



# HIGGINS AREA FIRE PROTECTION DISTRICT

10106 Combie Road Auburn, CA. 95602  
Phone: 530-269-2488 – 268-0844 Fax: 530-268-7737

## BOARD of DIRECTORS

**JOHN BOYKIN**   **CHUCK SUSZKO**   **BRUCE JONES**   **JANICE BUSCHMANN**   **RICHARD THICKENS**  
Chairman   Vice-Chair   Treasurer   Director   Director

## Minutes

Meeting of the Board of Directors, Wednesday, September 15, 2021 to take place 7:00 pm in the District Offices, 10106 Combie Road, Auburn, CA.

### 1. STANDING ORDERS

Call To Order 7:00  
Pledge Of Allegiance  
Roll Call: Absent Janice Buschmann

### 2. CONSENT CALENDAR

A. APPROVAL OF MINUTES                      August 18, 2021 Meeting  
B. FINANCIAL REPORTS  
**Motion: Jones/Suszko 4/0**

### 3. REPORTS/INFORMATIONAL ITEMS - WILL BE COVERED VERBALLY UNLESS OTHERWISE NOTED

A. CHIEF'S REPORT	F. FISCAL COMMITTEE-Ad hoc
B. INCIDENT SUMMARY REPORT	G. STRATEGIC PLANNING–Standing
C. PREVENTION/PLANNING REPORT	H. POLICY COMMITTEE-Ad hoc
D. LOCAL 3800 REPORT	I. CORRESPONDENCE
E. J.P.A. REPORT	

### 4. PUBLIC COMMENT ON MATTERS NOT ON AGENDA

*Please see footnotes for rules regarding public comment.*

### 5. PERSONNEL

### 6. CLOSED SESSION

*Closed Session may be called by the Chairman of the Board if personnel discussions warrant it (Govt. Code Section 54957).*

### 7. NEW BUSINESS

*Public Hearing*

**A. Resolution #21-22-04** - Adoption of the final budgets for year 2021-2022 for funds 6348, 6759 and 6784  
**Motion: Suszko/Jones 4/0** *(Discussion/Action)*

### 8. ANNOUNCEMENTS / GOOD OF THE ORDER - NA

*(Discussion)*

### 9. ADJOURNMENT

**Motion: Suszko/Jones 4/0**

PUBLIC COMMENT: The opportunity of the public to be heard on an item on the agenda shall be provided during the consideration of that item (Govt. Code Section 54954.3) prior to any Board action. The public may address items not on the agenda that are of interest to the public and are within the subject matter jurisdiction of the Board during the Public Comment period. While the Board may "briefly respond" to comments or questions from the public, no action may be taken on an item not on the agenda in compliance with Govt. Code Section 54954.3(a) The Chair may limit public comment during the public comment period or public hearing to no more than five minutes per individual.  
REGULAR MEETINGS are scheduled the 3rd Wednesday of each month. The public is welcome and encouraged to attend.  
\*\*This Agenda was posted 72 hours in advance of the meeting at Higgins Fire Protection District Office, 10106 Combie Rd, Auburn, Ca 95602.  
QUESTIONS? Contact Higgins Fire District's Chief at 530-269-2488 for Questions regarding agenda items.

# HIGGINS AREA FIRE PROTECTION

## Incident, Personnel & Training Summary

### 9/1/2021

#### CURRENT

Structure Fire	0
Vegetation Fire	3
Vehicle Fire	1
Medical Aid	59
Vehicle Accident	7
Public Assist	7
False Alarm	6
Smoke/Debris Escape	1
Haz.Cond./Gasleak,Power etc	0
Cal Fire Veg. Fire	0
Station Coverage.	2
OES Strike teams/Wind event	0
Auto/Mutual Aid	15
<b>Total Incidents</b>	<b>101</b>

#### Year to Date

1
19
1
473
46
94
70
19
18
21
9
4
240
1015

#### Auto/Mut. Aid Detail

Type	Dept	#	Type	Dept.	#	Type	Dept.	#
Str. Fire	PCC	1	Struc fire	NCC	0	Struc fir	Other	1
Veg Fire	PCC	1	Veg . Fire	NCC	2	Veg . Fi	Other	
Fal Alar	PCC	2	Fal Alarm	NCC	1	Fal Alar	Other	2
Med.Aid	PCC	4	Med. Aid	NCC	1	Med. Ai	Other	
Pub Ast	PCC	0	Pub Assi	NCC		Pub As:	Other	
VechAcc	PCC	0	Veh Acc	NCC		Veh Acc	Other	
		8			4			3

