



Council Agenda Report

To: Mayor Grisanti and the Honorable Members of the City Council

Prepared by: Joseph D. Toney, Assistant City Manager

Approved by: Steve McClary, City Manager

Date prepared: August 10, 2022 Meeting date: August 22, 2022

Subject: Amendment to May 23, 2022, Council action regarding Malibu Library Set Aside Fund for Fiscal Year 2022-23 (Councilmember Uhring and Mayor Pro Tem Silverstein) (Continued from August 8, 2022)

RECOMMENDED ACTION: At the request of Councilmember Uhring and Mayor Pro Tem Silverstein, approve amending the Council action of May 23, 2022, regarding Malibu Library Set Aside Fund for Fiscal Year 2022-23, to rescind approval of the \$500,000 endowment for the Los Angeles County Library Foundation.

FISCAL IMPACT: There is no fiscal impact associated with the recommended action.

WORK PLAN: This item was included as item 7a in the Adopted Work Plan for Fiscal Year 2021-22.

DISCUSSION: On May 23, 2022, the City Council voted to approve the use of Set Aside Funds for the Malibu Library for Fiscal Year 2022-23 as recommended by the Library Subcommittee and including the endowment for the LA County Library Foundation of \$500,000.

Councilmember Uhring and Mayor Pro Tem Silverstein have provided the following reasons in requesting that this Council action be amended:

1. Two Council members were absent from the meeting where this item was heard. A \$500,000 dispersal of public funds is significant and should be deliberated by the entire council.

2. The MOU for the Set aside funds dictates how the set aside funds may be used and the grant of \$500,000 to an organization outside of Malibu is not permitted under the MOU.
3. The \$500,000 grant was not proposed, discussed, or approved under the disbursement protocol requirement in the MOU.
4. The \$500,000 grant is a gift of public funds and may be illegal.

If the Council votes to amend the May 23rd action to rescind approval of the \$500,000 endowment for the LA County Library Foundation the approval of the other funding allocations will remain in effect.

ATTACHMENTS:

1. May 23, 2022, Council Agenda Report: Malibu Library Set Aside Fund for Fiscal Year 2022-2023.
2. Correspondence



Council Agenda Report

To: Mayor Grisanti and the Honorable Members of the City Council

Prepared by: Elizabeth Shavelson, Deputy City Manager

Reviewed by: Ruthie F. Quinto, Interim Assistant City Manager/City Treasurer

Approved by: Steve McClary, Interim City Manager

Date prepared: May 3, 2022 Meeting date: May 23, 2022

Subject: Malibu Library Set Aside Fund for Fiscal Year 2022-2023

RECOMMENDED ACTION: Approve the use of Set Aside Funds for the Malibu Library for Fiscal Year 2022-2023.

FISCAL IMPACT: There is no fiscal impact to the City with this action. Malibu Public Library services are paid for from a designated portion of property tax. Every year the County of Los Angeles sets aside the difference between the property tax dollars apportioned to the County Library from property within the City and the Malibu Library expenses into a designated fund. As of June 30, 2021, the Set Aside Fund totaled approximately \$14.1 million to be used solely to improve Malibu Library facilities and services.

WORK PLAN: This item was included as Item 7a in the Adopted Work Plan for Fiscal Year 2021-2022 and the Proposed Work Plan for Fiscal Year 2021-2022.

DISCUSSION: The Malibu Library was established in 1970 by the County of Los Angeles and is located on the County-owned Civic Center property.

In September 2008, the City and County executed a Memorandum of Understanding (MOU) that governs the use of the Set Aside Funds. The MOU established a structure in which the expenditure of the excess funds generated from the taxes that Malibu residents pay could be spent on the Malibu Library. On March 26, 2018, the City and the County executed an amendment to the MOU extending the term until 2044, with two possible five-year extensions. All other terms remain the same.

In order to optimize the allocation of local property tax dollars and provide the maximum benefit to the Malibu community, the City has conducted two comprehensive library needs assessments in collaboration with the County Library. The first needs assessment was completed in 2005, and the Malibu Library Needs Assessment (2005 Needs Assessment) was approved by the City Council on August 8, 2005. The 2005 Needs Assessment established community-specific goals for the Malibu Library that were primarily focused on the large-scale renovation of the existing library and the purchase of furniture and equipment to serve the library program. The City and the County cooperatively used the Set Aside Funds to renovate the Malibu Library. The renovations were completed in April 2012. Since that time, Set Aside Funds have been used for the Malibu Library Speaker Series, to enhance service hours, establish a deferred maintenance fund, hire additional library staff, hire a full-time security guard, enhance library collections and materials and support library programs as approved by the City Council.

In 2017, the City set out to update the 2005 Needs Assessment to establish new service goals that would guide the management of Malibu Library funding in subsequent calendar years. The process included extensive community input, as well as analysis of demographic trends and current service levels. On October 22, 2018, the City Council accepted the findings of the 2018 Malibu Library Needs Assessment (2018 Needs Assessment) and authorized staff to work with the Los Angeles County Library using Library Set Aside funds to:

- a) implement the immediate and short-term recommendations of the 2018 Needs Assessment where feasible;
- b) develop conceptual plans to relocate the main entrance of the Malibu Library;
- c) analyze the feasibility of expanding library services on the west side of Malibu; and
- d) analyze the resources needed to develop a Malibu historical archive.

Within weeks of the City Council acceptance of the 2018 Needs Assessment, the Woolsey Fire broke out ultimately destroying 488 homes in Malibu. In the aftermath of the Woolsey Fire, the Council decided against pursuing any of the larger scale projects it identified for the time being.

In the meantime, County Library staff has made progress on some of the recommendations identified in the 2018 Needs Assessment as part of normal staff operations. Updates on the status of the 2018 Needs Assessment recommendations are provided in Attachment 1. For reference, the attachment also identifies if the recommendation would be a County led initiative, managed primarily by County Library staff, or a collaborative effort administered by County and City staff.

In the aftermath of the Woolsey Fire and the onset of the COVID-19 pandemic, the City continued to affirm rebuilding and public safety as its top priorities and implemented a Work Plan to manage the City's other priority tasks. The Malibu Library projects were not included in the Adopted Work Plan for Fiscal Year 2021-2022. In June 2021, as the State

prepared for its planned reopening, the City Council approved the following allocations for Malibu Library Set Aside Funds for Fiscal Year 2021-2022 continued from previous years:

\$100,000	Increased service hours of 60 hours a week
\$260,000	Two dedicated security guards
\$100,000	Fund the deferred maintenance reserve
\$100,000	Full-time Teen Librarian
\$125,000	Malibu Library Speaker Series program
\$116,000	Outreach Librarian
\$140,000	Management Fellow for Education Programs
\$50,000	Family Place Programs throughout the County library system
\$50,000	Boys & Girls Club of Malibu (books and other library related supplies and services)
\$17,000	Malibu Public Schools (library related supplies)

Subtotal = \$1,058,000

Due to the pandemic's extended impact on library activities and staffing challenges, most of allocations that the City Council approved for certain positions and programs in Fiscal Year 2021-2022 have not expended. Some positions were unfilled, and several programs were put on hold during the pandemic. As the Library return to pre-pandemic service levels, expenditures will increase. For example, the Malibu Library Speaker Series was put on hold during the pandemic and recently resumed. The Malibu Library Speaker Series held its first virtual event in November 2021 and held its first in-person event since the start of the pandemic on April 7, 2022. The Malibu Library's hours, which were decreased during the pandemic, were increased to 60 hours on February 14, 2022. In addition, the County Library paused its Management Fellow Program, funded at \$140,000 annually, during the pandemic and has no plans to continue the program going forward. Malibu's unused allocations remain in the County's Malibu Library Set Aside Fund for programming in future fiscal years.

On April 20, 2022, the City Council Malibu Library Subcommittee met to consider the use of the Fiscal Year 2022-2023 Library Set Aside Funds. At the meeting, the Subcommittee requested that representatives from the LA County Library Foundation, Boys and Girls Club of Malibu and Malibu High School submit written funding requests for additional Malibu Library Set Aside Funds to be used for library eligible purposes. The written proposals are included as Attachment 2 and a summary of the funding requests is provided in the table below:

Organization	Request	Total
LA County Library Foundation	Funds to support the establishment of an endowment	\$500,000
Boys & Girls Club Malibu	Funds for an instructor to facilitate the	\$25,000

	Empowered Voices course and supplies for the Creative Arts Social Emotional Learning Summer Program and other school year activities	
Malibu High School	Funds for misc. library supplies and Teen Librarian services	\$26,390 + Teen Librarian costs

The County Library staff performed a preliminary review of these requests and found them to be eligible for Malibu Library Set Aside funds and supportable with one exception. The County Library voiced concerns with the Malibu High School's joint use staffing request for a Teen Librarian due to potential public service impacts to the Malibu Library. However, the County Library indicated that it is open to further discussions on how it can collaborate and partner with the High School to provide programming support without a formal agreement.

On May 2, 2022, the Subcommittee considered the proposals and recommended that the City Council approve the use of the Malibu Library Set Aside Funds for Fiscal Year 2022-2023 to:

1) provide funding for ongoing expenses as follows:

\$100,000	Increased service hours of 60 hours a week
\$260,000	Two dedicated security guards
\$100,000	Fund the deferred maintenance reserve
\$100,000	Full-time Teen Librarian
\$125,000	Malibu Library Speaker Series program
\$116,000	Outreach Librarian
\$50,000	Family Place Programs throughout the County library system
\$50,000	Boys & Girls Club of Malibu (library-related supplies & services)
\$17,000	Malibu Public Schools (library-related supplies & services)

Subtotal = \$918,000

2) fulfill the requests for funds submitted by the Boys and Girls Club of Malibu and Malibu High School, understanding the Teen Librarian may not work out, and

3) bring forward for Council discussion the Los Angeles County Library Foundation request for endowment funds.

The Subcommittee's recommendation for the proposed annual allocation of Malibu Set Aside Funds total \$969,390 not including the request from the Los Angeles County Library Foundation. Council is asked to consider the Los Angeles County Library

Foundation funding request and approve the use of the Malibu Library Set Aside Funds for Fiscal Year 2022-2023.

Assuming all of the previously appropriated annual expenses and revenue continue as currently projected, the estimated Set Aside Fund beginning balance in Fiscal Year 2022-2023 will be approximately \$16.6 million. It was previously estimated that approximately \$1 million would be added to the Set Aside Fund each year based on certain assumptions, including an estimated cost of living increase of 3%, and did not take into account a change in the cost of the services being provided or a significant increase or decrease in revenue. In the last two years, the Set Aside Fund balance has grown more than anticipated due in part to the fact that unspent allocations have remained in the Malibu Library Set Aside Fund.

Representatives from the County Library will be available at the meeting to answer questions regarding library operations, enhanced services, current needs, and the use of Set Aside Funds.

ATTACHMENTS:

1. Update on the Status of the 2018 Needs Assessment Recommendations
2. Funding Requests

Update on the 2018 Library Needs Assessment Recommendations

Recommendation	Timeline	Cost	Status	Library Led Initiative	Library and City Collaboration
Continue to weed collections	Immediate		Ongoing	x	
Cross-promote events at City events	Immediate	\$	Ongoing	x	
Develop strong library brand utilizing new County Library logo and branding	Immediate		Ongoing	x	
Exploit Web 2.0 to increase public relations	Immediate	\$	Ongoing	x	
Increase collaboration with schools	Immediate		Ongoing	x	
Publicize library programs and services at Library signature events	Immediate		Ongoing	x	
Reduce number of adult PCs, repurpose space, purchase new furniture	Immediate/Short Term	\$\$\$		x	
Reduce number of children's PCs repurpose space, purchase new furniture	Immediate/Short Term	\$\$\$		x	
Reduce print stations, repurpose space, purchase new furniture	Immediate/Short Term	\$\$\$		x	
Update links on City websites	Immediate		Done		x
Utilize Los Angeles County mobile program vans	Immediate/Short Term	unknown		x	
Conduct marketing assessment of existing programs	Short Term	\$			x
Conduct open houses, create welcome packets	Short Term	\$		x	
Continue to inform public of free digital resources	Short Term		Ongoing	x	
Continue to publicize interlibrary loan program	Short Term	\$	Ongoing	x	
Increase publicity for library programs	Short Term	\$	Ongoing		x
Increase use of self-service technology	Short Term		Ongoing	x	
Locate Community Services programs in Library	Short Term/Mid-Term		Ongoing		x
Evaluate Library signature collections	Short Term			x	
Purchase collections for Boys and Girls Club and schools to support curriculum and special studies	Short Term	\$\$	Done/Annual		x
Purchase laptop vending machine to replace desktop PCs	Short Term	\$\$\$		x	
Recruit program volunteers from abundant local talent	Short Term			x	
Recruit volunteers for program set-up and public relations	Short Term			x	
Relocate program offerings for specific audiences, e.g., to Malibu High School, Boys and Girls Club	Short Term	\$\$	Ongoing		x
Replace building identification sign	Short Term	\$\$		x	
Work with County Library's new Outreach Coordinator	Short Term			x	
Add charging stations, power towers	Mid-Term	\$\$\$		x	
Address community requests for enhanced collections, including development of a long-term collection development plan	Mid-Term	\$\$		x	
Address issues with staff entrance	Mid-Term	\$\$		x	
Budget 1 FTE position to manage library programs, logistics, publicity, volunteer recruitment	Mid-Term	\$\$\$		x	
Collaborate on oral history project with Pepperdine University	Mid-Term	Unknown			x
Collect Malibu primary source materials	Mid-Term				x
Collect writings by Malibu authors	Mid-Term			x	
Consider options for delivery site, including a pick-up location in Western Malibu	Mid-Term	Unknown			x
Develop building program for interior space reorganization	Mid-Term	\$\$		x	
Engage library architect to plan interior renovation	Mid-Term	\$\$\$\$		x	

Update on the 2018 Library Needs Assessment Recommendations

Recommendation	Timeline	Cost	Status	Library Led Initiative	Library and City Collaboration
Fund .5 FTE to create and manage Malibu historical and cultural archive or seek grant funding for this FTE	Mid-Term/Temporary	\$\$\$		x	
Fund programs requested by students to be held at MHS or other locations; e.g., SAT study, resume assistance, college applications	Mid-Term	\$\$		x	
Ensure proper climate control for all local history resources	Mid-Term	\$\$\$		x	
Continue Malibu Library Speaker Series		\$\$\$\$	Done/Ongoing		x
Purchase secure, fireproof cabinets for historic photographs and other valuable documents	Mid-Term	\$\$		x	
Reassess back of house needs, workflow, efficiency of staff operations	Mid-Term	unknown		x	
Redesign staff service desks	Mid-Term	\$\$\$		x	
Refurbish Meeting Room including new carpet, paint, A/V system replacement, storage door, HVAC noise issues	Short/Mid-Term	\$\$\$\$		x	
Refurnish Teen Area	Short/Mid-Term	\$\$		x	
Regularly evaluate program success	Mid-Term		Ongoing	x	
Reinstate bookmobile service	Mid-Term	\$\$\$\$		x	
Remove storage space in bookmobile bay to create climate controlled local history space, or	Mid-Term	\$\$\$\$		x	
Remove storage space in bookmobile bay to reinstate bookmobile service	Mid-Term	\$\$\$\$		x	
Reorganize children's area, replace furniture, increase shelving, expand play space, remove PCs and print station	Short/Mid-Term	\$\$\$		x	
Replace and refresh worn volumes	Mid-Term	\$\$	Ongoing	x	
Replace furniture in reading area with more individual reader stations	Mid-Term	\$\$\$\$		x	
Review equipment and related requirements for additional programs, e.g., STEAM, cooking classes, sewing classes, etc.	Mid-Term	\$\$		x	
Review list of community requests to implement additional programs	Mid-Term	\$\$	Ongoing	x	
Complete exterior renovation	Long Term	\$\$\$\$\$			x
Address need for library services to Western Malibu including participation in future planning for community center	Long Term	\$\$\$\$\$			x
Upgrade mechanical systems to address acoustical and ventilation issues	Long Term	\$\$\$\$		x	



A Request to the City of Malibu Establishing an Endowment for LA County Library Foundation

LA County Library Foundation, with the support of LA County Library, respectfully asks the City of Malibu to establish an endowment for the Library Foundation with funding of \$500K in 2022.

The Library Foundation supports the entire LA County Library system of 86 libraries, including Malibu Library. The City and citizens of Malibu are part of, and benefit from, a strong library system that strengthens your community, as well as those surrounding communities that are enriched by Library services. The City of Malibu, local businesses, and residents rely on those communities for a trained workforce; they're the people you and your children interact with and depend on, individuals who are essential to Malibu.

To put this request for an endowment in context: in 2019, the City gave the Library funding – \$300K over two years – to hire an Executive Director and, essentially, restart the Library Foundation.

Three years later, in 2022, LA County Library Foundation is self-sustaining – and it's at a point to accelerate support for the Library. Now is the time to establish an endowment.

Why is an endowment important? And why is it important to the city and people of Malibu?

- An endowment provides reliable, ongoing annual income
 - **More support for the Library** – with unrestricted and designated funds, and by increasing the Foundation's capacity to raise more funds for the Library
 - **Flexibility to meet needs** – for literacy and youth development, programs for older adults, for arts and environment education, for science, math, and tech programming, for the Library's cultural resource centers, and for what's needed most at a given time – and to weather economic downturns
- An endowment attracts more, and larger gifts

- **An endowment enhances prestige and stability.** It's a public statement that the Foundation is committed to the Library, that it will be around for a very long time. The Foundation is building assets to create a financial bedrock for the future.

That's something funders appreciate.

Foundations, for example, see an endowment as a sign of financial and organizational sustainability. An endowment signals that the Library Foundation is a solid organization – a strong investment.

Not having one has hindered the Foundation – even for applying for some grants. Other funders have capped the size of their grants to us.

- Many individuals also want to give to an endowment
 - **They'll make legacy gifts.** An endowment gift perpetuates their values and priorities. They're continuing to support a community institution long after they're gone
 - **An endowment gift declares a belief in the Library,** what it does and what it represents, that will be associated with future generations of family
 - **These individuals will also make outright gifts** – because they're committed to the future and also appreciate they can make a difference now

So, what's in it for Malibu? Beyond leveraging more support for the Library?

- An endowment is a significant investment in the future – of your community
- It's a sustainable source of funding for LA County Library
 - **That means Malibu is strengthening its own library, and also building up libraries that serve other communities** – and the individuals who work in and visit Malibu, *people who are essential to your community*
- Malibu's bold creation of an endowment says “yes” to a culture of literacy – to building upwardly mobile communities through the Library
 - **It's a public statement** that Malibu is committed to its beautiful community, and to the bigger community of which it's part

- An endowment is an opportunity for Malibu’s residents
 - Their gift associates them and their family with a respected and well-loved institution – **in perpetuity**
- An endowment is a mark of prestige for the City – with rare exceptions, every major library system in the U.S. has an endowment

Three examples of library foundations (Los Angeles Public Library, Chicago Public Library, and King County Library System) show the power of an endowment, even a modest sized endowment, to support a library system. Like LA County Library Foundation, each foundation conducts advocacy, raises funds, and makes grants to leverage public funding with private dollars to support their library system.

