



RANCHO MURIETA COMMUNITY SERVICES DISTRICT

15160 JACKSON ROAD
RANCHO MURIETA, CA. 95683

SPECIAL BOARD MEETING

May 28, 2008

Open Session 6:00 p.m.

AGENDA

1. **CALL TO ORDER** - Determination of Quorum - President Kuntz (**Roll Call**) 6:00
2. **RANCHO MURIETA COMMUNITY SERVICES DISTRICT SECURITY DEPARTMENT AUTHORITY – PRESENTATION BY STEVE RUDOLPH LEGAL COUNSEL** (Discussion/Action) (30 min.) 6:05
3. **COMMENTS FROM THE PUBLIC** 6:35
The public shall have the opportunity to directly address the Board on any item of interest before or during the Board's consideration of that item. Public comment on items within the jurisdiction of the Board is welcome, subject to reasonable time limitations for each speaker.

If you wish to address the Board at this time, as a courtesy, please state your name and address, and reserve your comments to no more than 3 minutes so that others may be allowed to speak. No action will be taken.
4. **COMMENTS/SUGGESTIONS – BOARD MEMBERS AND STAFF** 7:00
In accordance with Government Code 54954.2(a), Directors and staff may make brief announcements or brief reports of their own activities. They may ask questions for clarification, make a referral to staff or take action to have staff place a matter of business on a future agenda.
5. **ADJOURNMENT** 7:30

Note: This agenda is posted pursuant to the provisions of the Government Code commencing at Section 54950. The date of this posting is May 23, 2008. Posting locations are: 1) District Office; 2) Plaza Foods; 3) Rancho Murieta Association; 4) Murieta Village Association.

RANCHO MURIETA COMMUNITY SERVICES DISTRICT

Special Meeting on Security Services May 28, 2008

OUTLINE OF PRESENTATION

I. COMMUNITY CONCERNS

- a. Why are we here tonight?
- b. Community questions regarding District Security – role, functions, authority, limitations.
- c. Community questions regarding District regulatory authority.
- d. Understand community security needs, desires.
- e. Start to explore options.

II. INTRODUCTION

- a. Presentation Topics.
 - i. Authority of Community Services Districts.
 - ii. Distinction between authority of Community Services Districts, and Cities, Counties.
 - iii. Authority and functions of District Security Services.
 - iv. Planning for the future security service needs of Rancho Murieta.
- b. Presentation Themes
 - i. The powers and authority of the District are much more restricted than the power and authorities of the state, county or cities.
 - ii. District Security officers are not law enforcement officers and have very limited authority.

III. AUTHORITY OF COMMUNITY SERVICES DISTRICTS

a. Statutory Powers of Community Services Districts.

- i. The statutory powers of Community Services Districts are found in Section 61060 the California Government Code.
- ii. Community Services Districts have the authority to perform particular governmental functions and services within a specific territory.
- iii. Community Services Districts may only exercise authority which has been specifically granted to them by state law.

b. Types of Services a Community Services District May Provide.

- i. The types of services that a Community Services District may provide are expressly listed in Section 61100 of the Community Services Districts Law.
- ii. Some of the services that a Community Services District may provide include: supplying water; collection, treatment, and disposal of waste water, recycled water, and storm water; fire protection services; operation and maintenance of recreational facilities; security services; police services; and, library services.
- iii. Examples of express statutory authority to provide particular services include:

1. "Provide police protection and law enforcement services by establishing and operating a police department that employs peace officers pursuant to Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code." Gov't Code § 61100(i).
2. "Provide security services, including, but not limited to, burglar and fire alarm services, to protect lives and property." Gov't Code § 61100(j).
3. "Provide and maintain public airports and landing places for aerial traffic, in the same manner as an airport district formed pursuant to the California Airport District Act, Part 2 (commencing with Section 22001) of Division 9 of the Public Utilities Code." Gov't Code § 61100(o).