#### Current response numbers & response times

#### YEAR to DATE numbers & times

ZONES	1	2	3	A-A/M-A			1	2	3	AA				
RESPONSES	77	6	18	15			610	70	121	240				
Avg. Time/Zone	7.7	18.2	11.5	17.6			7.9	18.1	9.4	18.4				
Monthly Average	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec		
	94	80	98	92	142	135	147	107	101					
Year by total calls	1980	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
	125	806	804	790	932	934	1012	1023	986	998	957	1191	1196	

### PERSONNEL

#### AVERAGE PERSONNEL RESPONSE

#### PCF STATUS

#### Paid Staff

	PCFs	All FFs	Active	Rookies	Residents	Station	Station
All Other Incidents	7	12	21	0		21	23
			LOA	Cadets	Interns	11	7
Fires Only	9	10	2	0	0		
					Total: 23	11	7

### TRAINING

	Structure	WL	EMS	Rescue	Other	Total training hours	Annual Total Training
Staff	0	34	0	0	0	34	489
PCF	0	84	0	0	0	84	1352

TRAINING: Mobile Attack, I-Zone, Structure protection

**Higgins Are Fire Protection District**  
**Cash Balances**  
**As of September 30, 2021**

Fund	
6348	\$ 1,387,942.47
6759	\$ 775,651.87
6784	\$ 1,554,977.84
Total	<u>\$ 3,718,572.18</u>

*Cash as reported by the County of Nevada Treasure  
Reports as of September 30, 2021*

**Fund 6348 - General Fund**  
**Profit & Loss Budget Performance**  
September 2021

	<u>Sep 21</u>	<u>Jul - Sep 21</u>	<u>YTD Budget</u>	<u>% of Budget</u>
<b>Ordinary Income/Expense</b>				
<b>Income</b>				
4001-000 Current Secured Tax	-	-	1,689,000.00	0.0%
4003-000 Current Unsecured Tax	-	-	24,000.00	0.0%
4004-000 Prior Unsecured Tax	-	-	1,000.00	0.0%
4017-000 Supp. Secured	-	-	5,000.00	0.0%
4018-000 Supp. Unsecured	-	-	3,000.00	0.0%
4301-000 Interest	-	-	24,000.00	0.0%
4419-000 H.O Property Tax	-	-	12,000.00	0.0%
4444-000 Strike Team Reimb.	2,274.18	3,112.31	1,000.00	311.23%
4459-000 State Misc.				
4459-100 Refund Amador	751.04	751.04		
<b>Total 4459-000 State Misc.</b>	<b>751.04</b>	<b>751.04</b>		
4460-000 State Station Lease	12,730.80	23,408.25	45,000.00	52.02%
4496-000 Prop. 172 Funds	-	-	81,000.00	0.0%
4517-000 Special Taxes	-	-	131,000.00	0.0%
4608-000 Repays	-	-	1,000.00	0.0%
4620-000 Other				
4620-100 Donations	220.00	220.00	1,000.00	22.0%
4620-000 Other - Other	709.93	749.93		
<b>Total 4620-000 Other</b>	<b>929.93</b>	<b>969.93</b>	<b>1,000.00</b>	<b>96.99%</b>
4800-000 Grants	-	-	100,000.00	0.0%
4955-000 Carryover	-	-	1,300,000.00	0.0%
<b>Total Income</b>	<b>16,685.95</b>	<b>28,241.53</b>	<b>3,418,000.00</b>	<b>0.83%</b>
<b>Gross Profit</b>	<b>16,685.95</b>	<b>28,241.53</b>	<b>3,418,000.00</b>	<b>0.83%</b>
<b>Expense</b>				
5101-000 Salaries-Regular				
5101-100 Salaries-Staff Unp O/T	10,517.85	27,477.07		
5101-105 Salaries-Staff Plan O/	3,475.96	9,183.76		
5101-200 Salaries-STR PCF	6,798.00	14,480.38		
5101-300 Salaries PCF	12,773.50	35,241.18		
5101-500 Salaries-Strike Team	41,717.87	80,679.57		
5101-000 Salaries-Regular - Other	35,052.24	105,558.54	801,000.00	13.18%
<b>Total 5101-000 Salaries-Regular</b>	<b>110,335.42</b>	<b>272,620.50</b>	<b>801,000.00</b>	<b>34.04%</b>
5102-000 Salaries-Temp.				
5102-100 FF Summer	16,166.42	49,109.92		
5102-200 Relief Personnel	0.00	0.00		
5102-400 FF Summer PLANNED OT	2,362.78	6,750.80		
5102-500 FF Summer UNPLANNED OT	15,020.43	26,452.36		
5102-000 Salaries-Temp. - Other	0.00	0.00	194,000.00	0.0%
<b>Total 5102-000 Salaries-Temp.</b>	<b>33,549.63</b>	<b>82,313.08</b>	<b>194,000.00</b>	<b>42.43%</b>
5103-000 Retirement				
5103-100 457 Matching	184.60	599.95		
5103-000 Retirement - Other	10,381.01	141,688.31	242,000.00	58.55%