Los Angeles Public Library (supported by Library Foundation of Los Angeles)

Endowment total: \$41,412,671
 Total expenses 2020: \$6,958,201
 Endowment appropriations*: \$1,882,565, meeting 27.1% of expenses
 *varies by year, between 4-6%

Library Foundation for Los Angeles supports a system of 73 libraries with programming and services – Investing in Lifelong Learning (literacy and STEAM programming); Engaging the Imagination (raising awareness about Library programs, sponsoring public programs like ALOUD, digitizing resources); Helping Students Succeed (tutoring and college-prep, youth development, early childhood development); Library Store (located in Central Library – sells gifts and library-related items to promote awareness of library)

Chicago Public Library (supported by Chicago Public Library Foundation)

Endowment total: \$17,902,503
 Total expenses 2020: \$3,761,975
 Endowment income*: \$1,148,694, 30.5% of expenses
 *4.5% of a four-year rolling average of market value of investments as of each 31 Dec

Chicago Public Library Foundation supports a system of 81 libraries with programming and services – Close the Academic Opportunity Gap (early learning, digital

programs, STEAM, summer learning challenge, Teacher in the Library homework help); Activate Connection & Creativity for All (YOUmedia teen programming; Maker Lab; One Book, One Chicago); Bridge the Digital Divide (Chicago DigitalLearn adult literacy; Adult Professional Development access to LinkedIn Learning)

King County Library System (supported by King County Library System Foundation)

Endowment total:	\$1,680,813
Total expenses 2020:	\$1,547,923
Endowment appropriations*:	\$44,062, 2.8% of expenses

*varies by year, to a maximum of 6%

King County Library System Foundation supports a system of 50 libraries with programming and services – literacy and learning for students; job skills training for teens and adults; outreach to people experiencing homelessness; citizenship resources; promoting diversity, equity, and inclusion; general support for Library innovation

LA County Library (supported by LA County Library Foundation)

Proposed Founding Endowment:	\$600,000 (\$500,000 from City of Malibu)
Total expenses 2022:	\$327,960
Endowment appropriations:	TBD (please see statement below)

A meaningful endowment amount is typically two times as large as an average year's operating expenses. Therefore, the Library Foundation would launch an Endowment Founders campaign to raise \$100K to add to the City of Malibu's requested gift of \$500K.

LA County Library Foundation, supporting a system of 86 libraries, has committed to growing its annual operating budget, and in tandem, will grow an endowment. The Foundation board, working with an investment advisor, will establish policy, including annual rates of distribution and levels at which donors may establish named and restricted gifts, in addition to adding to the unrestricted endowment funds.

Why does the Library support an endowment for the Foundation?

The creation of an endowment for the Foundation, resulting in increased, sustainable, and reliable funding, will significantly assist LA County Library.

Stable funding from the Library Foundation would provide benefits system-wide, and would have a major positive impact on Malibu's residents and the community as a whole.

LA County Library faces funding deficits that unequally impact the communities it serves, including reduced hours of operation (many locations are only open 40 hours a week, even in communities with high demand for Library services) and levels of programming.

Increased and more reliable Foundation funding could benefit programs such as:

- Smart Start early literacy program (for children 0-5 and their caregivers)
- Reading Machine early literacy vehicles (providing programming to licensed home daycares and preschools)
- Reading Stars intergenerational tutoring program (pairing older adults with K-3 students for 1-1 tutoring)

These are examples of innovative programs the Library has successfully piloted and that are highly beneficial to communities. Yet, because of inconsistent grant funding, they've faced programming reductions.

Increased, stable funding from the Foundation will assist with these and other programs. They will strengthen communities throughout the county, including those on whom Malibu relies for visitors and current and future employees, people who are vital to your community.

An endowment would make a direct and positive impact for the residents of LA County and the City of Malibu.

Thank you for your consideration, and for your strong support.

For more information

Andrea Carroll

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562.940.4189

We respectfully request funding in the amount of \$25,000 from the City of Malibu as we continue to expand our sphere of services in addressing academic and literacy needs of the youth of this community. Funds will help support the following -

Empowered Voices, (a For Credit Course being offered at Malibu High School)

Empowered Voices is a course developed by the Boys & Girls Club of Malibu in partnership with SAMHSA. It is a year-long social emotional learning program with four modules each implementing design thinking and project-based learning. Students develop resiliency and better understand mental health, they will also deepen their knowledge in these areas by using their creativity, collaboration, communication, and critical thinking skills to create solutions for individual or community challenges. Social-Emotional Learning is a fundamental component utilized throughout this course. SEL gives members/students a lens through which to establish and maintain healthy relationships, feel and show empathy, and positively impact their community.

The teen years are a time of some of the most rapid and developmentally significant changes for youth. During this period of “identity formation,” teens are right in the middle of figuring out who they are, who they want to be, and who they want to be around. Empowered Voices was created to provide teens with evidence-based tools to support them in the areas outlined herein.

Course Goals:

- Engage students with an opportunity for authentic PBL/Design Thinking projects that make social emotional learning and social justice applicable to their daily life
- Support students by providing resources and measurable learning targets aligned with Common Core English Language Arts, social studies, and social justice standards
- Provide Adverse Childhood Experiences screening in a meaningful environment to create a trauma informed Club/classroom and community
- Prepare students for career & college readiness
- Students create a digital portfolio which helps them with college and job applications as well as teach them skills to promote and represent themselves online
- Teach important life skills including problem solving and collaboration

Who: For Boys & Girls Club members, high school and middle school students.

How: Through collaborative and interactive lesson plans and weekly group discussions, members learn about themselves, self-care, and how to empower themselves and others to positively impact the world around them!

- Weekly design thinking projects can be completed virtually or in-person learning environments
- Weekly group discussions guided by professional staff
- Building a peer-based, supportive community

This course requires a full time, educational instructor (with full credentials). We are seeking funds in order to keep this course available to students next year.

Requested Funds: \$12,000

Emotional Literacy

The spreadsheet included breaks down supplies needed for a Creative Arts Social Emotional Learning (SEL) Summer Program that we will run this summer and for the possible Club on campus. Writing and art expression is often a part of the therapeutic process especially for children who are working on their emotional literacy. This program is for middle and high school students needing to work on these skills and improve their emotional literacy along the way. Supplies are always needed and we appreciate the funding for students to develop their academic and emotional literacy skills. Books we include in this proposal are intended as tools for activities provided throughout the school year to students in the classroom as well as for parents participating in our parenting support groups through the BGCM Wellness Center.

Requested Funds: \$10,124.72
(Please see spreadsheet attached)

Wellness Center Background

The Wellness Center was inspired by a collective concern over a lack of accessible and affordable services available to youth in Malibu. We've watched too many young people hurt themselves, contemplate suicide and some who have followed through. Over 22 years ago, the BGCM was founded based upon a similar concern for youth and in direct reaction to the Columbine tragedy. 22 years later we are still working to create inspirational opportunities and funnel vital resources to our youth, so they can manage their personal challenges and trauma, to build self-worth and confidence-now and in their future, adult lives.

In 2014, we recognized a need for mental health services and partnered with the social and emotional wellness initiative (SEWI) to provide master's social work (MSW) interns during club hours for club members. The demand warranted increased scope which led to the wellness cooperative (volunteer group of professionals that are now an advisory board to assess the needs of the campus and school).

In 2016, the Santa Monica Malibu Unified School District (SMMUSD) partnered with and named the BGCM through a formal MOU as the lead agency responsible for intake and triage of all mental health services for the Malibu Public School Children. The Wellness Center is the sole entity providing counseling services to Malibu public school children K-12 (1,400).

The Wellness Center is located on the campus of Malibu High School and has satellite centers

Item Name	Link	Amount of individual items requested	Cost per item	Total for the line item
Children's (TK - 5th grade) Book: Have You Filled a Bucket Today?: A Guide to Daily Happiness for Kids (Bucketfilling Books) Paperback	https://www.amazon.com/Have-Filled-Bucket-Today-Bucketfilling/dp/099609993X/ref=asc_df_099609993X/?tag=hyprod-20&linkCode=df0&hvadid=312106842432&hvpos=&hvnetw=g&hvranid=1687996023642638566&hvpone=&hvptwo=&hvgmt=&hvdev=c&hvdvcmid=&hvllocint=&hvllocphy=9031040&hvtargid=pla-405602445225888-4	350	\$7.79	\$2,726.50
Parenting Book: How to Raise Emotionally Healthy Children	https://www.amazon.com/How-Raise-Emotionally-Healthy-Children/dp/0932767133/ref=asc_df_0932767133/?tag=hyprod-20&linkCode=df0&hvadid=312104274912&hvpos=&hvnetw=g&hvranid=5946342365030204431&hvpone=&hvptwo=&hvgmt=&hvdev=c&hvdvcmid=&hvllocint=&hvllocphy=9031040&hvtargid=pla-622321128447&pssc=1	150	\$12.90	\$1,935.00
Parenting Book: How to Raise Emotionally Healthy Children (In Spanish) Como Crear a Ninos Emocionalmente Sanos	https://www.amazon.com/Como-Criar-Ninos-Emocionalmente-Sanos/dp/0932767141	150	\$12.95	\$1,942.50
Growth Mindset Daily Practice Journal Grades 1-2 (packs of 10)	https://www.lakeshorelearning.com/products/language/reading-comprehension-fluency/growth-mindset-daily-practice-journal-gr-1-2-set-of-10-/s/GG992	20	\$46.99	\$939.80
Growth Mindset Daily Practice Journal Grades 3-5 (packs of 10)	https://www.lakeshorelearning.com/products/p/GG993	20	\$46.99	\$939.80
Grab & Write Social-Emotional Prompts (Grades 1-2)	https://www.lakeshorelearning.com/products/language/writing-grammar/grab-write-social-emotional-prompts-gr-3-5/s/EE118	4	\$32.99	\$131.96
Grab & Write Social-Emotional Prompts (Grades 3-5)	https://www.lakeshorelearning.com/products/language/writing-grammar/grab-write-social-emotional-prompts-k-gr-2/s/EE117	4	\$32.99	\$131.96
Sketch books	https://www.amazon.com/Strathmore-350-9-300-Sketch-Sheets/dp/B0027ACAPY/ref=sr_1_7?crid=3MTAIM6EGQODD&keywords=sketch+pads&qid=1650657200&s=home-garden&sprefix=sketch+pads%2Cgarden%2C172&sr=1-7	50	\$12.49	\$624.50
Sketch pencils	https://www.amazon.com/Royal-Langnickel-SPEN-12-Essentials-Sketching/dp/B003B44N8W/ref=sr_1_11?keywords=art%2Bpencils%2Bfor%2Bdrawing%2Bband%2Bshading&qid=1650657297&s=home-garden&sprefix=art%2Bpencils%2Cgarden%2C151&sr=1-11&th=1	50	\$4.97	\$248.50
Pastel sets	https://www.amazon.com/Sakura-Cray-Pas-Junior-Pastels-Assorted/dp/B0017D5XO2/ref=sr_1_4?crid=1F7E5HQ86Q8I7&keywords=pastles&qid=1650657428&s=home-garden&sprefix=pasteles%2Cgarden%2C151&sr=1-4&th=1	20	\$8.23	\$164.60
Watercolor paints	https://www.amazon.com/Watercolor-Non-toxic-Refillable-Washable-Children/dp/B092QTCLTM/ref=sr_1_5?crid=QPE3KOKSQGL3&keywords=watercolor+paint&qid=1650657586&s=office-products&sprefix=watercolor+paint%2Coffice-products%2C149&sr=1-5	20	\$8.99	\$179.80
Watercolor paintbrushes	https://www.amazon.com/Watercolor-Painting-Professional-Paintbrushes-Halloween/dp/B08CY551NH/ref=sr_1_12?crid=2116D9E9HKL4&keywords=watercolor%2Bpaint%2Bbrushes%2Bset&qid=1650657673&s=office-products&sprefix=watercolor%2Bpaint%2Coffice-products%2C105&sr=1-12&th=1	20	\$7.99	\$159.80
Grand Total				\$10,124.72

and comfort rooms (to support students with immediate crisis) at all elementary schools. Services are available during school hours and non-school hours, all year long.

Wellness Center Stats & Program Details

- Serving 5,300+ individuals and families
- Providing 3,000+ hours of social support services
- Supporting the entire school district with social emotional wellness

BGCM History:

In 1999, the BGCM was created in reaction to the tragedy at Columbine by a small group of concerned community members who recognized Malibu's shortcomings when it came to productive activities for teens combined with isolationism. The BGCM has thrived and has been dedicated to mentoring middle and high school students during their most critical decision-making years, providing them with programs that create confidence and helping to build positive relationships that will support them through high school. In 2014, we opened our first elementary based Club Houses on the campuses of Juan Cabrillo Elementary School and Point Dume Marine Science. In the Fall of 2017, our fourth Club house at Webster Elementary opened its doors. In September of 2018, we opened the doors to the Wellness Center which provides no-cost mental health and counseling services to children at all Malibu public schools, K-12th grade and their families. Today, all mental health counseling and wellness services are available to the community at large. In September of 2020, Wellness Center services were expanded to include social support services and continues to operate as a trauma informed facility. Offerings include:

- Mental health services
- Crisis intervention
- Support & parenting groups
- Healthcare assistance
- Student group education
- Economic support and recovery
- Workforce development
- Disaster relief + response

Although the BGCM was created as a prevention tool to tragedy by providing Malibu teens with engaging activities, it has become so much more. BGCM represents and provides services to the most diverse populations in the community, and often times underrepresented infrastructure of low-income domestic laborers and their children who commute to Malibu from Oxnard-East Los Angeles for work and to attend the Malibu public schools. Kids come to the Club for a variety of reasons, whether it be to escape an abusive home situation or bullying, children struggling with their sexuality, healthy life choices, or simply for any child or teen to have a place with local interest-based extracurricular activities.

What the Library funds are already contributing to at Malibu Middle and High Schools:

1. **Library Copiers costs:** Originally granted \$9,000 annually. Please note that amount is now actually \$9700 due to increases as you have just seen in invoicing
2. **Library Databases:** -Estimated \$5000 annual originally, those costs are actually \$4300.00 and cover
 - a. Gale Research in Context Database allows students to find reference articles, magazines, newspapers, and primary sources at varying lexile levels for the different grades. The librarian meets with most grades at least once a year to do lessons regarding how to use the databases.
 - b. IXL's curriculum, "is built on 8,500+ skills that are finely scaffolded to help you target specific areas of need. Wherever a student is in their personal learning journey, IXL has the right content to support them." While not a traditional database, MMS and MHS subscribe to this service as a great Library supplement for our special educations department.

NEW PROPOSED ELEMENTS OF LIBRARY COSTS THAT WILL BE SO APPRECIATED:

All of the following are database and/or software platforms that enhance our distributed library system being implemented on our new campus. This is a dispersed library system driven by digital content and specific state of the art curated/vetted resources that all students benefit from as part of the library department:

1. SWANK: film & video library database system used for content in arts departments and beyond- Cost \$900
2. Spotify Soundtrap – audio database/software curated by Library Cost \$490
3. Turnitin.com - anti plagiarism research software Cost \$3,400.00
4. Library Support Period costs – Enriching Students Software Program: Software platform needed for enrichment and intervention program; Enriching Students allows librarians and administrators to appropriately match students on an academic risk assessment scale to library and school intervention programs, enrichment programs, and study hall topics. The software allows us to manage the library and schoolwide support period program. Cost \$4800
5. Library planner supplies: for grades 6 through 9 students - organizers: \$2,200
6. Library Laminators: an adjunct to copier expenses that librarians make avail to all levels \$600
7. Suggestion of Joint Use project with County Teen Librarian: "Lunch Hours with the Librarian" or "Teen Librarian Lunch workshops"– request possibility to use the County Teen Librarian on campus an XX number of days a week from 11:30-1pm at the library on school campus to do additional support/programming enrichment programs with the students – note this is the busiest hours at the campus library and the addition of a Teen Librarian from the central malibu branch would be incredibly appreciated if feasible in a joint use style project.

TOTAL ECONOMIC RAMIFICATION:

ITEM	NOTE	COST
Copiers	Already being covered-continue	9700
Databases Historic	Gale and IXL – already being covered continue	4300

SWANK	film & video library database system	900
Spotify/Soundtrap	Audio database/software	490
Turnitin.com	Antiplagiarism	3400
Enriching Students-Library Support Period platform	Software Platform	4800
Planner Supplies		2200
Laminators	Adjunct cost to copiers	600
Teen Librarian Lunch Hours – Joint use project	11:30-1pm weekdays as avail?	?
TOTAL		\$26,390 + Teen librarian costs

Kelsey Pettijohn

Subject: Item 7B - Reconsider gift of Library Funds



-----Original Message-----

From: Andrew Ferguson [REDACTED]
Sent: Sunday, June 12, 2022 10:06 PM
To: Kelsey Pettijohn <kpettijohn@malibucity.org>
Subject: Item 7B - Reconsider gift of Library Funds

Hi Kelsey,

Could you please forward this to the council members and make it part of the public comments?

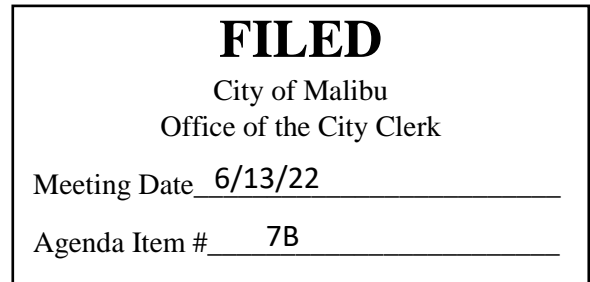
Thanks,
Andrew Ferguson

Dear Council members,

I would ask that you reconsider the gift of our library funds. I know the intent was to help other communities, but the MOU specifically dictates that the funds be used in Malibu. I think it's important that we follow the rules.

Best,
Andrew Ferguson

Sent from my iPhone



Kelsey Pettijohn

Subject: Item 7B, June 13, 2022 City Council Agenda

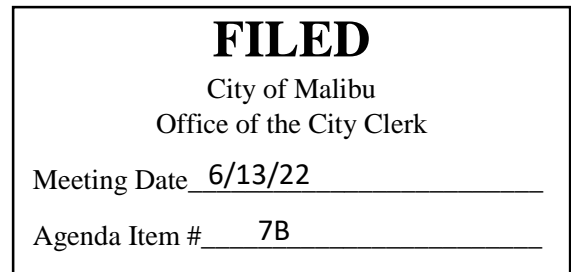


From: Bill Sampson [REDACTED]
Sent: Wednesday, June 8, 2022 5:03 PM
To: City Council <citycouncil@malibucity.org>
Cc: Steve Uhring <suhring@malibucity.org>; Paul Grisanti <pgrisanti@malibucity.org>; Bruce Silverstein <bsilverstein@malibucity.org>; Mikke Pierson <mpierson@malibucity.org>; Karen Ferrer [REDACTED]
Subject: Item 7B, June 13, 2022 City Council Agenda

Kelsey:

This should be part of the public record on this item.