4. “Acquire, construct, improve, maintain, and operate community facilities, including, but not limited to, community centers, libraries, theaters, museums, cultural facilities, and child care facilities.” Gov’t Code § 61100(s).

c. Authorization of Services by LAFCO.

- i. The Local Agency Formation Commission (LAFCO) must authorize the District to perform those services listed in the Community Services Districts Law.

d. Services Provided by Rancho Murieta Community Services District.

- i. Water supply collection, treatment, and distribution;
- ii. Wastewater collection, treatment, and reuse;
- iii. Storm drainage collection, disposal, and flood control;
- iv. Security; and
- v. Solid Waste collection.

e. Types of Security Services.

- i. Rancho Murieta Community Services District’s operation of an in-house security service is unique.
- ii. The four other community services districts which provide security services contract with a private security company.

IV. DISTINCTION BETWEEN DISTRICT AND COUNTY / CITIES

a. Authority to Regulate Personal Conduct.

- i. The California Constitution authorizes the state, counties, and cities to regulate personal conduct for the general welfare, and to promote public safety, public health, morality, peace and quiet, and law and order.
- ii. This authority is known as the “police power” of the state, counties, and cities.

b. Definition of Police Power.

- i. The term “police power” is distinct from the authority of peace officers or law enforcement personnel.
- ii. It is a legal term used to describe the authority of the state, counties and cities to regulate personal conduct.

c. Police Power Regulations.

- i. Examples of police power regulations include:
 1. animal control,
 2. possession and use of firearms,
 3. possession and use of alcoholic beverages,
 4. curfews,
 5. loitering,
 6. noise limitations,
 7. traffic and vehicle regulations, and
 8. business licensing.

d. Delegation of Police Power Authority.

- i. The California Constitution permits the state to delegate police power only to counties and cities.
- ii. The state may not delegate police power to any other entities, such as community services districts.

e. District May Not Enact Police Power Ordinances.

- i. A community services district may not enact ordinances to regulate personal conduct, because it does not have police power authority.

- ii. Revisions to Security Code required.
- f. District May Enact Ordinances for Administration of Services and Maintenance of District Facilities.
 - i. A community services district may adopt ordinances for the administration of services, and the operation, use and maintenance of district facilities; examples are water, sewer, drainage.
- g. Applicability of State and County Laws within Rancho Murieta.
 - i. State and county laws regulating personal conduct are applicable within the boundaries of Rancho Murieta Community Services District, regardless of whether an individual is inside or outside the gate.
 - ii. Vehicle Code provisions are not applicable within gated areas.
 - iii. Penal Code provisions are applicable everywhere.

V. **AUTHORITY AND FUNCTIONS OF DISTRICT SECURITY**

a. Function of District Security Officers.

- i. The authority and functions of District security officers are similar to those provided by private security firms.

b. Exemption from Private Security Services Act.

- i. District security officers are exempt from licensing requirements under the Private Security Services Act, as they are employees of a political subdivision of the state.
- ii. However, the District requires its security officers to be licensed for training purposes and because it is required in order for District security officers to carry a firearm.

c. Function of District Officers.

- i. The primary function of District security officers is to protect persons and property through prevention by being visible in the community.
- ii. Where prevention is not possible, the function of a security officer is to observe and report to the sheriff.

d. District Security Officers are not Peace Officers.

- i. District security officers are not peace officers.
- ii. Peace officers are defined by statute.
- iii. District security officers are not classified under any category of law enforcement and do not have limited law enforcement authority.
- iv. Off-duty peace officers serving as District security officers.

e. Authority to Make Arrests.

- i. The authority of District security officers to make an arrest is the same as a private person making a citizen's arrest.

- ii. After a District security officer makes an arrest, the security officer must turn the person who has been arrested over to the sheriff without delay.
- iii. If a person resists arrest, the security officer is allowed, but not required to use reasonable force to subdue the person.
- iv. Penal Code Section 836.5 provides District security officers with only limited additional authority to make arrests.

f. Detention.