**Fund 6348 - General Fund**  
**Profit & Loss Budget Performance**  
September 2021

	<u>Sep 21</u>	<u>Jul - Sep 21</u>	<u>YTD Budget</u>	<u>% of Budget</u>
<b>Total 5103-000 Retirement</b>	10,565.61	142,288.26	242,000.00	58.8%
<b>5104-000 Group Insurance</b>				
5104-100 457 Group Ins. Cafe.	1,246.16	3,900.02		
5104-200 Life Insurance	-83.26	-249.78		
5104-300 Retiree Health Insuran	500.00	1,000.00		
5104-000 Group Insurance - Other	341.45	18,440.82	152,000.00	12.13%
<b>Total 5104-000 Group Insurance</b>	2,004.35	23,091.06	152,000.00	15.19%
<b>5105-000 SDI Expense</b>	1,666.64	3,997.57	18,000.00	22.21%
<b>5106-000 Workers' Comp</b>	-	32,154.50	70,000.00	45.94%
<b>5110-000 Payroll Taxes</b>	4,188.32	11,742.44	36,000.00	32.62%
<b>5202-000 Clothing</b>	1,021.51	1,679.20	33,000.00	5.09%
<b>5203-000 Communications</b>	2,315.54	4,118.14	15,000.00	27.45%
<b>5206-000 Household Expense</b>				
5206-230 Household-Sta 23	-	86.98		
5206-000 Household Expense - Other	2,311.17	2,646.16	12,000.00	22.05%
<b>Total 5206-000 Household Expense</b>	2,311.17	2,733.14	12,000.00	22.78%
<b>5207-000 Insurance</b>	-	-	18,000.00	0.0%
<b>5208-000 Interest &amp; Bank Fees</b>	-	146.91		
<b>5209-000 Maint-Equipment</b>				
5209-108 Maint. Computers	52.99	52.99		
5209-000 Maint-Equipment - Other	263.84	6,160.71	27,000.00	22.82%
<b>Total 5209-000 Maint-Equipment</b>	316.83	6,213.70	27,000.00	23.01%
<b>5210-000 Maint-Structures</b>				
5210-230 Station Maint-Sta 23	-	511.04		
5210-000 Maint-Structures - Other	7,875.50	8,684.46	54,000.00	16.08%
<b>Total 5210-000 Maint-Structures</b>	7,875.50	9,195.50	54,000.00	17.03%
<b>5211-000 Maint-Vehicles</b>	12,925.65	29,327.29	92,000.00	31.88%
<b>5212-000 Memberships</b>	-	462.34	4,000.00	11.56%
<b>5213-000 Medical Supply</b>				
5213-101 O2 Refill	-	119.90		
5213-000 Medical Supply - Other	1,685.83	2,558.50	8,000.00	31.98%
<b>Total 5213-000 Medical Supply</b>	1,685.83	2,678.40	8,000.00	33.48%
<b>5214-000 Office Expense</b>				
5214-101 Stamps/Postage	-	16.50		
5214-000 Office Expense - Other	609.61	1,508.24	7,000.00	21.55%
<b>Total 5214-000 Office Expense</b>	609.61	1,524.74	7,000.00	21.78%
<b>5215-000 Professional Services</b>				
5215-100 Prof/Spec Service	-	250.00		
5215-150 LiveScan/Recert	-	31.00		
5215-400 DMV/RPP Physicals	-	124.99		
5215-000 Professional Services - Other	256.00	256.00	66,000.00	0.39%
<b>Total 5215-000 Professional Services</b>	256.00	661.99	66,000.00	1.0%
<b>5216-000 Publications</b>	-	-	5,000.00	0.0%
<b>5217-000 Rent/Lease Equipment</b>	-	-	4,000.00	0.0%