Councilmembers:



On May 23, 2022, in the absence of councilmembers Grisanti and Silverstein, by a 2-1 vote the City Council gave away \$500,000 of our money, earmarked for our library, to a foundation on which our former council member turned lobbyist Laura Rosenthal serves as a director, while simultaneously advancing the interests of extremist groups funded by the Kochs. This follows a \$300,000 gift most or all of which was used to fund a six figure salary for the foundation's only employee. The two who approved the latest gift of our money were councilmembers Pierson and Farrer. Farrer even stated that the council's library sub-committee had unanimously approved this gift. Naturally that sub-committee consists of Pierson and Farrer.

Giving away our money (yes I know it is held by LA County, BUT, it is for OUR library) is, at best, foolhardy, but in this instance smacks of political quid pro quo. Lip service has been paid to the proposition that by giving away our money to a private foundation some of the money will return to our library. A reasonable assumption is that 1/86th would return since there are 86 county library branches.

A more reasonable explanation is that OUR money is being used as bait - yes, two councilmembers chose to "chum" using Malibu. The LA County Library Foundation wants to use OUR money for their endowment. There are, in fact, no restrictions on this giveaway of tax dollars. Here is why I state that Malibu is being used as bait, quoted from the foundation's request for money in its undated letter attached to the staff report prepared for what was then item 6A on the May 23 Council agenda:

"An endowment enhances prestige and stability. It's a public statement that the Foundation is committed to the Library, that it will be around for a very long time. The Foundation is building assets to create a financial bedrock for the future.

An endowment enhances prestige and stability. It's a public statement that the Foundation is committed to the Library, that it will be around for a very long time. The Foundation is building assets to create a financial bedrock for the future."

Surely our city council, with two more voices considering the matter, can come up with a better use earmarked for us already, that create a nice shiny bit of prestige and stability for a private corporation.

May I also note that the foundation has been in existence since approximately 1982. Until Malibu gave it \$300,000 in 2019 it was destitute and moribund. Then it got a six figure directive whose most productive act has been to ask for another half million three years later. The foundation is a charitable organization as determined by the Internal Revenue Service and has received an exemption from taxation as an Internal Revenue Code Section 501(c)(3) organization. The foundation has advised in its most recent information filing (popularly called a tax return), that is, its Form 990, that members of the public may review its Form 1023 or Form 1024 upon request. Those forms are used by the organization to tell the public and the Internal Revenue Service what it plans to do and/or does. City of Malibu staff makes no mention of reviewing those forms to find out just what it is this Foundation claims to be doing, a regrettable lack of due diligence.

On June 1, 2022, I requested a copy of the foundation's 1023 from its executive director, whose salary we have been paying by our prior gift. She at first sent a different document and then advised that she did not have access to the form but would get it to me. So far she has not.

The important think is that a misguided minority of the council squandered OUR money. It should not be permitted to do so. I would urge Mr. Grisanti and Mr. Silverstein to reverse this mistake and keep Malibu Malibu.

Thank you

Bill Sampson


PS: I appreciate that the five of you stay up. I may not be able to do so to speak on this matter but will try. If I am unable to speak at the meeting please seriously consider my comments and stop this inappropriate waste.



CHARLOTTE M FRIEZE

FILED

City of Malibu
Office of the City Clerk

Meeting Date 6/13/22

Agenda Item # 7B

Malibu City Council
23825 Stuart Ranch Road
Malibu, CA 90265

RE: Item 7B – Reconsideration of
Library Set Aside Funds

June 11, 2022

Council Members:

The Los Angeles Library Foundation has requested a \$500,000 contribution from Malibu's Set Aside Funds toward the \$600,000 needed to endow their Foundation.

Why would the Malibu City Council agree to be responsible for 83% of the financial burden for a County effort?

I disagree with the Foundation's premise that Malibu has the over-sized responsibility to build up libraries that serve other communities. There are many wealthy communities in Los Angeles County who can contribute to the Foundation. Malibu's contribution could more reasonably be in the range of \$25-50,000 should the MOU permit it.

Remember the MOU states:

All Set Aside Funds currently in the separate account, and those which will be placed in the separate account during the pendency of this MOU, will be used solely to improve [Malibu] Branch facilities and services unless this MOU is unilaterally determined by one of the parties before expiration.

The Los Angeles Library Foundation's premise that the Malibu Library should be considered as a destination for people from all over Los Angeles County also is questionable. How could offering enhanced library services to other communities contribute to the Malibu community?

Clearly the Set Aside Funds can only be used to improve Malibu's facilities. The previous decision must necessarily be reversed.

Thank you,

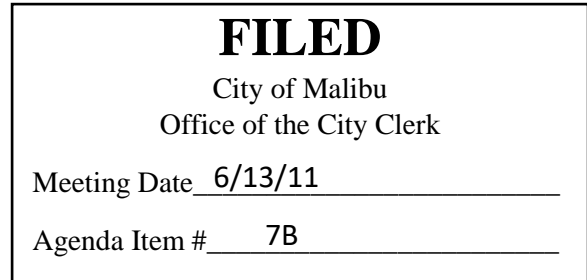
Charlotte Frieze Jones

Kelsey Pettijohn

Subject: Item 7B



From: cynthia goodman [REDACTED]
Sent: Sunday, June 12, 2022 7:29 PM
To: Kelsey Pettijohn <kpettijohn@malibucity.org>
Subject: Item 7B



Item 7B

Dear Councilmembers:

This email is sent on behalf of the Malibu Community Alliance addressing significant good governance/transparency issues raised by the City Council's May 23 vote to grant a \$500,000 endowment to the Los Angeles County Library Fund.

There is an overriding question as to whether funding an outside entity, in this case the Los Angeles County Library Foundation, is permissible under the City's MOU which precludes the use of city funds for non-Malibu purposes, *(All set aside funds..... will be used solely to improve (Malibu) Branch facilities and services..)* MOU pg 8 Further, the MOU sets forth a specific time frame for such allocations and the council meeting's grant did not fall within that time frame. Given these express guidelines, the allocation appears to violate the MOU. At a minimum, this is an issue that the City Attorney should review. Further, while representatives from the cities of West Hollywood and Claremont discussed their cities endowments, it is entirely unclear whether these cities have similar provisions as Malibu's within their governing documents. In the absence of equivalent provisions, their comments are besides the point.

Here, the grant is facially improper. As such, Malibu Community Alliance urges the City Council to reconsider its May 23, 2022 vote to fund a \$500,000 endowment to the Los Angeles County Library Fund.

Regards,

Cami Winkoff
Cynthia Kesselman
Scott Greco
Todd Kesselman for
Malibu Community Alliance

Kelsey Pettijohn

Subject: Item 7B Library Funds Previously sent in error under Item 6A



From: Georgia Goldfarb [REDACTED]

Sent: Monday, June 13, 2022 7:52 PM

To: Paul Grisanti <pgrisanti@malibucity.org>; Bruce Silverstein <bsilverstein@malibucity.org>; Steve Uhring <suhring@malibucity.org>; Mikke Pierson <mpierson@malibucity.org>; Karen Farrer <kfarrer@malibucity.org>

Cc: Kelsey Pettijohn <kpettijohn@malibucity.org>

Subject: Item 7B Library Funds Previously sent in error under Item 6A

Dear Mayor and Councilmembers,

I think it is clear from legal readings that the City cannot give funding to the Library Foundation, particularly for any activities outside the city as has been assiduously described by Kraig Hill.

It is astounding to me that the previous gift of \$300,000 and current \$500,000 were granted, the latter when two members were not present. I am requesting that the entirety of this funding be restored to the appropriate City account.

Georgia Goldfarb

FILED

City of Malibu
Office of the City Clerk

Meeting Date 6/13/22

Agenda Item # 7B

Kelsey Pettijohn

Subject: FW: ITEM 7B SET ASIDE FUNDS June 13, 2022
Attachments: 10-2016-Annual_Forboth_Gift-of-Public-Funds_Spoiler-Alert-Its-Illegal (1).pdf; 7-28-08 Canel Library MOU - remain with County (10).pdf



From: John Mazza [REDACTED]
Sent: Wednesday, June 8, 2022 5:07 PM
To: Patricia Salazar <psalazar@malibucity.org>; Karen Farrer <kfarrer@malibucity.org>; Mikke Pierson <mpierson@malibucity.org>; Paul Grisanti <pgrisanti@malibucity.org>; Bruce Silverstein <bsilverstein@malibucity.org>; Steve Uhring <suhring@malibucity.org>; [REDACTED]
Cc: Steve McClary <SMcClary@malibucity.org>; John Cotti <john.cotti@bbklaw.com>; Trevor Rusin <trevor.rusin@bbklaw.com>; fangel@angellaw.com
Subject: ITEM 7B SET ASIDE FUNDS June 13, 2022

Please see the attached and reconsider the ramifications of your action.

League of California Cities Gift of Public Funds (Spoiler Alert- It's Illegal)

AND

Memorandum of Understanding with the County of Los Angeles for Malibu Library Facilities and Services

THANK YOU JOHN MAZZA

SET ASIDE DOES NOT MEAN GIVE AWAY.

<p>FILED</p> <p>City of Malibu Office of the City Clerk</p> <p>Meeting Date <u>6/13/22</u></p> <p>Agenda Item # <u>7B</u></p>
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Gift of Public Funds (Spoiler Alert: It's Illegal)

Friday, October 7, 2016 General Session; 10:30 – 11:45 a.m.

Brian P. Forbath, Stradling, Yocca, Carlson & Rauth, PC

DISCLAIMER: *These materials are not offered as or intended to be legal advice. Readers should seek the advice of an attorney when confronted with legal issues. Attorneys should perform an independent evaluation of the issues raised in these materials.*

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Notes: _____

[illegible]

CALIFORNIA PUBLIC FUNDS DOCTRINE

Presentation for the

LEAGUE OF CALIFORNIA CITIES ANNUAL CONFERENCE

OCTOBER 5-7, 2016

Brian Forbath
Shareholder
Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
(949) 725-4193
bforbath@sycr.com

Stradling
Attorneys at Law

CALIFORNIA PUBLIC FUNDS DOCTRINE

1. OVERVIEW

- a. Set forth in *Cal. Const., art. XVI, § 6*
- b. Prohibits the giving or lending public funds to any person or entity, public or private
 - i. Prohibition includes aid, making of gift, pledging of credit, payment of liabilities
 1. Encompasses the giving of monetary funds and any “thing of value”
 - ii. “Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever”
 - iii. “and it shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever”

2. EXCEPTIONS

- a. Expenditures/disbursements for public purpose. *County of Alameda v. Janssen* (1940) 16 Cal 2d 276, 281; *Redevelopment Agency of San Pablo v. Shepard* (1977, Cal App 1st Dist) 75 Cal. App 3d 453; *Schettler v. County of Santa Clara* (1977, Cal App 1st Dist) 74 Cal App 3d 990.
 - i. The public purpose exception is liberally construed
 1. “Determination of public purpose is primarily a matter for the Legislature and will not be disturbed as long as it has a reasonable basis.” *County of Alameda v. Janssen* (1940) 16 Cal 2d 276, 281.
 - a. *County of Alameda* was decided when public funds doctrine was under Art IV § 31 but same standard still applied as seen in several of the examples below
 2. Courts may infer the public purpose from other legislation or the manner in which legislation enacted. *Scott v. State Board of Equalization* (1996, Cal App 3d Dist) 50 Cal App 4th 1597.
 3. Expenditure valid under public purpose exception even if there is an incidental private benefit *Redevelopment Agency of San Pablo v.*

Shepard (1977, Cal App 1st Dist) 75 Cal. App 3d 453 (citing *County of Alameda*).

- ii. Redevelopment is public purpose. *Board of Supervisors v. Dolan* (1975, Cal App 1st Dist) 45 Cal App 3d 237, 245.
- b. Aid granted pursuant to *Cal. Const., art. XVI, § 3*
 - i. *Cal. Const., art. XVI, § 6*: “nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever; **provided, that nothing in this section shall prevent the Legislature granting aid pursuant to Section 3 of Article XVI;**”
 - ii. *Cal. Const., art. XVI, § 3* provides: “No money shall ever be appropriated or drawn from the State Treasury for the purpose or benefit of any corporation, association, asylum, hospital, or any other institution not under the exclusive management and control of the State as a state institution, nor shall any grant or donation of property ever be made thereto by the State, except that notwithstanding anything contained in this or any other section of the Constitution:”
 - 1. can make state money obtained from federal government available or authorize its use for purpose of hospital construction by public agencies and nonprofits organized to construct/maintain such facilities
 - 2. can grant aid to institutions for orphans or abandoned children
 - 3. can aid “needy blind persons” who are not inmates in institution supported in whole/part by state or its political subdivisions
 - 4. can aid “needy physically handicapped” individuals who are not inmates of an institution under supervision of Dept. of Mental Hygiene and supported in whole/part by state or any institution supported in whole/part by a political subdivision
- c. Irrigation districts
 - i. can acquire stock of water corporation which has part of system located in foreign country
 - 1. “provided, further, that irrigation districts for the purpose of acquiring the control of any entire international water system necessary for its use and purposes, a part of which is situated in the United States, and a part thereof in a foreign country, may in the manner authorized by law, acquire the stock of any foreign corporation which is the owner of, or which holds the title to the part of such system situated in a foreign country”

- ii. can generally acquire stock of corporations or interests in rights as necessary for district's purposes
 - 1. "provided, further, that irrigation districts for the purpose of acquiring water and water rights and other property necessary for their uses and purposes, may acquire and hold the stock of corporations, domestic or foreign, owning waters, water rights, canals, waterworks, franchises or concessions subject to the same obligations and liabilities as are imposed by law upon all other stockholders in such corporation"
- d. Public entities can join with other agencies under insurance pooling or JPA agreement for purposes of providing insurance or other payment of various liabilities in tort, workers comp, etc.
 - i. "Provided, further, that this section shall not prohibit any county, city and county, city, township, or other political corporation or subdivision of the State from joining with other such agencies in providing for the payment of workers' compensation, unemployment compensation, tort liability, or public liability losses incurred by such agencies, by entry into an insurance pooling arrangement under a joint exercise of powers agreement, or by membership in such publicly-owned nonprofit corporation or other public agency as may be authorized by the Legislature;"
- e. Public entities can aid veterans via money or credit in acquiring farms, homes, businesses or otherwise paying for them
 - i. "Provided, further, that nothing contained in this Constitution shall prohibit the use of State money or credit, in aiding veterans who served in the military or naval service of the United States during the time of war, in the acquisition of, or payments for, (1) farms or homes, or in projects of land settlement or in the development of such farms or homes or land settlement projects for the benefit of such veterans, or (2) any business, land or any interest therein, buildings, supplies, equipment, machinery, or tools, to be used by the veteran in pursuing a gainful occupation;"
- f. If disaster or emergency declared by the President, the State or a subdivision thereof can aid/assist persons in clearing debris or wreckage from private land or waters if deemed to be in public interest
 - i. public entity must be indemnified by recipient against claims arising from such aid
 - ii. aid/assistance must be eligible for federal reimbursement
 - iii. "Provided, further, that nothing contained in this Constitution shall prohibit the State, or any county, city and county, city, township, or other political

corporation or subdivision of the State from providing aid or assistance to persons, if found to be in the public interest, for the purpose of clearing debris, natural materials, and wreckage from privately owned lands and waters deposited thereon or therein during a period of a major disaster or emergency, in either case declared by the President. In such case, the public entity shall be indemnified by the recipient from the award of any claim against the public entity arising from the rendering of such aid or assistance. Such aid or assistance must be eligible for federal reimbursement for the cost thereof.”

- g. Temporary transfers from treasurer of city/county to political subdivision for maintenance purposes when funds in custody and paid solely through treasurer’s office
 - i. only allowed when resolution adopted by city/county governing body directing it
 - ii. cannot except 85% of anticipated revenues of the political subdivision
 - iii. can’t be made before first day of fiscal year or after the last Monday in April of current FY
 - iv. must be replaced from revenues of political subdivision before any other obligation of political subdivision is met from such revenue
 - v. “And provided, still further, that notwithstanding the restrictions contained in this Constitution, the treasurer of any city, county, or city and county shall have power and the duty to make such temporary transfers from the funds in custody as may be necessary to provide funds for meeting the obligations incurred for maintenance purposes by any city, county, city and county, district, or other political subdivision whose funds are in custody and are paid out solely through the treasurer’s office. Such temporary transfer of funds to any political subdivision shall be made only upon resolution adopted by the governing body of the city, county, or city and county directing the treasurer of such city, county, or city and county to make such temporary transfer. Such temporary transfer of funds to any political subdivision shall not exceed 85 percent of the anticipated revenues accruing to such political subdivision, shall not be made prior to the first day of the fiscal year nor after the last Monday in April of the current fiscal year, and shall be replaced from the revenues accruing to such political subdivision before any other obligation of such political subdivision is met from such revenue.”