- i. A District security officer does not have the authority to detain a person, without affecting an arrest.

g. Weapons Search.

- i. When a District security officer has reason to believe that a person has a weapon and intends to harm him or her, the District security officer is entitled to perform a search of that person.
- ii. A District security officer is entitled to search a suspect for a weapon while making an arrest, if the security officer has reason to believe he or she is in physical danger.

h. Citation Authority.

- i. District security officers have the authority to issue misdemeanor citations for violations of District rules, regulations, and ordinances that occur anywhere within the District.
- ii. District security officers also have the authority to issue misdemeanor and infraction citations for violations of state law, county ordinances, if the misdemeanor or infraction occurs on District owned property, and in the presence of the District security officer issuing the citation.
- iii. District security officers have the authority to enforce the covenants, conditions, and restrictions (“CC&Rs”) of homeowners associations within the District.

i. Presentation by Security Chief.

- i. District security officer certifications and training.

- ii. District security officer interaction with the sheriff's department and district attorney's office.
- iii. What residents can do to help District security officers.

VI. PLANNING FOR THE FUTURE OF RANCHO MURIETA

a. Public Testimony

- i. Comments, concerns, questions

b. Future Meetings

- i. Further information in response to questions.
- ii. Community input on security needs and desires.
- iii. Formulation and consideration of options.


c. Options Available to District.

- i. Wide range of options available depending upon community needs, desires and available funding.
- ii. Legislative changes at the State, County and District.
- iii. Expansion of District authority through LAFCO.
- iv. Coordination with Sheriff's Department.

MEMORANDUM

DATE: May 22, 2008

TO: President and Directors
Rancho Murieta Community Services District

FROM: Steven Rudolph
Laura Hollender 

RE: Special Meeting on Security Services

INTRODUCTION

This memorandum provides an analysis of some of the critical points that will be discussed at the special meeting on May 28, 2008. In particular, it addresses (1) the authority and function of community services districts; (2) certain differences between the legislative authority of community services districts, and cities and counties; and, (3) the role of District security services.

ANALYSIS

I. Authority of Community Services Districts

Community services districts are a type of special district formed to perform specific governmental functions within a territory. Special districts are public corporations that have only those powers which have been expressly conferred upon them by the legislature. *In re Orosi Public Utility District (1925) 196 Cal 43, 53* ("One of the distinguishing features of...districts is that they are created for the purpose, generally, of some special local improvement, and may exercise only such powers as may be conferred by the legislature in the line of the object of their creation."). See also, *People ex rel. City of Downey v. Downey County Water District (1962) 202 Cal. App. 2d 786, 795*; *In re Bonds of Mardera Irrigation District (1891) 92 Cal. 296, 315-319*; *Turlock Irrigation District v. Hetrick (1999) 71 Cal. App. 4th 948, 952-953*. Examples of government services provided by special districts include: fire protection; public education; health care; parks and recreation; water; sewer; power; and transportation.

Special districts are created pursuant to either general law or a special act. Community services districts are formed pursuant to a particular special act. The special act is entitled, Community Services Districts Law, and it is located in Section 61000 *et seq.*, of the California Government Code. The Community Services Districts Law provides the legislative authority for community

services district formation and it also specifies which services a community services district may provide. *See Gov't Code §§ 61060, 61100.* The particular types of services that an individual community services district may provide are determined during the Local Agency Formation Commission ("LAFCO") formation process.

Rancho Murieta Community Services District was formed in 1982, and is currently authorized by LAFCO to provide the following services:

- Water supply collection, treatment, and distribution
- Wastewater collection, treatment, and reuse
- Storm drainage collection, disposal, and flood control
- Security
- Solid Waste collection

With regard to the security services, Section 61100(j) of the Government Code states that a community services district may, within its boundaries, "provide security services, including, but not limited to burglar and fire alarm services, to protect lives and property."

Rancho Murieta Community Services District operates an in-house security service, which is unique among community services district in the state. The other community services districts in California providing security services contract for those services with a private security company.

