract (in January), and now she sees the opportunity to make an issue out of it to get reelected," Gillette said.

Hausken, another critic of the board majority, said he is particularly concerned about the cost of police pensions. The board was unable to get officers to agree to contribute to their pensions during contract negotiations earlier this year.

"We're the only agency where the police don't pay into their pensions," Hausken said. "Other agencies are going belly-up over this."

Toombs said Gov. Jerry Brown has substantially settled the issue as far as he is concerned by negotiating pension reform at the state level.

"I think Chuck is being a bit optimistic about this," Hausken said. "I hope he's right."

Hausken said too much crucial debate is held in closed session during board meetings.

"The board majority is very cliquish," he said. "They have warm personal feelings toward the chief as a warm, cuddly and avuncular teddy bear. They always say they are afraid of lawsuits if we criticize him."

Zvik characterizes herself as a "moderate person" who pledges to try to take an objective view of issues if elected.

"The slates that have run together and now sit on the board have created a division on the board," she said.

Zvik said she understands concerns over Harman's salary and benefits at a time when others may be taking pay cuts. On the other hand, she said she is in favor "of moving on with the existing personnel on the police force."

Harman has said he is concerned about his job security if Kosel commands a majority on the board.

"If (Kosel) is making requests (for information), those should be respectfully followed and done," Zvik said. "I don't think it's a bad thing to meet some of the requests and move on."