3. EXAMPLES

a. GENERAL

- i. *Auerbach v. Board of Supervisors* (1999, Cal App 2d Dist) 71 Cal App 4th 1427

1. Background

- a. County sued by taxpayers for transferring money from county funds (12 of 16 of the funds were characterized as trust or agency funds) to general fund to cover cash flow deficits
 - b. Transfers did not affect any amount budgeted by county or any other required appropriation
 2. Court of Appeal affirmed lower court, finding that Supervisors had authority for transfers under Government Code § 25252. Court reasoned that contrary to Plaintiffs' assertion, Government Code § 25252 did not distinguish between county money and funds held in trust by county but not belonging to it
 - a. Government Code § 25252 allowed county funds to be used for general purpose unless irrevocably committed
 3. Found that Plaintiffs did not show that debts paid with funds were illegitimate
 4. Court noted that rule has no effect on transfers between funds of same public entity, only between one political subdivision and another
 - a. This was crux of Court's position that there was no violation of *Cal. Const., art. XVI, § 6*
 - b. Court rejected Plaintiffs' contention that the trust and agency funds were not county funds
 - i. Court said the fact that the funds were carried on county books under particular name which suggests plan for future expenditure reflected only a matter of "administrative or bookkeeping convenience"
 5. Court found transfers valid where none of county funds involved in transfers were political subdivisions for purposes of the definition set forth in Government Code § 8557(c), so the transfers did not fall within *Cal. Const., art. XVI, § 6* prohibition
 - a. Political subdivision defined in Government Code 8557(c) as "any city, county, district or other local governmental agency or public agency authorized by law"
- ii. *Jordan v. Dept. of Motor Vehicles* (2002, Cal App 3d Dist) 100 Cal App 4th 431
 1. Background
 - a. In original action, Plaintiffs sued the State of California and DMV, seeking refund for \$300 smog impact fee imposed on those moving to CA and registering out of state vehicles in CA

- b. Trial court awarded Plaintiffs' counsel approx. \$18 million, holding impact fee was unconstitutional under commerce clause of the U.S. Constitution and Article XIX of the California Constitution.
 - i. Fee and expense award represented 5% of common fund to be established refunds of fee resulting from Plaintiffs' efforts
 - c. State's appeal of fee/expense award was dismissed pursuant to agreement between state and Plaintiffs to conduct arbitration, and in the ensuing arbitration Plaintiffs were awarded approximately \$88 million in fees/expenses
 - i. Arbitration award was vacated by Sacramento County Superior Court following petition by State
 - d. Plaintiffs then appealed the decision to vacate the arbitration award
2. Court of Appeal upheld the lower court's decision to vacate the \$88 million arbitration award, finding a violation of public funds doctrine where the \$88 million award was in settlement of a \$18 million dispute
- a. Court explained that payment of claim exceeding maximum exposure is akin to payment of wholly invalid claim and constitutes invalid gift of public funds
 - b. Court defined gift for purposes of *Cal. Const., art. XVI, § 6* as including "all appropriations of public money for which there is no authority or enforceable claim' even if there is a moral or equitable obligation
 - c. Court considered the settlement of the fee dispute to be a valid public purpose, but State could not be compelled to pay more than the maximum exposure
 - i. Decision notes that this does not mean that "legally insupportable" arbitration award is per gift of public funds as long as award "within amount in dispute"
 - ii. Decision notes that the case was unusual because max exposure determined by trial court prior to arbitration
3. Court affirmed trial court's vacating of arbitration award and directed that new arbitration conducted in which award limited to original \$18 million trial court judgment plus interest

b. EMPLOYMENT

i. *Los Angeles Unified School Dist. v. Livingston* (1981, Cal App 2d Dist) 125 Cal App 3d 942

1. Background

- a. LAUSD challenging order dissolving TRO and refusing to grant preliminary injunction
- b. LAUSD had previously obtained TRO to stop director of California Employment Development Department from paying unemployment compensation to LAUSD teachers that administrative law judge had deemed eligible for those benefits

2. LAUSD argued that paying benefits while legal remedy pursued would cause irreparable harm because account would suffer a charge based on benefits paid even if LAUSD succeeds in court re eligibility

- a. LAUSD tried to distinguish similar cases cited in which benefits had to be paid despite pending legal proceedings because those cases dealt with private employer

- i. Court rejected LAUSD arguments, as there were different benefit financing alternatives made available by legislature for public employers, and the options all required the public employer to assume risk of overpayment

3. Court here did not examine eligibility determination, only order denying preliminary injunction

4. Court found that LAUSD benefit system presenting the risk of erroneous benefit payments did not violate *Cal. Const., art. XVI, § 6* where public purpose of prompt benefit payments served

- a. Determined that it was better to have working system with small percentage of error than none at all
- b. Noted that policy of California Unemployment Insurance Code §§ 1335(c) and 1338, as well as case law require balance of equities pending judicial review of unemployment benefits to be weighted in favor of unemployed worker
- c. Noted paragraph 2 of *Cal. Const., art. XVI, § 6* implies that insurance involves risk and that being unlucky with insurance claims doesn't equate to gift of public funds.

ii. *Sturgeon v. County of Los Angeles* (2008, 4th Dist) 167 Cal App 4th 630

1. Background

a. County paid judges same benefits as employees and local officers

i. County added these benefits in late 1980s, which were in addition to compensation prescribed by legislature

1. Amounted to \$46,436 in benefits in FY 2007 (approx. \$21 million total), which was approximately 27% of judge salary

b. Plaintiff taxpayer alleged gift of public funds and waste under CCP§ 526a

2. Court reversed trial court decision, finding no gift of public funds under *Cal. Const., art. XVI, § 6* because the benefits at issue promoted public interest of recruiting and retaining judges

a. Court reiterated public purpose/reasonable basis analysis and definition of “gift” for purposes of public funds doctrine as “all appropriations of public money for which there is no authority or enforceable claim, even if there is a moral or equitable obligation”

b. Notes that cases re bonuses for work already performed and benefits to employees are generally uniform in finding public purpose

i. E.g. *Jarvis v. Cory* (1980) 28 Cal 3d 562 and *San Joaquin Employers’ Assn., Inc. v. County of San Joaquin* (1974, Cal App 3d Dist) 39 Cal. App 3d 83

1. Followed rationale of public entity’s interest in recruiting and retaining employees

3. Also finds no waste under CCP § 526a

c. TAXATION

i. *Community Television of So. Cal. v. County of Los Angeles* (1975, Cal App 2d Dist) 44 Cal App 3d 990

1. Background

a. Appeal by County from LA Superior Court order granting summary judgment in favor of Community Television of Southern California (KCET) in action to recover paid real property taxes pursuant to statutory exemption of Cal Rev & Tax Code § 214

- i. Exception allowed certain organizations to avoid paying property tax in consideration for public benefit offered
 - 1. Here it was public TV station
 - b. County claimed that statute under which KCET filed for exception, Cal Rev & Tax Code § 271.4 was unconstitutional as gift of public funds and violation of equal protection
 - c. KCET had acquired property in County on 7/23/70 and filed for property tax exemption on 1/28/71, but was denied as a late filing, which amounted to a waiver under the Cal Rev and Tax Code
 - i. But KCET hadn't acquired the property in time to meet the deadline for the exemption claim
 - 1. Cal Rev & Tax Code § 271.4 allowed welfare exemption to apply retroactively in this circumstance
 - a. Consequently the County challenged the statute's constitutionality
 - i. County argued that its interest in taxes had vested so to allow the debt to be forgiven under Cal Rev & Tax Code § 271.4 would be a prohibited gift of public funds
 - 2. Court of Appeal affirmed summary judgment for KCET
 - a. Court explained that need for exemption trumps the procedural requirements and Cal Rev & Tax Code § 271.4 expressed this
 - 3. Court of Appeal finds that release of tax lien without consideration would violate Article XVI
 - a. But that was not the case here because court found public purpose expressed in Revenue and Tax Code § 214
 - 4. Decision reiterates case law saying that public purpose determination primarily a legislative matter and isn't disturbed so long as there is reasonable basis
- ii. *Edgemont Community Services Dist. v. City of Moreno Valley* (1995, Cal App 4th Dist) 36 Cal App 4th 1157
 - 1. Background

- a. District challenging Riverside Superior Court judgment barring the District from recovering the costs of collecting City's sewer utility user tax
 2. Court of Appeal found that trial court erred in holding that District not entitled to reimbursement for cost of collecting City's utility user's tax on sewer services provided by District on its behalf
 3. Court found that construing Government Code § 37100.5 as allowing this shift in cost of collection violates Art XVI § 6
 - a. Court explained that allowing for such transfer is not per se invalid if purpose of money collected on one entity's behalf is used for benefit of donor agency
 - i. Decision cites *Golden Gate Bridge & Highway Dist. v. Luehring* (1970) 4 Cal App 3d 204 as primary support for this assertion
 - b. Court reached its decision after finding that there was no indication that all or any portion of the tax would be used by City for the exclusive benefit of District residents or purposes specified in resolution under which District was organized
 - c. Court of Appeal ordered the trial court to enter judgment requiring the City to reimburse the District for costs incurred in collecting the City's user utility tax
 4. Court found no support for City argument that cost of collection of tax should be borne by District because tax was incident to services and facilities furnished by District
- iii. *White v. State of California* (2001, Cal App 4th Dist) 88 Cal App 4th 298

1. Background

- a. Recovery Laws enacted by State in wake of 1994 OC financial crisis allocated tax revenue to OC general fund when such revenue had previously been allotted to other County controlled funds and agencies
 - i. Followed prior rejection by OC voters of ½ cent sales tax to help recovery in 1995 after OC filed bankruptcy in 1994
 - ii. 4 recovery bills passed – SB 863, AB 200, SB 1276, AB 1664, among which:
 1. SB 863 reduced property allocation to an OC flood control district and a harbors, beaches

- and parks fund by \$4 million a year, allocated money to general fund of County
- 2. AB 1664 allowed OC to reduce revenue deposited in transportation fund over 15 year period by \$38 million in order to keep in general fund
- 3. SB 1276 allocated some highway user tax funds to transportation fund which would have previously gone to County
 - a. Related to legislative intent to minimize Recovery Laws' effect on agencies
- 4. AB 200 corrected technical issues
 - b. Plaintiff claimed Art IV § 16 of California Constitution violated, which provides that all laws of a general nature have uniform operation and that a local or special statute is invalid in any case where a general statute can be made applicable
 - i. Trial court found no violation
 - c. Plaintiff claimed violation of public funds where transfers did not promote specific interests of the "donor agencies"
 - i. Trial court found no violation
- 2. Court of Appeal upheld Legislative action under Art IV because the Court considered this a unique situation, where OC went bankrupt and taxpayers unwilling to raise taxes for recovery
 - a. Court found legislative action valid, as necessary to protect OC and State where Recovery Laws were narrowly targeted and generally applicable laws wouldn't adequately address issue
 - b. Purpose was clearly set forth in legislation
- 3. Court of Appeal affirmed trial court with respect to public funds doctrine challenge, finding no prohibited gift of public funds because no transfer of funds had been effectuated by the Recovery Laws. Court explained that even if there had been a transfer, legislative findings showed OC needed the money for its recovery and credit standing of public debt issuers constituted a valid public purpose
 - a. Decision reiterates public purpose/reasonable basis analysis
 - b. Court said prohibition regarding gift of public funds is not triggered merely because legislature allocated less tax dollars to

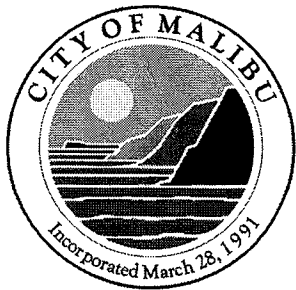
certain local agencies and instead determined that such funds be allocated to general fund to be used for public purpose.

- i. As this did not constitute transfer of funds between public entities
- c. Court noted that funds were not specifically raised for purpose of transferring agencies, but were levied as general property and sales taxes and then allocated
 - i. This rationale and the rationale reflected in item 4 below paralleled the primary reasoning relied on by the Court of Appeal in rejecting public fund doctrine violation in *California Redevelopment Assn. v. Matosantos* (2013, Cal App 4th Dist) 212 Cal App 4th 1457
 1. Concerning state legislation that transferred tax increment funds from redevelopment agencies
4. Court explained that even assuming allocations could be viewed as transfers between agencies, funds were from sales and property taxes and same general group of taxpayers would benefit
 - a. Decision notes that under Art XVI § 6 “showing of public benefit to the transferor agency [per *Edgemont* and *Golden Gate*] is only necessary where there is not a substantial identity between the taxpayers who paid the taxes and those who will benefit”

d. OTHER APPLICATIONS

- i. *County of Riverside v. Idyllwild County Water Dist.* (1978, Cal App 4th Dist) 84 Cal App 3d 655
 1. Background
 - a. District adopted resolution requiring all tax exempt entities to agree to pay capital cost charge in addition to service charges based on rate schedule applicable to all users as a condition of sewer service
 - b. Trial court said County was not obligated to pay under Art XIII § 3 as it was exempt from property taxes and special assessments which is how capital cost charge was characterized
 2. Court affirmed trial court, finding that County agreement to pay invalid special assessment charge to District by means of signing a user’s agreement to pay charges amounted to prohibited gift of public funds

- a. Consequently, the agreement did not function as a waiver of the County's right to contest charge, as County was not empowered to enter into the agreement
- ii. *California Housing Finance Agency v. Elliott* (1976) 17 Cal 3d 575
 1. Background
 - a. CHFA made loans to private housing sponsors and mortgage lenders at below-market rates, refinanced existing mortgages and created a supplemental bond security fund in connection with the construction/development/acquisition of low rent and mixed income housing
 - b. Loan funds were to come from bond proceeds which CHFA Chairperson refused to issue in part because he argued it was unconstitutional gift of public funds
 - c. Program was undertaken pursuant to Health and Safety Code § 41000 et seq.
 2. Court found that legislature acted reasonably in concluding that such housing developments serve a public purpose and that CHFA used funds as provided by the legislation, which Court regarded as having been carefully designed to achieve the public purpose
 3. Court noted that non-state entities benefitted only as incident to public purpose



Council Agenda Report

To: Mayor Jennings and the Honorable Members of the City Council

Prepared by: Reva Feldman, Administrative Services Director *RF*

Approved by: Jim Thorsen, City Manager *JT*

Date prepared: July 17, 2008 Meeting date: July 28, 2008

Subject: Memorandum of Understanding with the County of Los Angeles for Malibu Library Facilities and Services

RECOMMENDED ACTION: 1) Authorize the Mayor to negotiate and execute a Memorandum of Understanding (MOU) with the County of Los Angeles for improvements to the Malibu Library facilities and services; and 2) Adopt Resolution No. 08-47 repealing Resolution No. 08-15 authorizing the withdrawal from the County of Los Angeles Public Library.

FISCAL IMPACT: There is no fiscal impact on the City's budget associated with this action. The cost for any improvements or services will be paid out of "set aside" funds by the County of Los Angeles from property taxes earmarked for library services. The current balance of the set aside funds is approximately \$2.6 million.

DISCUSSION: The Malibu Library is a branch of the County of Los Angeles Public Library (CoLAPL). The library was established in 1970 by the County of Los Angeles and is located on the County-owned Civic Center property. The County uses funding generated through property tax to fund the library.

In 2004-2005, the City identified that property taxes for library services far exceeded the funds being spent on the Malibu library. As a result, the City requested the County conduct a Community Needs Library Assessment to address a number of issues impacting the library, such as staff turnover, a low number of visitors, outdated collections, and deferred maintenance issues. This study was completed in the summer of 2005.

Commencing in fiscal year 2004-2005, the City and the County agreed that the funds generated by property taxes from residents of the City of Malibu that were not spent each year on the library would be set aside in a reserve account. The County of Los

Angeles has set aside these excess funds, and currently, the balance of the set aside funds is approximately \$2.6 million. In 2006, the City and County began preparing a MOU that would identify the use of the set aside funds.

In February 2007, the City Council authorized an agreement with Arroyo Associates Inc. to conduct a feasibility study on how to properly evaluate the options for improving the Malibu Library. In November 2007, Arroyo Associates presented its final report to the City Council. The final report discussed the different options available for the Malibu Library. The primary recommendation was for the City to remain with the CoLAPL and utilize the excess funds currently set aside for the Malibu Library by the County to make enhancements to service levels and improvements to the existing facility. However, withdrawal from the County Library system was determined to be feasible.

In March 2008, the City Council adopted Resolution No. 08-15 authorizing the City's withdrawal from the County of Los Angeles Public Library (CoLAPL) that would be effective July 1, 2009. The Council also directed staff to continue negotiations on the Memorandum of Understanding (MOU) with the County in order to reach an agreement on library renovations and improvements to services at the Malibu Library by the County prior to the effective separation date.

On June 6, 2008, City staff, County staff and the City's Library Ad Hoc Committee (comprised of Mayor Conley Ulich and Councilmember Barovsky) met to discuss the terms of the MOU. An agreement was reached by all parties on the terms and the language of the MOU. The County has now revised the MOU in accordance with the terms agreed to during the meeting and the final document has been reviewed by the Library Ad Hoc Committee. The Library Ad Hoc Committee has recommended that the Council approve the MOU as presented.

The MOU establishes a structure for the expenditure of the excess funds available to be spent on the Malibu Library by the County. Once the MOU has been executed, the set aside funds may be used either for one-time improvements such as capital improvements and purchases of materials or for on-going service enhancements. The agreement allows the City to be the lead agency in all of the building and facility improvements. This will allow the City to hire designers and architects as well as supervise the construction of the facility improvements. Both agencies must approve all plans and changes prior to the commencement of construction.

The MOU provides for the City and the County to work cooperatively in improving the interior and exterior of the building. Interior renovations shall include, at minimum, new lighting, new carpet, new paint and compliance with current Americans with Disabilities Act requirements. Exterior renovations could include the addition of an outdoor patio, known as the "Room with a View".

Improvements made will be based on the priorities and recommendations from the 2004-2005 Needs Assessment. The MOU establishes that the City and the County will meet at least once a year to discuss the use of the excess funds for the upcoming year. If there are no changes to the expenditure priorities, the prior year priorities will remain in place.

The initial term of the MOU runs through June 30, 2019 and will be automatically extended for a period of five years if no written objection is given by either the City or the County.

ATTACHMENTS:

Resolution No. 08-47

Resolution No. 08-15

Memorandum of Understanding with the County of Los Angeles

RESOLUTION NO. 08-47

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU
REPEALING RESOLUTION NO. 08-15 WHICH AUTHORIZED THE
WITHDRAWAL FROM THE COUNTY OF LOS ANGELES PUBLIC
LIBRARY

The City Council of the City of Malibu does hereby find, order and resolve as follows:

SECTION 1. On March 10, 2008, the City of Malibu adopted Resolution No. 08-15 authorizing the City of Malibu's withdrawal from the County of Los Angeles Public Library.

SECTION 2. Since the adoption of Resolution No. 08-15, the City has negotiated a Memorandum of Understanding with the County of Los Angeles for improvements to the Malibu Library facilities and services and will remain with the County of Los Angeles Public Library.

SECTION 3. Resolution No. 08-15 is hereby repealed.

SECTION 4. The City Clerk shall certify the adoption of this resolution and shall cause the same to be processed in the manner provided by law.

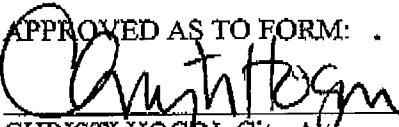
PASSED, APPROVED AND ADOPTED this 28th day of July, 2008.

PAMELA CONLEY ULICH, Mayor

ATTEST:

LISA POPE, City Clerk
(seal)

APPROVED AS TO FORM: .


CHRISTI HOGIN, City Attorney

RESOLUTION NO. 08-15

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU AUTHORIZING
THE WITHDRAWAL FROM THE COUNTY OF LOS ANGELES PUBLIC LIBRARY AND
INDICATING ITS INTENT TO ESTABLISH AN INDEPENDENT MUNICIPAL LIBRARY

The City Council of the City of Malibu does hereby find, order and resolve as follows:

SECTION 1.