II. Distinction Between Authority of Community Services Districts, and Cities and Counties

Police power is the inherent authority of the states to subject individual rights to reasonable regulation for the general welfare. *Munn v. Illinois*, 94 U.S. 113, 125 (1877); *Western Indemnity Co. v. Pillsbury* 170 Cal. 686, 694; *Miller v. Board of Public Works of the City of Los Angeles* (1925) 195 Cal. 477, 484-485. Pursuant to its police power, a state may adopt reasonable regulations "designed to promote public convenience or the general prosperity, as well as regulations designed to promote the public health, public morals or the public safety." *Chicago, B. & Q. Railway Co. v. Illinois*, 200 U.S. 561, 592 (1906) (citing *Lake Shore & M.S.R. Co. v. Ohio* (1899) 173 U.S. 285, 292; *Gilman v. Philadelphia*, 70 U.S. 713, 730-732 (1865); *Hannibal & St. J. R. Co.* 95 U.S. 470, 472-474 (1877)). "Public safety, public health, morality, peace and quite, law and order—these are some of the more conspicuous examples of the traditional application of the police power to municipal affairs." *Berman v. Parker*, 348 U.S. 26 (1954); *Western Indemnity Co. v. Pillsbury* (1915) 170 Cal. 686; *Birken v. City of Berkeley* (1979) 17 Cal.3d 129, 160; *Massingill v. Department of Food and Agriculture* (2002) 102 Cal.App. 4th 498, 504.

Examples of ordinances that have been adopted pursuant to police power authority include ordinances that (1) regulate the sale of firearms, (2) prohibit dogs from running at large, (3) require the posting of health warnings wherever alcoholic beverages are sold, (4) establish curfews, (5) prohibit graffiti, (6) prohibit trespassing or loitering, and (7) regulate gambling.

The California Constitution permits the state to grant police power to cities and counties with respect to local affairs; however the state may not delegate police power to entities that are not specified in the constitution. *Gilbert v. Stockton Port District* (1936) 7 Cal.2d 384, 387-389

(disapproved on other grounds by *San Diego Bldg. Contractors Assn. v. City Council* (1974) 13 Cal. 3d. 205, 217). According to Article XI, Section 7 of the California Constitution, the only two local political subdivisions that may make and enforce laws that are an exercise of police power are counties and cities. Article XI, Section 7 of California Constitution states:

“A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”

Thus, the state legislature cannot confer police power on other governmental entities, such as special districts and community services districts. *Gilbert v. Stockton Port District* (1936) 7 Cal. 2d 384, 387 (disapproved on other grounds by *San Diego Bldg. Contractors Assn. v. City Council* (1974) 13 Cal. 3d. 205); *People ex rel. City of Downey v. Downey County Water District* (1962) 202 Cal. App. 2d 786, 794-5 (referring to “public corporations as inferior in power and scope to a municipal corporation” and stating that a district has “only such powers as are given to it by statute and it is an entity, the powers and functions of which are derived entirely from the legislature.”). Therefore, community services districts do not have the authority to enact police power ordinances to regulate personal conduct. It should be noted, however, that state and county or city laws regulating personal conduct are applicable within the boundaries of community service districts, such as Rancho Murieta Community Services District.

III. Authority and Functions of District Security Service

Functions

The authority and functions of security officers employed by the District are similar to those provided by private security services pursuant to the Private Security Services Act located in Chapter 11.5 of the California Business and Professions Code. *See Bus. & Prof. Code § 7580 et seq.* The authority and functions of District security officers may be analogized to those provided in the Private Security Services Act, even though District security officers are exempt from compliance with the Act, because they are employees of a political subdivision of the state. *See Bus. & Prof. Code § 7582.2(b).*

According to the Private Security Services Act, a security officer is an employee who performs certain functions on or about premises owned or controlled by his or her employer. Primary among these functions is the security officer’s duty to protect persons and property by seeking to prevent an incident or offense from occurring. Security officers should seek to prevent incidents or offenses from occurring by being highly visible, such as through patrols, and by being alert, focused and attentive, thus deterring or discouraging anyone who may be considering committing an offense.