**Fund 6348 - General Fund**  
**Profit & Loss Budget Performance**  
 September 2021

	<u>Sep 21</u>	<u>Jul - Sep 21</u>	<u>YTD Budget</u>	<u>% of Budget</u>
5219-000 Small Tools	-5.19	4,279.13	30,000.00	14.26%
5220-000 Special District Exp.				
5220-300 Schedule A	0.00	32,318.17		
5220-710 Administrative Support	757.50	3,926.25		
5220-800 LAFCO Annual Cost	-	1,915.00		
5220-000 Special District Exp. - Other	-	814.80	347,000.00	0.24%
<b>Total 5220-000 Special District Exp.</b>	<b>757.50</b>	<b>38,974.22</b>	<b>347,000.00</b>	<b>11.23%</b>
5222-000 Travel/Transportation	0.00	935.64	8,000.00	11.7%
5223-000 Fuel	1,707.83	5,267.52	17,000.00	30.99%
5224-000 Utilities				
5224-220 Utilities-Sta 22	125.78	125.78		
5224-000 Utilities - Other	817.23	1,933.74	12,000.00	16.12%
<b>Total 5224-000 Utilities</b>	<b>943.01</b>	<b>2,059.52</b>	<b>12,000.00</b>	<b>17.16%</b>
5402-000 Station Improvement	-	-	26,000.00	0.0%
5403-000 Office Equipment	-	-	7,500.00	0.0%
5404-000 Auto Equipment	-	-	4,500.00	0.0%
5405-000 Other Equipment	-	-	16,000.00	0.0%
5505-000 Future 18/19 Personnel	-	-	100,000.00	0.0%
5506-000 Op. Contingency-NextFY	-	-	350,000.00	0.0%
5507-000 Transfer Out	-	-	500,000.00	0.0%
5600-000 Contingency	-	-	142,000.00	0.0%
66000 - Payroll Expenses/Health UNFPERS	4,023.43	4,023.43		
<b>Total Expense</b>	<b>199,054.19</b>	<b>682,488.22</b>	<b>3,418,000.00</b>	<b>19.97%</b>
Net Ordinary Income	-182,368.24	-654,246.69	0.00	100.0%
Other Income/Expense				
Other Expense				
6900 - Other Expenses	-	-344.00		
<b>Total Other Expense</b>	<b>-</b>	<b>-344.00</b>		
Net Other Income	-	344.00		
<b>Net Income</b>	<b>-182,368.24</b>	<b>-653,902.69</b>	<b>0.00</b>	<b>100.0%</b>

**Fund 6348 - General Fund**  
**Check History Report**  
 September 2021

Type	Date	Num	Name	Paid Amount
<b>Sep 21</b>				
Bill Pmt -Check	09/09/2021	947208	Burton's Fire Inc.	3323.68
Bill Pmt -Check	09/09/2021	910573	EDD	4656.78
Bill Pmt -Check	09/09/2021	237593	Golden State EVS	1985.23
Bill Pmt -Check	09/09/2021	237596	McIntosh, John (A/P)	250
Bill Pmt -Check	09/09/2021	237534	US Bank Cal Card	42403.07
Bill Pmt -Check	09/09/2021	237596	EDD	44.35
Paycheck	09/13/2021		Net Payroll PPE 2021-09-04	46,672.14
Bill Pmt -Check	09/13/2021	237605	CalPERS 457 Deferred Compensation Program	934.53
Bill Pmt -Check	09/13/2021	910574	CalPERS Retirement	7769.68
Bill Pmt -Check	09/13/2021	237639	Child Support Services	186.4
Bill Pmt -Check	09/13/2021	910572	Internal Revenue Service	11022.34
Bill Pmt -Check	09/13/2021	947313	Nevada Co. Prof. Firefighters #3800	336
Bill Pmt -Check	09/13/2021	237578	Nevada County Consolidated	757.5
Bill Pmt -Check	09/16/2021	947404	Burton's Fire Inc.	5321.88
Bill Pmt -Check	09/16/2021	947432	FDAC	759.47
Bill Pmt -Check	09/16/2021	237763	Golden State EVS	534.8
Bill Pmt -Check	09/16/2021	947395	McIntosh, John (A/P)	250
Bill Pmt -Check	09/16/2021	947392	Riverview International	259.67
Bill Pmt -Check	09/20/2021	910594	CalPERS Retirement	1400
Bill Pmt -Check	09/20/2021	910614	EDD	6541.24
Bill Pmt -Check	09/23/2021	237920	Higgins Fire District	500
Paycheck	09/27/2021		Net Payroll PPE 2021-09-18	59,957.16
Bill Pmt -Check	09/27/2021	910615	CalPERS Retirement	7690.79
Bill Pmt -Check	09/27/2021	238000	Child Support Services	300
Bill Pmt -Check	09/27/2021	910613	Internal Revenue Service	16292.02
Bill Pmt -Check	09/27/2021	947708	Nevada Co. Prof. Firefighters #3800	336
Bill Pmt -Check	09/27/2021	237960	CalPERS 457 Deferred Compensation Program	934.53
<b>Sep 21</b>				<b>221,419.26</b>