- A. The City of Malibu desires to withdraw from the County of Los Angeles Public Library.
- B. The City intends to establish an independent municipal library.
- C. Pursuant to Education Code 19106, the City has published public notice regarding the withdrawal from the County of Los Angeles Public Library and intention to establish an independent municipal library and held a public hearing on the matter.

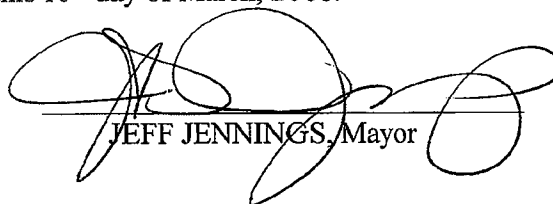
SECTION 2. The City Council hereby approves the withdrawal from the County of Los Angeles Public Library and directs staff to notify the board of supervisors for the County of Los Angeles that the City no longer desires to be part of the county free library system and desires to acquire all the County Library facilities and personal property therein related to the provision of library services within Malibu. Staff is further directed to begin negotiations with CoLAPL regarding the purchase of the library building, parking area and contents in accordance with Education Code Section 19116.

SECTION 3. The City Council hereby expresses its intent to establish an independent municipal library and directs staff to prepare an analysis of the options so that the matter may be heard at a future City Council meeting.

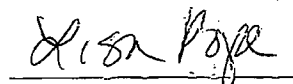
SECTION 4. This resolution shall take effect immediately upon adoption.

SECTION 5. The City Clerk shall certify passage of this resolution.

PASSED, APPROVED AND ADOPTED this 10th day of March, 2008.

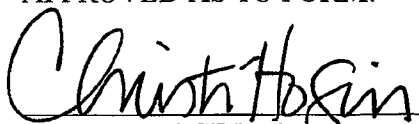

JEFF JENNINGS, Mayor

ATTEST:



LISA POPE, City Clerk
(seal)

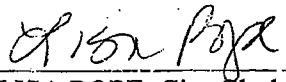
APPROVED AS TO FORM:



CHRISTI HOGIN, City Attorney

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 08-15 was passed and adopted by the City Council of the City of Malibu at the regular meeting thereof held on the 10th day of March, 2008, by the following vote:

AYES:	5	Councilmembers:	Barovsky, Kearsley, Stern, Conley Ulich, Jennings
NOES:	0		
ABSTAIN:	0		
ABSENT:	0		



LISA POPE, City Clerk
(seal)

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding Agreement ("MOU") is entered into by and between the City of Malibu, a California municipal corporation (hereinafter "City") and the County of Los Angeles, a political subdivision of the State (hereinafter "County").

RECITALS

- A. The County of Los Angeles Public Library (hereafter "County Library") desires to improve the facility and services offered at the Malibu Branch of the Public Library System ("Branch");
- B. The City of Malibu ("City") desires an improved library facility and enhanced library services for everyone who uses the facility;
- C. County Library and City both wish for City to remain within the County Library System;
- D. County Library and City both recognize that a majority of the property taxes paid by City property owners reserved for the County Library System are actually used to fund the Branch and its services; but that over the past several years, the amount of such property taxes collected from City property owners has exceeded the operating costs of the Branch; and
- E. County Library and City both believe that these excess funds should primarily be used to implement the recommendations made in the 2005 Community Library Needs Assessment, which will accomplish the mutually desired improvement in the facility and services of the Branch.

NOW, THEREFORE, in consideration of the foregoing and of the promises and covenants set forth herein, the parties agree as follows:

BASE SERVICE LEVELS

1. The County Library is the exclusive owner of all land on which the Branch sits as well as the contents and collection housed within the Branch, with the exception of certain materials within the Arkel Erg Memorial Mountaineering Collection. The Branch is a 15,926 square foot building consisting of a community meeting room, public restrooms, public space with adult and children's areas, staff work areas, a basement, and the Bookmobile garage. Utilities for the Branch are provided as part of the service for the entire property. The current library materials collection is approximately 85,400 items. The Branch houses three special collections: The Arkel Erg Memorial Mountaineering Collection, The Peter A. Horn Senior Citizen Collection, and The Sean Matthews Collection.
2. The current service levels ("Base Levels") at the Branch are as follows: The Branch is open 6 days a week for 50 hours a week (Mondays and Tuesdays 10 am to 8 pm; Wednesdays and Thursdays 10 am to 6 pm; and Fridays and Saturdays 10 am to 5 pm). The Branch full time staff consists of one Community Library Manager (Librarian III), one Reference Librarian (Librarian I), one Children's/Teen Librarian (Librarian I), and one Library Assistant I. The Branch currently provides reference services, public access Internet computers, WIFI and children's and young adult programming including

regularly scheduled toddler and preschool storytimes. The County Library currently conducts routine maintenance and repair of the Branch facilities including janitorial upkeep, landscaping/ groundskeeping, and technological systems (telephones, internet connections etc.)

3. By signing this MOU, the City acknowledges that the County Library retains sole responsibility for adjusting the Base Levels at the Branch and throughout the County Public Library System. Neither the County nor the City is obligated to continue enhancements above the Base Level at any time. County agrees that any change to the Base Levels at the Branch will be made on a fair and consistent basis relative to Base Level spending at other branches of the County Library System. Further, should sources of funding to the Public Library System that are not available as of the date of this MOU become available during the pendency of this MOU, County agrees to make these sources available to the Branch on a fair and consistent basis relative to the other branches. County agrees that it will not arbitrarily reduce Base Levels at the Branch in an effort to reduce the overall availability of Set Aside Funds for enhancements at the Branch.

SET ASIDE FUNDS

4. Currently, approximately 2.45% of the ad valorem property tax revenue generated from property located within the City is reserved for the support of the County Free Library System in accordance with the provisions of Article 2 (commencing with Section 96) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code.

5. For purposes of this MOU, "Set Aside Funds" shall refer to the yearly difference in the amount of property tax received from City property owners and reserved for the County Library, and the cost of providing Base Level services at the Branch.
6. In each fiscal year since 2004-2005 (July 1, 2004 – June 30, 2005), County Library has placed Set Aside Funds in a separate budgetary fund with the intent of improving the Branch's facility and providing more enhanced services and programs at the Branch. The parties agree that the current amount of Set Aside Funds accumulated in this fashion is \$1,945,000, collected over the years as follows: Fiscal Year 2004-05, \$521,000; Fiscal Year 2005-06, \$603,000; Fiscal Year 2006-07, \$821,000. The parties mutually acknowledge that the amount of Set Aside Funds varies from year to year and will continue to do so in the future
7. Absent extraordinary circumstances the County Library shall, for the duration of this MOU, continue to place Set Aside Funds in a separate fund within the County Library's budget. However the parties acknowledge that in case of a countywide fiscal emergency, the County may, after notice to the City, discontinue placing Set Aside Funds in the separate fund. The parties acknowledge that a countywide fiscal emergency would necessitate a reduction in funding for all branches of the County Library. County therefore agrees that any reduction in Set Aside Funds made in response to a countywide fiscal emergency under this section shall be made fairly and in a manner consistent with reductions at other branches receiving the equivalent of Set Aside Funds such that any

percentage cut at the Malibu Branch Library will not exceed the percentage cut at any other branch. Further, County agrees that, in the event of countywide fiscal emergency, any reduction of Base Levels at the Branch will be made fairly and in a manner consistent with reductions at other branches such that any percentage cut at the Malibu Branch Library will not exceed the percentage cut at any other branch.

8. All Set Aside Funds currently in the separate account, and those which will be placed in the separate account during the pendency of this MOU, will be used solely to improve Branch facilities and services unless this MOU is unilaterally terminated by one of the parties before expiration. The provisions of this section shall survive the natural expiration of this MOU and shall continue in effect until all Set Aside Funds so accrued have been spent in accordance with the process established in Section 13, *infra*. However, if this MOU is terminated, any unexpended Set Aside Funds remaining in the separate account shall be spent in accordance with Section 28 *infra*.
9. The parties agree that any facility and collection improvements purchased with Set Aside Funds at the Branch shall remain the property of the County Library.
10. If the City obtains property for the construction of a new library branch, it shall notify County that the City desires to use the Set Aside Funds to assist in funding the construction of the new library branch and the parties shall meet to amend this MOU accordingly.

SET ASIDE FUND EXPENDITURES

11. Set Aside Funds may be used for both one-time improvements at the Branch, such as capital improvements and materials purchases, and for on-going service enhancements at the Branch (such as increased Library hours on Sunday or increased staffing levels), and for additional needs as outlined in the 2005 Needs Assessment.
12. Set Aside Funds may not be used by either party as security for any loan or bond.
13. The City and County Library shall meet immediately upon approval of this MOU to discuss the use of Set Aside Funds from the date of approval through the following June 30. Thereafter, for the duration of this MOU, the City and County Library shall meet in November of each year to discuss the use of Set Aside Funds in the fiscal year beginning on the following July 1. No less than four weeks before each of the required November meetings, the City Council of City shall take formal action to approve a prioritized list of issues to be discussed at the yearly meeting. If the City Council fails to approve such a list, the County Library shall assume that City issues and priorities remain unchanged from the most recent previously approved list provided by the City. The purpose of these meetings is to reach agreement on an expenditure program for the Set Aside Funds in the next fiscal year; however, these meetings are advisory in nature and nothing in this section is intended to divest the County Library, or the County of Los Angeles, of any authority to control or use Set Aside Funds. This section shall not be construed as a limit to the frequency of meetings between the parties and the parties hereby express a willingness to

meet as frequently as necessary to resolve issues related to Set Aside Funds or the Branch. The provisions of this section shall survive the natural expiration of this MOU and shall continue in effect so long as Set Aside Funds are required by any provision of this MOU to be spent on Branch enhancements.

14. It is the intent of the parties that the first use of Set Aside Funds shall be to renovate the interior of the Branch, as recommended by the 2005 Community Library Needs Assessment. The interior renovation shall include, at minimum, new lighting, new carpet, new paint, and compliance with current Americans with Disabilities Act requirements.
15. It is anticipated that the City will be primarily responsible for designing and delivering the interior and exterior renovations of the Branch contemplated by this MOU. However, the County may perform such tasks at the City's request. A separate project agreement, signed by both parties, shall be used to describe each party's specific responsibilities for the Branch renovation project.
16. All final plans for renovation of the Branch must be reviewed by each party to assure compliance with zoning and building codes, and all final plans are subject to the mutual approval of City and County.
17. Except as specifically provided herein, all costs associated with the physical construction of the interior renovation described in this MOU will be paid from Set Aside Funds

provided by the County, except that the cost of County Library and City administrative staff time devoted to this project shall not be charged to the Set Aside Fund.

OTHER PROVISIONS

18. If during the duration of this MOU or anytime thereafter, the City notifies the Los Angeles County Board of Supervisors that the City no longer desires to be a part of the County Free Library System, (pursuant to California Education Code section 19116 or any other means), any unspent Set Aside Funds accrued at any time shall remain in the control of the County Library to spend in its sole discretion, including at County Library facilities other than the Branch, and this MOU shall terminate at the time such notice is provided if it is still in operation at the time notice is given. The provisions of this section shall supersede all other provisions of this MOU including the provisions of sections 8 and 28. And, the provisions of this section shall survive the natural expiration or other termination of this MOU and shall continue in effect until all Set Aside Funds accrued have been spent.
19. The Parties hereby acknowledge that the expenditure of any Set Aside Funds are subject to, and conditioned upon, ongoing approval by the County's Board of Supervisors and that such approval is not certain.
20. The City acknowledges that Set Aside Funds are the only funds that shall be used by the County Library to enhance facilities and services at the Branch, other than an increase in

the Base Levels; and that neither the County Library nor the County of Los Angeles is under any obligation to expend funds from any other source for this purpose. This MOU shall not be construed to place any limitations on the City's ability to raise funds for contribution to the Branch or for library services within the City, nor shall it limit the right of City or County Library to apply for and receive grants or State bond proceeds for library purposes.

21. In the performance of its obligations under this MOU, the parties shall comply with all applicable laws, regulations, standards and ordinances.
22. The City shall indemnify, defend and hold harmless the County, its Special Districts, elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the City's acts and/or omissions arising from and/or relating to this MOU.
23. The County shall indemnify, defend and hold harmless the City, its elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the County's acts and/or omissions arising from and/or relating to this MOU.

//

24. All notices of matters under this MOU shall be given in writing by first class mail, personal delivery or facsimile. Mailed notices shall be addressed as set forth below, but either party may change its address by giving written notice thereof to the other in accordance with the provisions of this section:

CITY: City of Malibu
 ATTN: City Manager
 23815 Stuart Ranch Road
 Malibu, CA 90265

COUNTY LIBRARY: County of Los Angeles Public Library
 ATTN: Margaret Donnellan Todd
 7400 East Imperial Highway
 90242

25. The laws of the State of California shall govern the interpretation and enforcement of this MOU. Any action, suit or proceeding related to or arising from this MOU shall be filed in the Los Angeles County Superior Court.

26. The term of this MOU shall be from the date of complete execution of this MOU by both parties until June 30, 2019 unless sooner terminated as provided elsewhere herein. However, the term of this MOU shall be automatically extended one (1) time for an additional five (5)

years unless written objection to extension is given at any time by either party. Objection by any party to the automatic extension provisions of this MOU shall not be considered termination of the MOU by that party for purposes of Section 28 of this MOU. At the expiration of this MOU the Library will cease placing Set Aside Funds in a separate account; however unless this MOU has been terminated by either party, and under the terms and procedures of Sections 8 and 13 of this agreement, *supra*, Set Aside Funds accrued during the pendency of this MOU shall be used to enhance Branch facilities and services until such funds are exhausted.

27. Any amendments to this MOU shall be in writing and executed by both parties.

28. Either party may unilaterally terminate this MOU for any reason upon 120 days written notice. As described in Section 8 *supra*, upon termination of this MOU, any remaining Set Aside Funds will be used as follows:

28.1 If County terminates the MOU, any remaining Set Aside Funds will be used solely to improve Branch facilities, services, and programs above Base Levels.

28.2 If City terminates the MOU, any remaining Set Aside Funds will remain in the control of the County Library to spend in its sole discretion, including at County Library facilities other than the Branch.

28.3 If the MOU is terminated by mutual written agreement of the City and the County, the parties shall agree upon the use or uses of the remaining Set Aside Funds as part of the termination agreement.

29. This MOU is made and entered into for the sole benefit of the parties hereto. No other person or entity shall have any right of action based upon any provision of this MOU.

30. This MOU shall be deemed to have been prepared jointly and equally by the parties, and none of its terms shall be construed against any party on the ground that the party prepared the MOU or caused it to be prepared.

31. This MOU constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements and understandings, both written and oral. This MOU may not be modified or amended except in a writing signed by all parties hereto.

32. If any provision of this MOU or the application thereof to any person or circumstance is held invalid, the remainder of this MOU and the application of such provision to other persons or circumstances shall not be affected thereby.

33. The persons executing this MOU on behalf of each of the parties warrant and represent that they have the authority to execute this MOU on behalf of the party for whom they execute and have the authority to bind the party to the obligations hereunder.

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IN WITNESS WHEREOF, the parties have executed this MOU as of the dates set forth below.

CITY OF MALIBU	COUNTY OF LOS ANGELES
By: _____ Mayor	By: _____
Dated:	Dated:
ATTEST:	ATTEST:
City Clerk	SACHI HAMAI Executive Officer-Clerk of the Board of Supervisors
APPROVED AS TO FORM:	By _____
 _____ Christi Hogin, City Attorney	APPROVED AS TO FORM: Raymond G. Fortner, Jr. County Counsel By _____ Deputy County Counsel

Kelsey Pettijohn

Subject: Item 7B – Reconsideration of Library Set Aside Funds

FILED City of Malibu Office of the City Clerk Meeting Date <u>6/13/22</u> Agenda Item # <u>7B</u>
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From: K Hill

Sent: Friday, June 10, 2022 2:48 AM

To: Paul Grisanti <pgrisanti@malibucity.org>; Bruce Silverstein <bsilverstein@malibucity.org>; Mikke Pierson <mpierson@malibucity.org>; Karen Farrer <kfarrer@malibucity.org>; Steve Uhring <suhring@malibucity.org>

Cc: Steve McClary <SMcClary@malibucity.org>; Kelsey Pettijohn <kpettijohn@malibucity.org>

Subject: Item 7B – Reconsideration of Library Set Aside Funds

Dear Council,

Regarding the request for \$500,000 of library set aside funds made by the LA County Library Foundation, let me first be clear about where I stand ideologically. I'm sympathetic with arguments about supporting "the greater good," and I appreciate that Malibu should play some fair role in helping to lift up the rest of LA County.

Unfortunately, as a threshold matter, this matter does not rise to the level of any sort of argument about ideology. The simple fact is that the Foundation's request would be a violation of the clear terms of the original MOU. The MOU states its basic intent on the first page: the set aside fund is "to improve the facility and services offered at the Malibu Branch of the Public Library System." Nothing else.

Similarly, the 2008 staff report, written by then administrative services Director Reva Feldman, was not confused about it: "The set aside funds may be used either for one-time improvements such as capital improvements and purchases of materials or for on-going service enhancements." Nothing else.

The MOU then states it more formally (at 5):

8. All Set Aside Funds currently in the separate account, and those which will be placed in the separate account during the pendency of this MOU, will be used solely to improve [Malibu] Branch facilities and services unless this MOU is unilaterally determined by one of the parties before expiration. [Emphasis added.]

In case there were any confusion, the MOU gives examples (at 6) of what it intends by the terms "facilities" and "services":

11. Set Aside Funds may be used for both one-time improvements at the Branch, such as capital improvements and materials purchases, and for on-going service enhancements at the Branch (such as increased Library hours on Sunday or increased staffing levels), and for additional needs outlined in the 2005 Needs Assessment. [Emphases added.]

Both categories, "one-time improvements" (as exemplified) and on-going service enhancements (as exemplified), are expressly limited in application to the Malibu Branch. Thus any expenditure for an organization that serves the whole of LA County could only be construed as an impermissible diversion of funds outside the terms of the MOU.

Moreover, the MOU explicitly clarifies (at Clause 12) that “Set Aside Funds may not be used by either party as security for any loan or bond.” An endowment is arguably a form of security, in that the Principal is secured, so that the income – and only the income – can be distributed. The use of the word “any” in that construction indicates that the meaning of “security” shall have the broadest interpretation.

Furthermore, Clause 29 specifies that “This MOU is made and entered into for the sole benefit of the parties hereto [the City and the County]. No other person or entity shall have any right of action based upon any provision of this MOU.” [Emphasis added.] Thus, the Foundation can have no claim to any benefits of the Fund, nor to their own interpretation of what the purpose of those funds could be.

Thus, by the unambiguous language of the MOU, there is no scope to make expenditures that provide direct benefit to anyone or anything beyond the limited physical scope of the Malibu Branch Library. As a legal matter, that’s the end of the argument. I would not be surprised if, were this transfer of funds to be approved, some concerned Malibu taxpayers would sue the City.