In situations where prevention of an incident or offense is not possible, the function of a security officer is to observe and report. The function of observing and reporting includes informing the local police or other proper authorities about what has or is occurring, writing a report detailing of the incident, and testifying about the incident should a person ultimately be charged and brought to trial.

Arrests

Under no circumstance is a District security officer obligated to make an arrest, however, a security officer may make a citizen's arrest in his or her capacity as a private citizen pursuant to Section 837 of the California Penal Code. This section allows private persons to make arrests for offenses committed or attempted in their presence, including felony offenses. A felony arrest may be made, even if the felony was not committed in the presence of the private person making the arrest, as long as the person making the arrest has reasonable cause to believe that the person being arrested committed the felony.

When a District security officer makes a citizen's arrest pursuant to Section 837, the security officer should tell the person that he or she is under arrest and state the nature of the charges and the authority under which the security officer is making the arrest. If a suspect resists arrest, the security officer is allowed to use reasonable force to subdue the suspect. Reasonable force is the degree of force that is appropriate to effectuate an arrest and protect persons and property. After a security officer makes an arrest, the security officer must turn the person who has been arrested over to a peace officer without delay.

Penal Code Section 836.5

Penal Code Section 836.5 provides immunity for public officers and employees that make misdemeanor arrests in limited situations. In order for immunity to apply, the public officer or employee must act "within the scope of his or her authority for false arrest or false imprisonment arising out of any arrest that is lawful or that the public officer or employee, at the time of the arrest, had reasonable cause to believe was lawful." *See Penal Code § 836.5(b)*. Penal Code Section 836.5 also provides that when a person is arrested pursuant this section, and that person does not demand to be taken to a magistrate, the public officer or employee must prepare a written notice to appear and release the person on his or her promise to appear according to the procedures set forth in Penal Code Section 853.5. Due to the limited statutory authority of the District, District security officers do not have the authority to make arrests and issue citations pursuant to Penal Code Section 836.5.

Weapons Search

If a security officer has reason to believe that a person has a weapon and intends to harm him or her, the security officer is entitled to perform a search of that person. Similarly, a security officer is entitled to search a suspect for a weapon while making an arrest, if the security officer has reason to believe he or she is in physical danger.

Citations

District security officers have the authority to issue misdemeanor citations for violations of District rules, regulations, and ordinances that occur anywhere in the District. *See Gov't Code § 61064*. District security officers may also issue misdemeanor and infraction citations for violations of state law, county ordinances, and District rules, regulations, and ordinances, if the misdemeanor or infraction occurs on District owned property and in the presence of the security officer issuing the

citation. *Id.* In addition, District security officers may enforce covenants, conditions, and restrictions (“CC&Rs”) of homeowners associations within the District.

Detention

In addition to the authorities and functions stated above, a District security officer may ask questions of a person, if that person is acting in suspicious way. If the person refuses to answer questions or the answers given are not satisfactory, the security officer may ask the person to stop what they are doing and to leave the premises. However, under no circumstance may a security officer detain a person against their will. In this regard, it should be noted, that the authority to make an arrest under Section 837 is distinct from the authority to detain. A security officer does not have the authority to detain for any purpose, at any time. For the purposes of this memo, detention means to hinder the free movement of an individual, without affecting an arrest.

Peace Officers

District security officers are not peace officers. Peace officers are individuals who have been specifically designated as peace officers by statute and otherwise meet all standards imposed upon peace officers by law. The primary standards imposed on peace officers are instituted by the California Commission on Peace Officers Standards and Training, also known as “POST.”

The statutes that designate peace officer status are located in Sections 830.1 through 860.6 of the Penal Code. No where in these statutes are community services district security officers designated as peace officers. Therefore, District security officers may not act as peace officers and provide law enforcement services.

cc: Ed Crouse, General Manager
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