**Fund 6348 - General Fund**  
**Account QuickReport**  
 As of September 30, 2021

2301-000 US Bank - CalCard	Num	Name	Paid Amount
	Marchinek	DirecTV	41.78
	Beeby	Misc Cal Card Vendor	125
	Beeby	Misc Cal Card Vendor	85
	Beeby	Misc Cal Card Vendor	106
	Wilson	Misc Cal Card Vendor	14.99
	Wilson	Misc Cal Card Vendor	130.19
	Willson	Staples	77
	Harkins	Misc Cal Card Vendor	96.72
	Good	Misc Cal Card Vendor	290.34
	Good	Amazon	9.99
	Good	Real Graphic	240.8
	Good	Frontier Communications	44.49
	Good	Life Assist	258
	Good	Life Assist	610.51
	Good	Life Assist	54.72
	Good	Life Assist	206.4
	Good	Life Assist	37.22
	Medical Sup	O'Reilly	131.15
	Good	O'Reilly	243.27
	Good	LOP Ace Hardware	273.2
	Good	Misc Cal Card Vendor	195.5
	Good	Waste Management	83.61
	Good	Verizon Wireless	250.54
	Good	Amerigas Inc	125.78
	Good	Home Depot	163.13
	Good	Misc Cal Card Vendor	75
	Good	Staples	1437.92
	Good	Misc Cal Card Vendor	30.98
	Good	Misc Cal Card Vendor	0.99
	Good	Misc Cal Card Vendor	520
	Good	Misc Cal Card Vendor	8.99
	Good	Misc Cal Card Vendor	52.99
	Good	Real Graphic	163.63
	Good	CVS Pharmacy	518.98
	Good	LOP Ace Hardware	712.34
	Good	Nevada County - Dept. of Sanitation	457.44
	Good	L.N. Curtis	125
	Good	Misc Cal Card Vendor	220.83
	Good	Amazon	429.99
	Good	P G & E	817.23
	Good	Waste Management	83.51
	Good	Staples	40.3
	Good	Riverview International	259.67
	Good	Misc Cal Card Vendor	52.03



**Fund 6348 - General Fund**  
**Account QuickReport**  
 As of September 30, 2021

<u>Num</u>	<u>Name</u>	<u>Paid Amount</u>
Good	AT&T U-verse	1787.7
Good	AT&T U-verse	132.6
Good	Advantage Gear	173.69
Good	Advantage Gear	37.48
Good	QuickBooks-Intuit	85.2
Good	Hunt & Sons	1376.73
Good	Sierra Office Supplies	19.28
Good	Sierra Office Supplies	68.6
Good	Misc Cal Card Vendor	14.99
Good	Frontier Communications	48.18
Good	Misc Cal Card Vendor	75
Tam	Home Depot	6296
Tam	Misc Cal Card Vendor	100
Tam	Misc Cal Card Vendor	66.45
Tam	Misc Cal Card Vendor	100
Tam	Misc Cal Card Vendor	64.65
Tam	Misc Cal Card Vendor	382.71
Good	Misc Cal Card Vendor	11.41
Good	O'Reilly	53.6
Good	Misc Cal Card Vendor	0.99
		<u>20,798.41</u>
		<u>20,797.41</u>

Total 2301-000 US Bank - CalCard

**TOTAL**

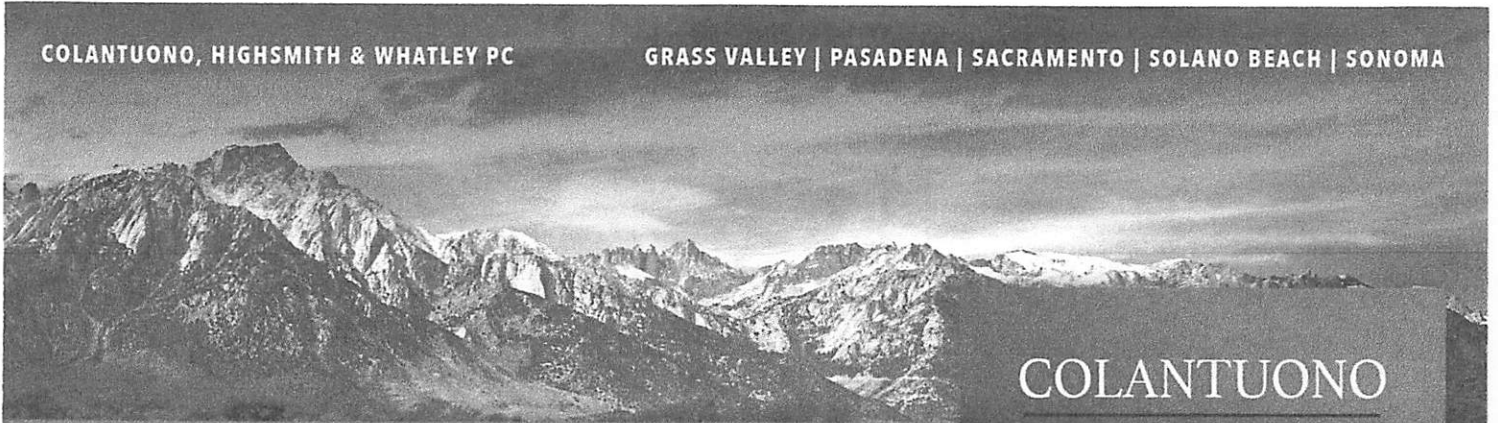
**Fund 6759- Mitigation Fees**  
**Profit & Loss Budget Performance**  
 September 2021  
**Fund 6759**  
**Profit & Loss Budget Performance**  
 September 1, 2021