* * * * *

Further, now that you’re reminded of the terms of the MOU, consider the words of Laura Bollinger, a member of the Foundation from Claremont, in her comment to Council on May 23rd. She said, “This is very important to hear: our bylaws limit our support to only the LA County Library System, and its related Friends groups.” If they are limited to supporting the *System* as a whole, that’s a categorically different beneficiary than “the Malibu Branch.” So their bylaws and the requirements of the Malibu MOU appear to be in direct conflict.

As an aside, it’s suggestive that no one from the County Library System has appeared to speak to Council on behalf of the Foundation’s request – nor anyone from the Malibu Branch, for that matter (at least not recently). That lack of engagement from the very entity meant to be benefitting tends to militate against Laura Rosenthal’s assertion in the May 23 Council meeting that the Foundation “operates in strong coordination with the Library.” (Video at ~4:13:xx.)

Even beyond all that – if you could somehow insist that the words in a legal document do not mean what they say on their face – still the Foundation’s request is rife with linguistic hand-waving, feel-good talk and unsupported assertions, with few numbers or details. Much of it, when read closely, turns out to be ephemeral. It’s a shame, really, because a case could probably be made that Malibu should contribute *something* to the County. They just haven’t made it (and in any case, it couldn’t be out of the Set Aside Funds, per the MOU).

For example, In Ms. Rosenthal’s comment she states, “It’s so important for Malibu,” yet doesn’t say how or why. She states that they’ve “started conversations with three other cities that have set aside funds,” but doesn’t further characterize the content of those “conversations.” For all you know, they said, “Hey, do you guys want to contribute too?” and the other cities said, “No thanks.” And, the Foundation’s request letter asserts that “An endowment signals that the Library Foundation is a solid organization – a strong investment.” But of what concern is that to the Malibu taxpayers, whose monies would be diverted to it? An investment for whom exactly? Where is the detail, where is the evidentiary support?

Meanwhile, you should also want to reject the Foundation’s premise that the job of the City is to promote Malibu as a *destination* for people from all over the County. In their request, they ask rhetorically, “So, what’s in it for Malibu?,” and answer that they want to be “building up libraries that serve *other* communities – and [serve people who] visit Malibu, people who are *essential to your community*.” Even if you would allow that there could be significant numbers of visitors from elsewhere who are *essential* to our community, how would their having enhanced library services contribute to *our community* in any significant way? Consider the meaning of *essential*. By analogy, you could say that improved recycling services on the other side of the County would make the World an incrementally more beautiful place, but you couldn’t then leap to the conclusion that it would represent a specific benefit to Malibu.

Similarly, current Foundation chair Kate Hennigan, in her oral comments (after Rosenthal’s comments), was more candid about the gist of it all (paraphrasing): they want to take \$500k from the Malibu Library and

distribute it all over LA County, so that some small share of the benefit would dribble back to Malibu – and that somehow the Malibu Community should prefer that. Astonishingly, they've even gotten some die-hard school supporters to believe that the proposal would provide *additional* direct funds for Library materials and services for their children! (How cynical can the Foundation be, not to set the record straight for even those who might well be their friends?)

As a final point, if there were a County-wide effort to have more affluent communities support the library services of less advantaged communities, then of course the Malibu community would want to contribute its fair share. Yet here, the Foundation is proposing that Malibu would contribute \$500k of the \$600k that they supposedly need to get the endowment off the ground. In other words, they're suggesting that Malibu should shoulder 83% of the burden, on behalf of the whole County. In what universe could that be considered reasonable? There are many other well-off communities that could be contributing a share, if the essential plan were to be helping communities with fewer resources. In that situation, with contributions from affluent communities all over, Malibu's contribution might be more in the range of, say, \$25-50,000 – not the \$800,000 total that the Foundation wants (so far). But of course that would be a radically different, more egalitarian proposal.

In short, the Foundation's proposal is wrong on multiple levels: legally, conceptually, and in its execution. Please keep the Set Aside Funds in Malibu, the community for which they've been expressly dedicated.

Respectfully,
K Hill

Kelsey Pettijohn

Subject: Item 7B – Reconsideration of Library Set Aside Funds

FILED

City of Malibu
Office of the City Clerk

Meeting Date 6/13/22

Agenda Item # 7B



From: R Y A N <[REDACTED]>

Sent: Friday, June 10, 2022 2:16 PM

To: Kraig Hill <[REDACTED]>; Paul Grisanti <pgrisanti@malibucity.org>; Bruce Silverstein <bsilverstein@malibucity.org>; Mikke Pierson <mpierson@malibucity.org>; Karen Farrer <kfarrer@malibucity.org>; Steve Uhring <suhring@malibucity.org>

Cc: Steve McClary <SMcClary@malibucity.org>; Kelsey Pettijohn <kpettijohn@malibucity.org>

Subject: Re: Item 7B – Reconsideration of Library Set Aside Funds

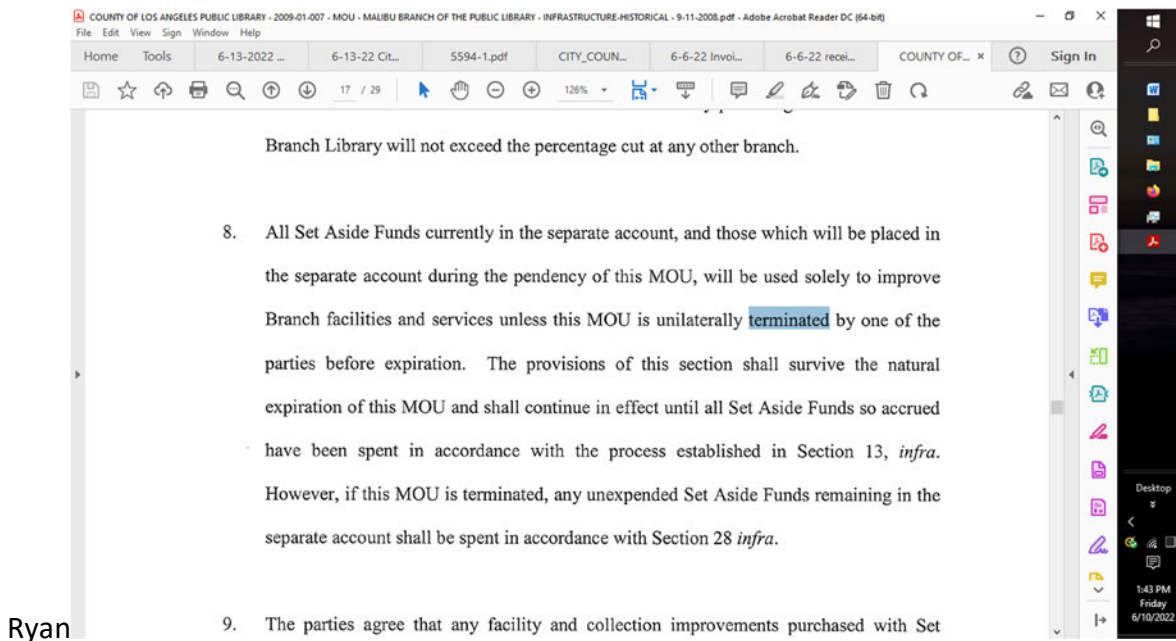
Kraig,

What you wrote is correct -- almost. The quote of Section 8 of the MOU is wrong in that the work "terminate" was replaced and quoted as "determined".

Lastly, Malibu contributed and amount equal to \$14 million (in today's tax funding value) from approximately 1991 to 2007 to the County Library system IN EXCESS of the annual operating cost for the Malibu Library Branch because that is the approximate amount of Set-Aside Funds that have amassed from Malibu taxpayers after adoption of the MOU (approximately equal number of years of current assessed value percentage).

Of special significance, the MOU was a windfall for Los Angeles County and its Library system as a whole because NONE of that \$14 million-equivalent over-contribution was assigned by the County to instantly make Malibu Library "whole" and be remodeled/2nd Branch to replace the Pt. Dume satellite library closed/closing. INSTEAD, Malibu had to annually SAVE-UP the Set-Aside Funds, per the MOU, and WAIT for enough cash to remodel Malibu Library circa 2015.

So Kraig, I disagree with your altruistic Robinhood "wealthy" Malibu should go back to augment the \$14 million already diverted and retained by Los Angeles County after the City of Malibu incorporated -- let alone the ongoing practice of economic sucking for decades prior to that. The dowry/endowment/looting has long satisfied, in perpetuity, any moral or ideological burden to support L.A. County Library branches OUTSIDE of Malibu. THAT GIFT OF FUNDS was achieved by the very adoption of the MOU (heist #1 -- L.A. County kept all the money previously sucked-out of Malibu). How much annual revenue does our prior \$14 million endowment to Los Angeles COUNTY Library System provide?



From: K Hill [REDACTED]
Sent: Friday, June 10, 2022 2:48 AM
To: PGrisanti@malibucity.org <PGrisanti@malibucity.org>; Bruce Silverstein <BSilverstein@malibucity.org>; Mikke Pierson <MPierson@malibucity.org>; Karen Farrer <KFarrer@malibucity.org>; SUhring@malibucity.org <SUhring@malibucity.org>
Cc: Steve McClary <smccclary@malibucity.org>; Kelsey Pettijohn <kpettijohn@malibucity.org>
Subject: Item 7B – Reconsideration of Library Set Aside Funds

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Respectfully,
K Hill

K

Kelsey Pettijohn

Subject: Malibu Library Set-Aside Funds Agreement with LA County
Attachments: COUNTY OF LOS ANGELES PUBLIC LIBRARY - 2009-01-007 - MOU - MALIBU BRANCH OF THE PUBLIC LIBRARY - INFRASTRUCTURE-HISTORICAL - 9-11-2008.pdf; Screenshot (2524).png; Screenshot (2523).png; Screenshot (2520).png; Screenshot (2525).png; Screenshot (2526).png; Screenshot (2490).png; Screenshot (2488).png; Screenshot (2530).png; 10-2016-Annual_Forbath_Gift-of-Public-Funds_Spoiler-Alert-Its-Illegal.pdf; Screenshot (2488).png

FILED

City of Malibu
Office of the City Clerk

Meeting Date 6/13/22

Agenda Item # 7b

From: R Y A N [REDACTED]

Sent: Monday, June 13, 2022 11:00 PM

To: Paul Grisanti <pgrisanti@malibucity.org>; Bruce Silverstein <bsilverstein@malibucity.org>; Kelsey Pettijohn <kpettijohn@malibucity.org>; Elizabeth Shavelson <eshavelson@malibucity.org>

Subject: Fw: Malibu Library Set-Aside Funds Agreement with LA County

Malibu City Council members and staff:

At the regular Malibu City Council meeting of May 23, 2022, termed-out councilwoman Laura Rosenthal quoted reiterated her request that the City of Malibu give to a private Foundation that she sits on the board of, half a million dollars -- without strings -- from the Malibu Library Set-Aside Fund. The Set Aside Fund exists because in the mid 2000's a wiser City Council conducted a public audit of Los Angeles County's property tax collections from Malibu and the grossly-disproportionate, and inadequate, maintenance and staffing at Malibu Library. The audit revealed what, in today's dollars, exceed a million dollars a year ABOVE AND BEYOND the expense to operate Malibu Library. The County and City entered into a Memorandum of Understanding (MOU) instead of litigating the issue and which allowed the County to keep all of the extra monies it took from Malibu taxpayers for 16 years and was not spent in Malibu up to the adoption of the MOU in 2008 (attached).

We all know that Malibu is over 21 miles long and can take half an hour just to drive from one end to the other. When the Point Dume Community Services District was operating the closed elementary school on Fernhill, a satellite library existed in Western Malibu. The obvious need is to construct a state-of-the-art library in Western Malibu to restore local library services to the western half of Malibu. The Set-Aside Funds have increased since Malibu Library in the Civic Center was rebuilt and now amounts to a balance over \$14 million, and growing at around \$2 million annually, for which construction is a possible use of this Set-Aside Funding. By the time the process of selecting, purchasing, designing, and building Malibu's Western Malibu Library, \$20 million of funding will be available. The new Western Malibu library will need to have multiple public meeting rooms where group education and meetings can occur. Such rooms could be similar to what the City of Calabasas built after that city divorced from Los Angeles County Library system and thus retained its locally-generated Library property tax revenue. Calabasas Library's multi-purpose room is known as Founder's Hall, is state-of-the-art with moveable walls, built-in audio video projection, microphone ports, and exterior access and is known as Founder's Hall.

Selecting the right location and purchasing the land -- which does not need to be land that the City owns -- is important because the location will be permanent.

Los Angeles County Librarian Skye Patrick, did not attend the May 23, 2022, Malibu City Council meeting to register any disclosures and to answer any questions about the proposed recommended action from the two council member subcommittee comprised of Karen Farrer and Mikke Pierson. The finances of Rosenthal's Foundation were not included in the staff report available to the public prior to the meeting. The County was not present in the meeting, and did not send a written statement of any kind that acknowledged that the County Board of Supervisors was even aware of the proposed scheme, or to acknowledge that the eligible uses of the Set-Aside Funds as stipulated in the MOU preclude the gift of public funds in this instance. NO staff was present AT ALL -- no one represented Los Angeles County or its Board of Supervisors -- the "other" party to the MOU -- during the meeting prior to the hastily-called vote by Karen Farrer, who happened to be Chairing the meeting. Without the financials in the packet, without anyone from LA County present, and with a lot of unanswered questions, Rosenthal was left to quote for a County employee consistent with the idea that the Foundation needs to build-up an endowment.

What is not clear is whether Los Angeles County Library District director Skye Patrick came up with this scheme, agreed to it, or recommended raiding the Set-Aside Fund and gifting \$1/2 million of Malibu's public funds to the Foundation that Rosenthal sits on the Board of and can spend out money far and away from Malibu and in complete defiance of the specific controls and stipulations expressly stated in the MOU. As chair of the meeting Karen Farrer hastily moved, and Mikke Pierson seconded, this time voting as sitting Council Members accepting their own recommendation as Library committee members, and both voted to approve the \$1/2 million gift in a lock-step 2-1 vote.

In the absence of County representation, or even a written opinion or concurrence to the proposed gift, Rosenthal and the the City's subcommittee members now about to vote as Council members, pushed ahead to give away \$1/2 million to the third party Foundation that Rosenthal sits on the Board. Not even the Executive Director of the Foundation was available at the May 23rd meeting to answer and attempt to justify the request by Rosenthal for \$1/2 million the gift of public Library Set-Aside Funds. That Executive Director of the Foundation has been paid over \$100,000 a year for several years per the Foundation's documents, which appears to have eat-up the bulk of past income to the Foundation and the over-riding factor of coming to Malibu to try to raid the Set-Aside Funds.

Last year, as County Library Director, Skye Patrick got over \$442,000 in compensation for the government job -- more than any U.S. President performing his government job, screen shot attached.

If any County employee doesn't understand the plain English strict limitations on eligible uses of the Malibu Library Set-Aside Funds listed in Section 8 of the 2008 MOU written by the County and agreed-to by the City (as signed by Pamela Conly Ulich, Lisa Pope, and Christi Hogin on behalf of the City, screen shot attached) -- Los Angeles County's Counsel could have been utilized. This email, below, confirms that County Library has access to, and uses, LA County's legal counsel. I surmise that Los Angeles County Counsel was NOT made aware of the proposed gifting of public funds to Rosenthal's 3rd party Foundation because the concept, if carried-out, would breach the MOU.

Earlier tonight, we heard how the Coastal Commission has halted the improper acts of the City issuing permits for serial development, concurrently, as "Option 4" exemption for Woolsey Fire burn-out rebuilds. IF the City violates the MOU as proposed by Council members Farrer and Pierson accepting their own "recommended action", the County will become involved in the scandal.

If Malibu allows Farrer and Pierson to actualize their vote, which would intentionally create acts in conflict with the MOU, the City jeopardizes the \$14 million funds. To protect AGAINSt such abuses, specific requirements of the MOU provide that Notice must be sent to the County a month before an annual Meet-and-Confer event to occur annually in November to discuss and concur on eligible uses of the Set-Aside Funding (screenshot attached). Gifting of the funds is ineligible by California Constitution art. XVI, § 6, and the expenditure of Set Aside Funds anywhere outside of the Malibu Library branch is also not possible as stipulated in the MOU (screenshot attached). The limitation is consistent with the INTENT of the MOU as stated therein (screenshot attached).

I further surmise that the City of Malibu City Council Subcommittee on Malibu Library were aware of the existence of the MOU and its terms, had access to the MOU, and had access to City legal counsel should any such person have difficulty interpreting the plain English meanings of the intent, purpose, and limitations on funding as prescribed in the MOU, and the over-riding prohibition on Gifting Public Funds.

Perhaps Rosenthal attended the League of California Cities' 2016 Annual Conference where this was presented specifically with a written report (attached). Such might make the soliciting of such gift a willful crime by those who knew, should have known, or should have performed due diligence to inquire.

Ryan

From: Veronica Zaragoza <VZaragoza@library.lacounty.gov>
Sent: Tuesday, May 31, 2022 1:39 PM
To: R Y A N [REDACTED]
Subject: RE: Malibu Library Set-Aside Funds Agreement with LA County

Hi Ryan,

We use County Counsel.

Thank you.

From: R Y A N [REDACTED]
Sent: Tuesday, May 31, 2022 1:23 PM
To: Veronica Zaragoza <VZaragoza@library.lacounty.gov>
Subject: Re: Malibu Library Set-Aside Funds Agreement with LA County

CAUTION: External Email. Proceed Responsibly.

Veronica,

Thank you. Does the Library have internal counsel or does it use County counsel?

Ryan

From: Veronica Zaragoza <VZaragoza@library.lacounty.gov>
Sent: Tuesday, May 31, 2022 10:11 AM

To: [REDACTED]
Cc: Sherry Su <[SSu@library.lacounty.gov](mailto:ssu@library.lacounty.gov)>; Elsa Munoz <EMunoz@library.lacounty.gov>
Subject: RE: Malibu Library Set-Aside Funds Agreement with LA County

Good morning,

Please see Library's response to your request for public records. Please confirm receipt.

Thank you.

From: R Y A N [REDACTED]
Sent: Tuesday, May 24, 2022 5:35 PM
To: Library Director <LibraryDirector@library.lacounty.gov>
Subject: Malibu Library Set-Aside Funds Agreement with LA County

CAUTION: External Email. Proceed Responsibly.

Ms. Skye Patrick, Director
Los Angeles County Library District

May 24, 2022

Please forward to me an electronic copy of the Memorandum of Understanding currently in effect between Los Angeles County and the City of Malibu which controls potential uses of the Set-Aside funding.

Thank you.

Ryan Embree

LIBRARYDIRECTOR@LIBRARY.LACOUNTY.GOV
pio@library.lacounty.gov

**AMENDMENT NO. 1 TO MEMORANDUM OF UNDERSTANDING NO. PL-MAL-MOU
BETWEEN THE COUNTY OF LOS ANGELES AND
THE CITY OF MALIBU**

THIS AMENDMENT NUMBER 1 TO Memorandum of Understanding (hereinafter "MOU") No. PL-MAL-MOU is made and entered into this 12th day of July, 2018 by and between the **COUNTY OF LOS ANGELES**, a body corporate and politic and a political subdivision of the State of California, (hereinafter "COUNTY"), and the **CITY OF MALIBU**, a municipal corporation (hereinafter "CITY").

RECITALS

WHEREAS, on November 13, 2008, the COUNTY and the CITY executed MOU No. PL-MAL-MOU to govern the use of property tax dollars apportioned to the County Library from property within the CITY for the purposes of providing library services at the Malibu Library; and

WHEREAS, MOU No. PL-MAL-MOU will expire on June 30, 2019 and the COUNTY and CITY desire to extend the base term of the MOU for another 25-years, and up to two 5-year extension periods; and

WHEREAS, on May 29, 2018 the Board of Supervisors delegated authority to the County Librarian, or designee, to execute an amendment to extend the term of the MOU;

WHEREAS, on March 26, 2018 the Malibu City Council agreed to execute an amendment to extend the term of the MOU;

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions set forth herein, the parties hereto and each of them does agree that MOU No. PL-MAL-MOU is amended as follows:

1. Section 26, is amended to delete existing Section 26, in its entirety and replace with a new Section 26 as follows:
 26. The term of this MOU shall be from the date of complete execution of this MOU by both parties until June 30, 2044, unless sooner terminated as provided elsewhere herein. However, the term of this MOU shall be automatically extended up to two (2) times for an additional five (5) year period each extension, unless written objection to extension is given at any time prior to June 30, 2044 for the first extension and June 30, 2049 for the second extension by either party. Objection by any party to the automatic extension provisions of this MOU shall not be considered termination of the MOU by that party for purposes of Section 28 of this MOU. At the expiration of this MOU the County Library will cease placing Set Aside Funds in a separate account; however, unless this MOU has been terminated by either party, and under the terms and procedures of

Sections 8 and 13 of this agreement, supra, Set Aside Funds accrued during the pendency of this MOU shall be used to enhance Branch facilities and services until such funds are exhausted.

- 2. RATIFICATION
All other terms, conditions, covenants and promises of the MOU not affected by this Amendment No. 1 shall remain in full force and effect and hereby reaffirmed.
- 3. EFFECTIVE DATE
The effective date of this Amendment No. 1 to the MOU shall be on the date this Amendment is executed by the COUNTY and the CITY.

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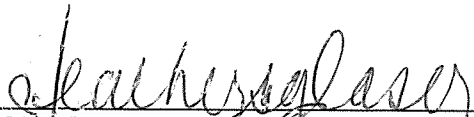
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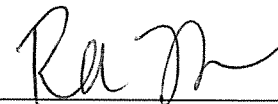
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IN WITNESS WHEREOF, the COUNTY and the CITY have executed this Amendment, as of the day, month, and year first above written.

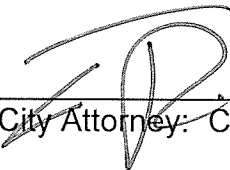
ATTEST:

CITY OF MALIBU

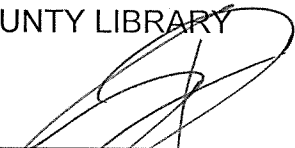
By: 
City Clerk: Heather Glaser

By: 
City Manager: Reva Feldman

APPROVED AS TO FORM:


By: 
City Attorney: Christi Hogin

LA COUNTY LIBRARY

By: 
Skye Patrick
County Librarian

APPROVED AS TO FORM:

MARY C. WICKHAM
County Counsel

By: 
Keever Rhodes Muir
Deputy County Counsel

**AMENDMENT NO. 1 TO MEMORANDUM OF UNDERSTANDING NO. PL-MAL-MOU
BETWEEN THE COUNTY OF LOS ANGELES AND
THE CITY OF MALIBU**

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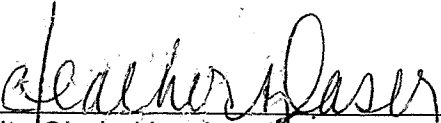
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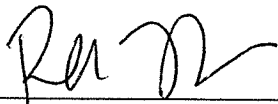
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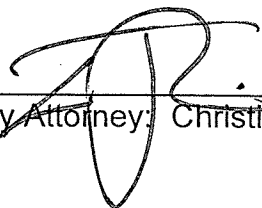
ATTEST:

CITY OF MALIBU

By: 
City Clerk: Heather Glaser

By: 
City Manager: Reva Feldman

APPROVED AS TO FORM:

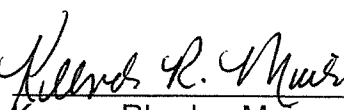
By: 
City Attorney: Christi Hogan

LA COUNTY LIBRARY

By: _____
Skye Patrick
County Librarian

APPROVED AS TO FORM:

MARY C. WICKHAM
County Counsel

By: 
Keever Rhodes Muir
Deputy County Counsel

June 14, 2018

To: Lisa Soghor
Assistant City Manager
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265

From: Elsa Munoz, Support Services
LA County Library

Re: Amendment No. 1 to
Memorandum of Understanding
No. PL-MAL-MOU between the
County of Los Angeles and the
City of Malibu,

Please obtain City signatures on the attached two originals and return both originals to the address below. We will send you a finalized agreement upon County Librarian's signature.

ATTN: Elsa Munoz
LA County Library - Support Services
7400 E. Imperial Hwy., Rm 221
Downey, CA 90242
562-940-8450



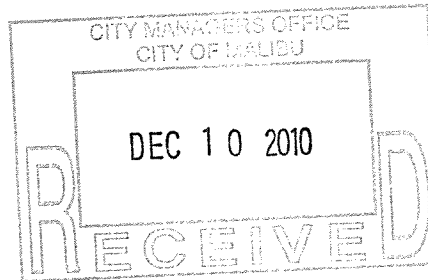
County of Los Angeles Public Library ■ www.colapublib.org
7400 East Imperial Hwy., Downey, CA 90242 ■ (562) 940-8400



Margaret Donnellan Todd
County Librarian

December 7, 2010

Jim Thorsen
City Manager
City of Malibu
23815 Stuart Ranch Road
Malibu, CA 90265



Dear Mr. Thorsen:

We have corrected the cost of service information which provides the cost for library service in your city as the amount of property tax collected and special tax, if applicable. This report reflects the cost of service and property tax for fiscal year 2009-2010.

Cost of Library Service	\$1,160,850
Total Contribution	\$2,520,697
• Property Tax Contribution	\$2,520,697
• Special Tax Contribution	-0-

Enclosed you will find additional data relating to the cost of service and a chart indicating the data for all the cities that we serve.

As always, I will be happy to discuss any questions that you might have or provide additional information.

Sincerely,


Margaret Donnellan Todd
County Librarian

MDT:cd

Enclosures

c: Supervisor Zev Yaroslavsky
Rita Robinson, Deputy Chief Executive Officer

cc: Council; CM; AS; orig to Library Agmt file

**County of Los Angeles Public Library
Operating Statement
Fiscal Year 2009-2010**

Malibu Library
23519 W. Civic Center Way, Malibu

Cost Code: 117
Org Code: 41259

Operating Costs

	<u>Actual</u>
Salaries and Employee Benefits	\$440,968
Services and Supplies	
Books and Materials	66,497
Lease-Buildings	0
Maintenance-Buildings and Grounds	113,538
Maintenance-Equipment	0
Facilities Special Jobs	0
Professional and Special Services	3,112
Insurance	2,493
Supplies and Miscellaneous Exp	17,025
Utilities	60,849
Facilities Services Operations	108,603
Regional Operations	67,868
Acquisitions and Cataloging	29,775
Integrated Library System	16,825
Information Services	17,375
Equipment and Technology	81
Sub-Total Operating Costs	\$945,009

Support Costs

Administration	130,545
Information Technology Equipment and Services	40,668
Program Specialists	28,467
Countywide Overhead Charge	16,161
Sub-Total Support Costs	215,841
Total Cost of Service	\$1,160,850

Less: Offsetting Revenue Special Jobs

Refurbishments	0
Information Technology Fund	0
Sub-Total Offsetting Revenue	0
Net Cost of Service	\$1,160,850

Operating Revenue \$25,496

Note:



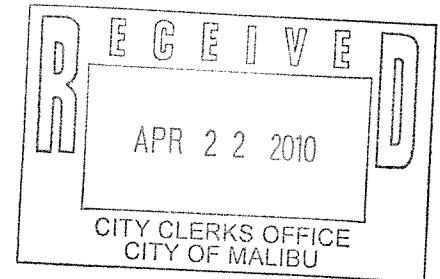
County of Los Angeles Public Library ■ www.colapublib.org
7400 East Imperial Hwy., Downey, CA 90242 ■ (562) 940-8400



Margaret Donnellan Todd
County Librarian

April 16, 2010

Mayor Sharon Barovsky
City of Malibu
23815 Stuart Ranch Road
Malibu, CA 90265



Dear Mayor Barovsky:

As you are aware the County's CEO presented his proposed budget today. You may have seen that in the proposed budget there are recommendations for reductions in library service.

I want to assure you that the **Malibu Library will experience no reduction in library hours**. Since your community's local property tax contribution constitutes over 80% of the funding for your library's operations, service hours will not change.

If you should have any questions or concerns, please contact me.

Sincerely,


Margaret Donnellan Todd
County Librarian

MDT:cd

c: Jim Thorsen, City Manager
Supervisor Zev Yaroslavsky

Library file
83

County of Los Angeles Public Library
2008-09 Property Tax and Operating Cost by City

(A)	(B)	(C)	(D)	(E)	(F)
Description	Adjusted for Actual Property Tax Collected	Adjusted for Actual Special Tax Collected	City Contribution	2008-09 Cost By City	Surplus (Shortfall)
Cities with Building Outlets Located within City Boundary					
Malibu	\$ 2,396,679			\$ 1,250,315	\$ 1,146,364
Manhattan Beach	2,631,235			1,639,089	992,146
West Hollywood	1,441,256	255,750		1,072,541	624,465
Santa Clarita	4,870,316	1,431,246		6,069,832	231,730
Hermosa Beach	957,203			783,604	173,599
Diamond Bar	1,583,127			1,660,813	(77,686)
La Canada	1,153,571	206,862		1,446,623	(86,190)
Westlake Village	675,423		40,947	841,065	(124,695)
Walnut	808,697			1,010,631	(201,934)
Avalon	123,753			448,409	(324,656)
Artesia	285,924			661,565	(375,641)
Bell	234,027			652,072	(418,045)
Maywood	127,639	89,846		639,096	(421,611)
Cudahy	92,723	46,654		605,466	(466,089)
South El Monte	313,031			786,795	(473,764)
Lomita	370,102	136,200		1,020,330	(514,028)
Bellflower	950,588		100	1,485,734	(535,046)
La Mirada	856,571			1,394,636	(538,065)
Hawaiian Garden	9,418			548,504	(539,086)
Paramount	442,557		20,000	1,008,031	(545,474)
Bell Gardens	176,000			779,900	(603,900)
Lynwood	538,916	275,289		1,444,940	(630,735)
Baldwin Park	664,115			1,306,990	(642,875)
Pico Rivera	749,077		117	1,433,568	(684,374)
Agoura Hills	910,161			1,627,714	(717,553)
La Verne	599,414			1,326,462	(727,048)
Duarte	216,267	162,688		1,114,142	(735,187)
San Dimas	731,960			1,470,458	(738,498)
Carson	2,519,989			3,281,505	(761,516)
La Puente	390,424			1,174,726	(784,302)
El Monte	1,371,376	473,485		2,634,813	(789,952)
San Gabriel	841,965			1,634,485	(792,520)
Compton	805,391			1,706,941	(901,550)
Lawndale	327,278			1,255,865	(928,587)
San Fernando	240,616			1,196,559	(955,943)
Temple City	691,276			1,655,773	(964,497)
Claremont	604,442		43,084	1,746,782	(1,099,256)
Lakewood	1,635,610	652,905		3,395,374	(1,106,859)
Hawthorne	1,109,676			2,217,438	(1,107,762)
Rosemead	594,843			1,827,530	(1,232,687)
Gardena	1,090,081			2,344,695	(1,254,614)
South Gate	808,128			2,091,930	(1,283,802)
Culver City	909,968	360,857		2,596,629	(1,325,804)
Lancaster	2,342,282			3,683,803	(1,341,521)
Huntington Park	307,912			1,800,931	(1,493,019)
West Covina	1,682,660			3,260,092	(1,577,432)
Montebello	882,924		93,983	2,996,787	(2,019,880)
Norwalk	1,194,195			3,561,048	(2,366,853)
Subtotal	\$ 45,260,786	\$ 4,091,782	\$ 198,231	\$ 81,593,031	\$ (32,042,232)
Cities Without Building Outlet Located Within City Boundary					
Hidden Hills	247,841			\$ -	\$ 247,841
La Habra Heights	265,398			-	265,398
Azusa	0			-	0
Bradbury	86,210			-	86,210
Subtotal	\$ 599,449			\$ -	\$ 599,449
Unincorporated Area					
Unincorporated	\$ 18,343,202	8,455,202		\$ 33,883,287	\$ (7,084,883)
Juvenile Hall	-			272,051	(272,051)
Total - Public Library	\$ 64,203,436	\$ 12,546,984	\$ 198,231	\$ 115,748,369	\$ (38,799,717)

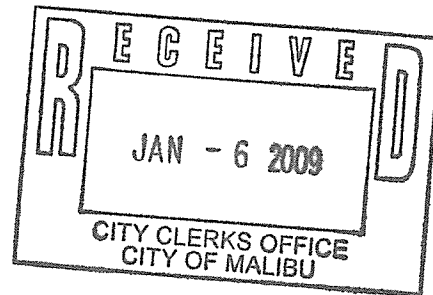
CONFIDENTIAL

MARGARET DONNELLAN TODD
COUNTY LIBRARIAN

December 17, 2008

Pamela Conley Ulich
Mayor
City of Malibu
23815 Stuart Ranch Road
Malibu, CA 90265-4861

Attention: Reva Feldman
Administrative Services Director



**EXECUTED MEMORANDUM OF UNDERSTANDING BETWEEN
THE COUNTY LOS ANGELES AND THE CITY OF MALIBU**

Enclosed, for your records, is the executed Memorandum of Understanding (MOU) between the County of Los Angeles and the City of Malibu. This MOU will govern the use of property tax dollars apportioned to the County from property within the City of Malibu for the purposes of providing Library services at the Malibu Branch of the Public Library.

The above referenced matter was approved by the Board of Supervisors on November 12, 2008, item 23. A copy of the adopted Board letter is also enclosed for your reference.

If you have any questions or need additional information, please contact Malou Rubio at (562) 940-8450.

Sincerely,

Margaret Donnellan Todd
County Librarian

MDT:MR:bf

U:\COMMON\BOARD LETTERS\BUDGET\Set Aside Funds\MOU Cover Letter - Malibu.doc

Enclosures (2)

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding Agreement ("MOU") is entered into by and between the City of Malibu, a California municipal corporation (hereinafter "City") and the County of Los Angeles, a political subdivision of the State (hereinafter "County").

RECITALS

- A. The County of Los Angeles Public Library (hereafter "County Library") desires to improve the facility and services offered at the Malibu Branch of the Public Library System ("Branch");
- B. The City of Malibu ("City") desires an improved library facility and enhanced library services for everyone who uses the facility;
- C. County Library and City both wish for City to remain within the County Library System;
- D. County Library and City both recognize that a majority of the property taxes paid by City property owners reserved for the County Library System are actually used to fund the Branch and its services; but that over the past several years, the amount of such property taxes collected from City property owners has exceeded the operating costs of the Branch; and
- E. County Library and City both believe that these excess funds should primarily be used to implement the recommendations made in the 2005 Community Library Needs Assessment, which will accomplish the mutually desired improvement in the facility and services of the Branch.

NOW, THEREFORE, in consideration of the foregoing and of the promises and covenants set forth herein, the parties agree as follows:

BASE SERVICE LEVELS

1. The County Library is the exclusive owner of all land on which the Branch sits as well as the contents and collection housed within the Branch, with the exception of certain materials within the Arkel Erg Memorial Mountaineering Collection. The Branch is a 15,926 square foot building consisting of a community meeting room, public restrooms, public space with adult and children's areas, staff work areas, a basement, and the Bookmobile garage. Utilities for the Branch are provided as part of the service for the entire property. The current library materials collection is approximately 85,400 items. The Branch houses three special collections: The Arkel Erg Memorial Mountaineering Collection, The Peter A. Horn Senior Citizen Collection, and The Sean Matthews Collection.
2. The current service levels ("Base Levels") at the Branch are as follows: The Branch is open 6 days a week for 50 hours a week (Mondays and Tuesdays 10 am to 8 pm; Wednesdays and Thursdays 10 am to 6 pm; and Fridays and Saturdays 10 am to 5 pm). The Branch full time staff consists of one Community Library Manager (Librarian III), one Reference Librarian (Librarian I), one Children's/Teen Librarian (Librarian I), and one Library Assistant I. The Branch currently provides reference services, public access Internet computers, WIFI and children's and young adult programming including

regularly scheduled toddler and preschool storytimes. The County Library currently conducts routine maintenance and repair of the Branch facilities including janitorial upkeep, landscaping/groundskeeping, and technological systems (telephones, internet connections etc.)

3. By signing this MOU, the City acknowledges that the County Library retains sole responsibility for adjusting the Base Levels at the Branch and throughout the County Public Library System. Neither the County nor the City is obligated to continue enhancements above the Base Level at any time. County agrees that any change to the Base Levels at the Branch will be made on a fair and consistent basis relative to Base Level spending at other branches of the County Library System. Further, should sources of funding to the Public Library System that are not available as of the date of this MOU become available during the pendency of this MOU, County agrees to make these sources available to the Branch on a fair and consistent basis relative to the other branches. County agrees that it will not arbitrarily reduce Base Levels at the Branch in an effort to reduce the overall availability of Set Aside Funds for enhancements at the Branch.

SET ASIDE FUNDS

4. Currently, approximately 2.45% of the ad valorem property tax revenue generated from property located within the City is reserved for the support of the County Free Library System in accordance with the provisions of Article 2 (commencing with Section 96) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code.