	<u>Sep 21</u>	<u>Jul - Sep 21</u>	<u>YTD Budget</u>	<u>% of Budget</u>
<b>Income</b>				
4301-000 Interest	0.00	0.00	9,000.00	0.0%
4527-000 Dev Fees-NetofRefunds	4,964.02	11,758.50	20,000.00	58.79%
4955-000 Carryover	0.00	0.00	650,000.00	0.0%
<b>Total Income</b>	<u>4,964.02</u>	<u>11,758.50</u>	<u>679,000.00</u>	<u>1.73%</u>
<b>Expense</b>				
5402-000 Structure/Improve	-	-	5,000.00	0.0%
5403-000 Office Equipment	-	-	5,000.00	0.0%
5404-000 PreEmptive Devices	-	-	5,000.00	0.0%
5405-000 Other Equipment	-	-	40,000.00	0.0%
5506-000 Restricted Funds	-	-	600,000.00	0.0%
5600-000 Contingency	-	-	24,000.00	0.0%
<b>Total Expense</b>	<u>-</u>	<u>-</u>	<u>679,000.00</u>	<u>0.0%</u>
<b>Net Income</b>	<b><u>4,964.02</u></b>	<b><u>11,758.50</u></b>	<b><u>-</u></b>	<b><u>100.0%</u></b>
		11,758.50		

**Fund 6784 (Capital Replacement)**  
**Profit & Loss Budget Performance**  
 September 2021

	<u>Sep 21</u>	<u>Jul - Sep 21</u>	<u>YTD Budget</u>	<u>% of Budget</u>
<b>Ordinary Income/Expense</b>				
<b>Income</b>				
<b>4301-000 Interest</b>	-	-	12,000.00	0.0%
<b>4640-000 Transfer In</b>	-	-	500,000.00	0.0%
<b>4955-000 Carryover</b>	-	-	1,300,000.00	0.0%
<b>Total Income</b>	-	-	1,812,000.00	0.0%
<b>Expense</b>				
<b>5402-000 Structures &amp; Improve.</b>	-	-	60,000.00	0.0%
<b>5403-000 Office Equipment</b>	-	-	5,000.00	0.0%
<b>5404-000 Auto Equipment</b>	-	-	580,000.00	0.0%
<b>5405-000 Other Equipment</b>	-	-	62,000.00	0.0%
<b>5506-000 Desig Bal-Cap Replace</b>	-	-	1,100,000.00	0.0%
<b>5600-000 Contingency</b>	-	-	5,000.00	0.0%
<b>Total Expense</b>	-	-	1,812,000.00	0.0%
<b>Net Ordinary Income</b>	-	-	-	0.0%
<b>Net Income</b>	-	-	-	0.0%

# Correspondance



Newsletter | Fall 2021

COLANTUONO  
HIGHSMITH  
WHATLEY, PC

## Update on Public Law New, Short Time to Challenge Water and Sewer Rates

By Michael G. Colantuono

The Governor recently signed into law SB 323 (Caballero, D- Salinas) sponsored by the Association of California Water Agencies to require challenges to water and sewer rates “adopted, modified or amended after January 1, 2022” to be filed as validation suits within 120 days. It is very good news for local utilities.

In 1996, California voters approved Proposition 218 to impose procedural and substantive restrictions on a newly defined class of “property related fees and charges.” The California Supreme Court made clear in 2006 that these include ordinary water and sewer charges and litigation of water rates, in particular, became common. 2011 and 2015 appellate decisions striking down tiered water rates in Palmdale and San Clemente lead to dozens of copycat suits, some of which are still in the courts. One suit now pending against 81 water agencies around the state challenges use of water rate proceeds to fund fire flows — water at the pressures and in the volumes necessary to serve hydrants and sprinklers. Some of these rates are more than 4 years old — there had been no meaningful statute of limitations (deadline for suit) because the Supreme Court had ruled in a utility users tax case that a new claim arises with each utility bill.

SB 323 changes this. Water and sewer rates adopted or amended after January 1, 2022 can be challenged only within 120 days of the later of their effective date or adoption and suit must be brought in validation — a particular kind of suit commonly used to resolve all issues regarding public revenues and debts in a single case. This is the existing rule for public electric rates and for water and sewer connection and capacity charges.

Notice of a Proposition 218 majority protest hearing on new or increased rates must mention the 120-day deadline. The new deadline

*(continued on page 2)*

## Welcome, Merete Rietveld and Abby Mendez!

CHW added two litigators this Fall. Merete is Senior Counsel in our Pasadena office with 14 years’ experience—including eight as a staff attorney at the LA Court of Appeal. She will be a very good fit for our public law litigation practice in both trial and appellate courts.

Abby joins us in Pasadena as a first-year attorney. A Southern California native, she has her undergraduate degree *magna cum laude* from Tufts and her law degree from Boston University.

Abby and Merete will support a range of our public law clients in state and federal courts.

Welcome, Merete and Abby!

# Continuing Challenge of Managing Homeless in Public Spaces

By *Conor W. Harkins*

A recent decision of the Supreme Court of Washington holds the federal Eighth Amendment's excessive fines clause requires courts to analyze a person's ability to pay a municipal fine. (*City of Seattle v. Long*.) Although not binding in California, *Long* illustrates courts' willingness to stop cities from punishing the status of homelessness, much like the 9th Circuit's 2019 *Martin v. City of Boise* decision prohibiting that City to enforce its ban on camping on public land when other shelter is unavailable.

Seattle imposed \$946.41 in fines and fees on Steven Long for parking on city property for more than 72 hours. A magistrate waived the \$44 parking ticket, reduced the impound charges to \$547.12, and added a \$10 administrative fee. Represented by a legal aid organization, Long sued, arguing the impound fees violated the Eighth Amendment's excessive fines clause. The case attracted no fewer than 19 amicus briefs from criminal defense, homeless advocacy, and municipal interests from around the country.

The Eighth Amendment to the U.S. Constitution prohibits "excessive fines" and penalties as well as "cruel punishments." To trigger Eighth Amendment scrutiny, a fine must be excessive and at least partially punitive. The Washington Court held Seattle's impound fees were partially punitive because the City's Municipal Code described impoundment as a penalty. It need not have done so; impoundment can be understood as management of public rights of way, not punishment.

A fine is excessive "if it is grossly disproportional to the gravity of a defendant's offense." The Washington Court also considered Long's ability to pay, stating, the "homeless crises and widespread use of fines to fund the criminal justice system ... fully support an ability to pay inquiry." California

courts also consider ability to pay, and the use of fines to fund the justice system is of concern to California courts and legislators, too.

The Washington Court found "Long's circumstances were such that he had little ability to pay \$547.12." Long earned \$400 to \$700 a month, lived in his truck, and had saved only \$50. The truck held Long's "clothes, food, bedding, and various work tools essential to his job as a general tradesman." After his truck was towed, Long could not obtain work without his tools, and was forced to sleep outside. The Court concluded the impound fees were grossly disproportionate to a "not particularly egregious" parking infraction.

*(continued on page 3)*

## Rate Challenge (Cont.)

does not apply to disputes about application of established rates — like billing errors. Nor does it apply if another statute provides a specific procedure to challenge a particular fee.

The statute was surprisingly uncontroversial. Only the Howard Jarvis Taxpayers Association opposed it and the final Assembly vote was unanimous (68-0) and the Senate vote was 33-2, with just two southern California Republican Senators voting "no."

Water and sewer providers may wish to defer adopting new rates until the new year — or to readopt existing rates then — to benefit from this new law. But, ratemaking is still risky and it is wise to use a qualified consultant unless an agency has in-house ratemaking staff, to make a good record that "shows the math" supporting rates and to have a lawyer review the ratemaking analysis.

*For more information, contact Michael at [MColantuono@chwlaw.us](mailto:MColantuono@chwlaw.us) or (530) 432-7359.*

# Form 700 a “Political Work,” Complaint Subject to Anti-SLAPP Law

By Gary B. Bell

The Orange County Court of Appeal recently held in *Exline v. Gillmor* that a mayor’s Form 700 was a “political work” and therefore a lawsuit challenging it as insufficient under the Political Reform Act could be challenged as a SLAPP suit — a “strategic lawsuit against public participation,” or a suit intended to silence free expression. The case protects public officials in lawsuits alleging incorrect or incomplete disclosures on Form 700s and makes private litigation of such forms less likely.

Representing student Brian Exline, a prominent San Jose plaintiffs’ firm sued Santa Clara Mayor Lisa Gillmor, alleging she had failed to disclose a business position and income on her Form 700. Exline sought money damages, to compel Mayor Gillmor to disclose the position and income, and interest, court costs, and attorney fees. Although the case arose in San Jose, the appeal was heard in Orange County to assist the San Jose Court of Appeals while two of its seven seats were vacant.

The Mayor filed an anti-SLAPP motion—a special motion to dismiss the case at the outset. Such a motion is a powerful tool to weed out meritless claims at an early stage and allows a prevailing defendant to recover attorney’s fees and costs from the plaintiff. The motion requires the defendant to show the challenged claim arises from expressive activity. If she does, the burden shifts to the plaintiff to demonstrate the suit has a probability of success.

There are exceptions to the anti-SLAPP law and exceptions to the exceptions, too. The anti-SLAPP law is construed broadly to achieve its purpose to protect free speech and its exceptions are construed narrowly for the same reason. Exline argued an exemption to the anti-SLAPP law for suits which seek to confer a significant benefit on the general public. But this “public interest” exemption does not apply to “any action ... based upon the creation,

dissemination, exhibition, advertisement, or other similar promotion of any dramatic, literary, musical, **political**, or artistic work.”

The Court of Appeal explained “work” means something produced or accomplished by effort, exertion, or exercise of skill and “[t]here is no question Form 700 is political in nature.” A Form 700 requires both “effort” and “exertion” to complete, including “discern[ing] what the law requires the official to disclose, as it may not always be obvious.” Accordingly, a Form 700 is a “political work” subject to the exception to the exception and the Mayor had the protection of the anti-SLAPP law.

The result is a bit surprising and establishes a powerful tool for defense of suits over Form 700s. The plaintiffs’ bar may have less appetite for such suits in the future, leaving enforcement of disclosure requirements to the Fair Political Practices Commission and the court of public opinion.

For more information, contact Gary at [GBell@chwlaw.us](mailto:GBell@chwlaw.us) or (916) 898-0049.

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## Homeless (Cont.)

But the case raises an obvious question — how do local governments manage public spaces to serve all of society and not just the homeless? Courts have vigorously protected the homeless, but have not been as articulate about how to achieve other public policy goals also worthy of judicial respect. Persistence, creativity — and good legal advice — will be needed to make progress on these vexing social problems.

For more information, contact Conor at [CHarkins@chwlaw.us](mailto:CHarkins@chwlaw.us) or (530) 798-2416.

# HIGGINS AREA FIRE PROTECTION DISTRICT

## RESOLUTION 2021-22-06

### RESOLUTION OF DETERMINATION OF A MEMBER'S DISABILITY BY THE BOARD OF DIRECTORS OF THE HIGGINS AREA FIRE PROTECTION DISTRICT

WHEREAS, the Higgins Area Fire Protection District is a contracting agency of the California Public Employees' Retirement System(CalPers):

WHEREAS, the California Public Employees' Retirement Law requires that a contracting agency determine whether an employee of such agency in employment in which he/she is classified as a local-safety member is disabled for the purposes of the California Public Employees' Retirement Law and whether such disability is "industrial" within the meaning of such Law;

WHEREAS, an application for industrial disability retirement of internal (hernia) and orthopedic (neck) condition from Peter Marchinek, employed by the District in the position of Fire Captain, has been filed with the California Public Employees' Retirement System; and;

WHEREAS, the Board of Directors of the Higgins Area Fire Protection District has reviewed the medical and other evidence relevant to such alleged disability;

NOW, THEREFORE BE IT HEREBY RESOLVED the Board of Directors of the Higgins Area Fire Protection District finds and determines based on medical and other information as submitted to the Board pertaining to Peter Marchinek that said employee is incapacitated within the meaning of the California Public Employees Retirement Law for performance of his/her duties in the position of Fire Captain; and

BE IT FURTHER RESOLVED that the Board of Directors of the Higgins Area Fire Protection District finds and determines and hereby certify under the penalty of perjury that such disability is a result of injury arising out of and in the course of employment; and does hereby certify that this determination was made on the basis of competent medical opinion and was not used as substitute for the disciplinary process in accordance with Government Code section 21156(a)(2).

BE IT FURTHER RESOLVED that the Board of Directors of the Higgins Area Fire Protection find and determine and it does hereby find that such disability is injury arising out in the course of employment, further neither said Peter Marchinek nor the agency, Board of Directors of the Higgins Area Fire Protection has applied to the Workers' Compensation Appeals Board for a determination pursuant to Government Code section 21166 whether such disability industrial.

BE IT FURTHER RESOLVED that the member will separated from his employment in the position of Fire Captain after expiration of his rights under Government Code section 21164, effective October 30, 2021 and that no dispute as to the expiration of such leave rights is pending. His last day on pay status is October 30, 2021. there is not a possibility of third party liability. Advanced Disability Pension Payments will be made. The payments will be made, bi-weekly in the amount of 50% of the last three year average, beginning November 13, 2021 ending pay period. the primary disabling condition are internal (hernia) and orthopedic (neck). The duration of the disabling condition is expected to be permanent which is certified by competent medical opinion.

AYES:

NOES:

ABSTAIN;

ABSENT:

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John Boykin Chairperson of the Board  
Higgins Area Fire Protection District

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Bethany Wilson, Secretary to the Board

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