5. For purposes of this MOU, "Set Aside Funds" shall refer to the yearly difference in the amount of property tax received from City property owners and reserved for the County Library, and the cost of providing Base Level services at the Branch.
6. In each fiscal year since 2004-2005 (July 1, 2004 – June 30, 2005), County Library has placed Set Aside Funds in a separate budgetary fund with the intent of improving the Branch's facility and providing more enhanced services and programs at the Branch. The parties agree that the current amount of Set Aside Funds accumulated in this fashion is \$1,945,000, collected over the years as follows: Fiscal Year 2004-05, \$521,000; Fiscal Year 2005-06, \$603,000; Fiscal Year 2006-07, \$821,000. The parties mutually acknowledge that the amount of Set Aside Funds varies from year to year and will continue to do so in the future
7. Absent extraordinary circumstances the County Library shall, for the duration of this MOU, continue to place Set Aside Funds in a separate fund within the County Library's budget. However the parties acknowledge that in case of a countywide fiscal emergency, the County may, after notice to the City, discontinue placing Set Aside Funds in the separate fund. The parties acknowledge that a countywide fiscal emergency would necessitate a reduction in funding for all branches of the County Library. County therefore agrees that any reduction in Set Aside Funds made in response to a countywide fiscal emergency under this section shall be made fairly and in a manner consistent with reductions at other branches receiving the equivalent of Set Aside Funds such that any

percentage cut at the Malibu Branch Library will not exceed the percentage cut at any other branch. Further, County agrees that, in the event of countywide fiscal emergency, any reduction of Base Levels at the Branch will be made fairly and in a manner consistent with reductions at other branches such that any percentage cut at the Malibu Branch Library will not exceed the percentage cut at any other branch.

8. All Set Aside Funds currently in the separate account, and those which will be placed in the separate account during the pendency of this MOU, will be used solely to improve Branch facilities and services unless this MOU is unilaterally terminated by one of the parties before expiration. The provisions of this section shall survive the natural expiration of this MOU and shall continue in effect until all Set Aside Funds so accrued have been spent in accordance with the process established in Section 13, *infra*. However, if this MOU is terminated, any unexpended Set Aside Funds remaining in the separate account shall be spent in accordance with Section 28 *infra*.
9. The parties agree that any facility and collection improvements purchased with Set Aside Funds at the Branch shall remain the property of the County Library.
10. If the City obtains property for the construction of a new library branch, it shall notify County that the City desires to use the Set Aside Funds to assist in funding the construction of the new library branch and the parties shall meet to amend this MOU accordingly.

SET ASIDE FUND EXPENDITURES

11. Set Aside Funds may be used for both one-time improvements at the Branch, such as capital improvements and materials purchases, and for on-going service enhancements at the Branch (such as increased Library hours on Sunday or increased staffing levels), and for additional needs as outlined in the 2005 Needs Assessment.
12. Set Aside Funds may not be used by either party as security for any loan or bond.
13. The City and County Library shall meet immediately upon approval of this MOU to discuss the use of Set Aside Funds from the date of approval through the following June 30. Thereafter, for the duration of this MOU, the City and County Library shall meet in November of each year to discuss the use of Set Aside Funds in the fiscal year beginning on the following July 1. No less than four weeks before each of the required November meetings, the City Council of City shall take formal action to approve a prioritized list of issues to be discussed at the yearly meeting. If the City Council fails to approve such a list, the County Library shall assume that City issues and priorities remain unchanged from the most recent previously approved list provided by the City. The purpose of these meetings is to reach agreement on an expenditure program for the Set Aside Funds in the next fiscal year; however, these meetings are advisory in nature and nothing in this section is intended to divest the County Library, or the County of Los Angeles, of any authority to control or use Set Aside Funds. This section shall not be construed as a limit to the frequency of meetings between the parties and the parties hereby express a

willingness to meet as frequently as necessary to resolve issues related to Set Aside Funds or the Branch. The provisions of this section shall survive the natural expiration of this MOU and shall continue in effect so long as Set Aside Funds are required by any provision of this MOU to be spent on Branch enhancements.

14. It is the intent of the parties that the first use of Set Aside Funds shall be to renovate the interior of the Branch, as recommended by the 2005 Community Library Needs Assessment. The interior renovation shall include, at minimum, new lighting, new carpet, new paint, and compliance with current Americans with Disabilities Act requirements.
15. It is anticipated that the City will be primarily responsible for designing and delivering the interior and exterior renovations of the Branch contemplated by this MOU. However, the County may perform such tasks at the City's request. A separate project agreement, signed by both parties, shall be used to describe each party's specific responsibilities for the Branch renovation project.
16. All final plans for renovation of the Branch must be reviewed by each party to assure compliance with zoning and building codes, and all final plans are subject to the mutual approval of City and County.
17. Except as specifically provided herein, all costs associated with the physical

construction of the interior renovation described in this MOU will be paid from Set Aside Funds provided by the County, except that the cost of County Library and City administrative staff time devoted to this project shall not be charged to the Set Aside Fund.

OTHER PROVISIONS

18. If during the duration of this MOU or anytime thereafter, the City notifies the Los Angeles County Board of Supervisors that the City no longer desires to be a part of the County Free Library System, (pursuant to California Education Code section 19116 or any other means), any unspent Set Aside Funds accrued at any time shall remain in the control of the County Library to spend in its sole discretion, including at County Library facilities other than the Branch, and this MOU shall terminate at the time such notice is provided if it is still in operation at the time notice is given. The provisions of this section shall supersede all other provisions of this MOU including the provisions of sections 8 and 28. And, the provisions of this section shall survive the natural expiration or other termination of this MOU and shall continue in effect until all Set Aside Funds accrued have been spent.
19. The Parties hereby acknowledge that the expenditure of any Set Aside Funds are subject to, and conditioned upon, ongoing approval by the County's Board of Supervisors and that such approval is not certain.
20. The City acknowledges that Set Aside Funds are the only funds that shall be used by the

County Library to enhance facilities and services at the Branch, other than an increase in the Base Levels; and that neither the County Library nor the County of Los Angeles is under any obligation to expend funds from any other source for this purpose. This MOU shall not be construed to place any limitations on the City's ability to raise funds for contribution to the Branch or for library services within the City, nor shall it limit the right of City or County Library to apply for and receive grants or State bond proceeds for library purposes.

21. In the performance of its obligations under this MOU, the parties shall comply with all applicable laws, regulations, standards and ordinances.
22. The City shall indemnify, defend and hold harmless the County, its Special Districts, elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the City's acts and/or omissions arising from and/or relating to this MOU.
23. The County shall indemnify, defend and hold harmless the City, its elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the County's acts and/or omissions arising from and/or relating to this MOU.

24. All notices of matters under this MOU shall be given in writing by first class mail, personal delivery or facsimile. Mailed notices shall be addressed as set forth below, but either party may change its address by giving written notice thereof to the other in accordance with the provisions of this section:

CITY: City of Malibu
ATTN: City Manager
23815 Stuart Ranch Road
Malibu, CA 90265

COUNTY LIBRARY: County of Los Angeles Public Library
ATTN: Margaret Donnellan Todd
7400 East Imperial Highway
Downey, CA 90242

25. The laws of the State of California shall govern the interpretation and enforcement of this MOU. Any action, suit or proceeding related to or arising from this MOU shall be filed in the Los Angeles County Superior Court.
26. The term of this MOU shall be from the date of complete execution of this MOU by both parties until June 30, 2019 unless sooner terminated as provided elsewhere herein. However, the term of this MOU shall be automatically extended one (1) time for an

additional five (5) years unless written objection to extension is given at any time by either party. Objection by any party to the automatic extension provisions of this MOU shall not be considered termination of the MOU by that party for purposes of Section 28 of this MOU. At the expiration of this MOU the County Library will cease placing Set Aside Funds in a separate account; however unless this MOU has been terminated by either party, and under the terms and procedures of Sections 8 and 13 of this agreement, *supra*, Set Aside Funds accrued during the pendency of this MOU shall be used to enhance Branch facilities and services until such funds are exhausted.

27. Any amendments to this MOU shall be in writing and executed by both parties.
28. Either party may unilaterally terminate this MOU for any reason upon 120 days written notice. As described in Section 8 *supra*, upon termination of this MOU, any remaining Set Aside Funds will be used as follows:
 - 28.1 If County terminates the MOU, any remaining Set Aside Funds will be used solely to improve Branch facilities, services, and programs above Base Levels.
 - 28.2 If City terminates the MOU, any remaining Set Aside Funds will remain in the control of the County Library to spend in its sole discretion, including at County Library facilities other than the Branch.
 - 28.3 If the MOU is terminated by mutual written agreement of the City and the County, the parties shall agree upon the use or uses of the remaining Set Aside Funds as part of the termination agreement.

29. This MOU is made and entered into for the sole benefit of the parties hereto. No other person or entity shall have any right of action based upon any provision of this MOU.
30. This MOU shall be deemed to have been prepared jointly and equally by the parties, and none of its terms shall be construed against any party on the ground that the party prepared the MOU or caused it to be prepared.
31. This MOU constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements and understandings, both written and oral. This MOU may not be modified or amended except in a writing signed by all parties hereto.
32. If any provision of this MOU or the application thereof to any person or circumstance is held invalid, the remainder of this MOU and the application of such provision to other persons or circumstances shall not be affected thereby.
33. The persons executing this MOU on behalf of each of the parties warrant and represent that they have the authority to execute this MOU on behalf of the party for whom they execute and have the authority to bind the party to the obligations hereunder.


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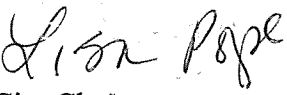
IN WITNESS WHEREOF, the parties have executed this MOU as of the dates set forth below.

CITY OF MALIBU

By: 
Pamela Conley Ulich
Mayor

Dated: 9/11/08


ATTEST:


City Clerk

APPROVED AS TO FORM:


Christi Hogin, City Attorney

COUNTY OF LOS ANGELES

By: 
Margaret Donnellan Todd
County Librarian

Dated:

ATTEST:

SACHI HAMAI

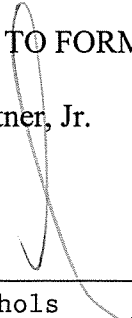
Executive Officer-Clerk
of the Board of Supervisors

By NOT APPLICABLE

APPROVED AS TO FORM:

Raymond G. Fortner, Jr.

County Counsel

By 
Brandon Nichols
Deputy County Counsel

MARGARET DONNELLAN TODD
COUNTY LIBRARIAN

November 12, 2008

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

23 NOV 12 2008

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

Dear Supervisors:

**APPROVAL OF MEMORANDUM OF UNDERSTANDING
WITH THE CITY OF MALIBU
(SUPERVISORIAL DISTRICT 3) (3 VOTES)**

SUBJECT

The Public Library is recommending Board approval of a Memorandum of Understanding ("MOU") with the City of Malibu. This MOU will govern the use of property tax dollars apportioned to the County from property within the City for the purposes of providing Library services at the Malibu Branch of the Public Library. The MOU is effective upon execution by the City and County and will continue through June 30, 2019 unless earlier terminated or extended. There is an automatic five-year extension that will extend the MOU to 2024 unless objected to by one of the parties.

IT IS RECOMMENDED THAT YOUR BOARD:

Approve and instruct the County Librarian to execute the attached MOU governing the use of property tax dollars apportioned to the County from property within the City for the purposes of providing Library services at the Malibu Branch.

PURPOSE/JUSTIFICATION FOR RECOMMENDED ACTION

The Public Library is recommending approval of the MOU on the grounds that it establishes a cooperative and mutually beneficial relationship with the City of Malibu,

provides for the City's continued participation in the County Library System and the benefits the County System derives therefrom, and for the improvement of the services provided at the Malibu Branch of the Public Library.

Implementation of Strategic Plan Goals

Approval of this recommended action is consistent with the County's Strategic Plan Goals in the areas of Service Excellence (1), Organizational Effectiveness (3), and Fiscal Responsibility (4).

FISCAL IMPACT/ FINANCING

The Public Library has established a special budgetary fund for the City of Malibu. The Public Library during each budget planning year, will determine the City's property tax revenues in excess of operating costs and set-aside this amount in the City's fund. The total accumulated reserve is \$2,646,000 based on excess property tax collections since Fiscal Year (FY) 2003/04 through FY 2006/07. It is the intent of the City and County to use the accumulated funds for a major renovation of the Malibu Library.

There is no other fiscal impact.

FACTS/PROVISIONS/ LEGAL REQUIREMENTS

Under the provisions of Education Code section 19100 et seq., cities may elect to participate in the County's Public Library System. When they do, the cost of providing library services within the city is provided to the County by an apportionment of property tax revenues derived from property located within the city. Cities may later choose to leave the County System and these revenues are then redirected back to the city.

When the City of Malibu incorporated in 1991, the City elected to continue to be a part of the County of Los Angeles Public Library. However, in recent years, the apportioned amount of property taxes collected from the City has exceeded the cost of Library services provided within the City. And, in each budget fiscal year since FY 2005/06, the Library has set aside this difference in a special budgetary fund with the intent of improving Library services at the branch located in the City ("Malibu Branch").

In 2003, the County Library under direction from the Board provided revenue and cost information including property tax revenue to all the 51 cities served by the County Library. At that time, the City of West Hollywood, the City of Manhattan Beach and the

City of Malibu each approached the County Library with concerns that the library service provided to their cities was inadequate for their communities. They recognized that significant revenue was being collected in their cities for library service but that funding was not being directly used to improve library service in their cities. They requested that those funds be more directly used to raise the standard of service. As a result of that request, the County Library began to set aside excess funds to improve both the buildings and service levels.

These cities are committed to staying in the County System but recognize if they do not receive adequate library service for their communities, they may be forced to leave county service and establish their own city libraries. The loss of these cities would be detrimental to the County System as well as to the residents of those cities.

In 2003, the Board of Supervisors approved an agreement with the City of West Hollywood for set aside funds to be used toward the construction of a new library. Ground breaking for that new library is set for April 2009. The City of Manhattan Beach has also requested that funds be held for the construction of a new library or for the major renovation and expansion of the existing facility. It is anticipated that once these construction projects are complete, the increased operating costs of these two improved facilities will eliminate the disparity between the cost of service and the revenue collected .

The City of Malibu has requested an MOU. The proposed MOU is based on the Community Library Needs Assessment study which was commissioned by the City and County in 2005. This study identified a number of opportunities for improving Library services in the City including a major renovation of the 1970 facility. Staff from the Public Library and the County Counsel's Office have been meeting with the City to discuss how the recommended improvements could be made using funds already set aside for this purpose and to establish protocols governing the use of funds derived from future differences between property tax monies received by the County and the cost of providing Library services ("set aside funds"), if any. These discussions have culminated in the development of the attached MOU.

The MOU establishes current levels of Library service at the Malibu Branch. And, it provides that, absent a County-wide fiscal emergency, existing and future set aside funds will be used for improving Library services at the Malibu Branch. The MOU also establishes an ongoing process for the City and County to meet to jointly discuss priorities for the use of these funds and library-service improvement. The MOU was structured to provide adequate protections for the County. The MOU recognizes that

Honorable Board of Supervisors
November 12, 2008
Page 4

the County retains the sole responsibility for adjusting base service levels and all improvements remain the property of the County Library. In addition, the County can cancel the MOU at anytime. Further, during a fiscal emergency, the MOU provides that the County may reduce library service in the City so long as the reduction is done in a fair and consistent manner in comparison with other communities served by the County Library System. Should the revenue contributed by the City decrease, the County has no obligation to continue enhanced services and may adjust the baseline service if revenues do not support the base line service.

The MOU will begin on approval of the City and County and will terminate on June 30, 2019. There is one five year extension which will occur automatically unless first objected to by the City or County. For the duration of the MOU, the City has agreed to participate in the County Library System.

The MOU may be terminated for any reason 120 days after notice is given by the terminating party. If the County unilaterally terminates the MOU before the natural expiration date, any set aside funds accrued prior to termination must be spent on service improvements at the Malibu Branch of the Library. If the City unilaterally terminates the MOU before the natural expiration date, all funds remain the County's to spend at its sole discretion.

CONCLUSION

Please return a conformed copy of the adopted stamped Board letter to the Public Library and Office of the County Counsel.

Respectfully submitted,



MARGARET DONNELLAN TODD
County Librarian

MDT:bf

Attachment (1)

c: Chief Executive Officer
County Counsel
Auditor-Controller

'skye patrick' search results

6 employee records found

Search within these records:

Year



Search



[Download search results](#)

	<u>Job title</u>	<u>Regular pay</u>	<u>Overtime pay</u>	<u>Other pay</u>	<u>Total pay</u>	<u>Benefits</u>	<u>Total pay benefits</u>
ephifanie Patrick	County Librarian Los Angeles County, 2021	\$302,637.00	\$0.00	\$44,286.00	\$346,923.00	\$95,226.00	\$442,149.00
EPHIFANIE PATRICK	COUNTY LIBRARIAN Los Angeles County, 2019	\$276,073.00	\$0.00	\$37,806.00	\$313,879.00	\$96,602.00	\$410,481.00
ephifanie Patrick	COUNTY LIBRARIAN Los Angeles County, 2020	\$293,656.00	\$0.00	\$45,374.00	\$339,030.00	\$65,263.00	\$404,293.00
EPHIFANIE PATRICK	COUNTY LIBRARIAN Los Angeles County, 2018	\$259,752.00	\$0.00	\$36,582.00	\$296,334.00	\$94,961.00	\$391,295.00
ephifanie R. Patrick	COUNTY LIBRARIAN Los Angeles County, 2017	\$239,882.00	\$0.00	\$32,021.00	\$271,903.00	\$104,666.00	\$376,569.00
ephifanie Patrick	COUNTY LIBRARIAN	\$100,247.00	\$0.00	\$40,400.00	\$230,745.00	\$71,421.00	\$301,176.00

6-13-2022 ...

6-13-22 Cit...

5594-1.pdf

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6-9-22 Mali...

2019 form9...

Final Respon... x

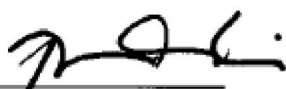


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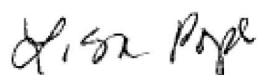
IN WITNESS WHEREOF, the parties have executed this MOU as of the dates set forth below.

CITY OF MALIBU

By: 
Pamela Conley Ulich
Mayor

Dated: 9/11/08


ATTEST:


City Clerk

APPROVED AS TO FORM:


Christi Hogin, City Attorney

COUNTY OF LOS ANGELES

By: 
Margaret Donnellan Todd
County Librarian

Dated: November 13, 2008

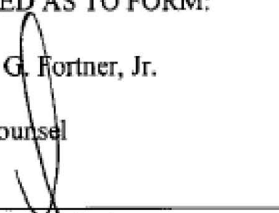
ATTEST:

SACHI HAMAI
Executive Officer-Clerk
of the Board of Supervisors

By NOT APPLICABLE

APPROVED AS TO FORM:

Raymond G. Fortner, Jr.
County Counsel

By 
Brandon Nichols
Deputy County Counsel



e Total. Add lines 11a-11d ▶

12 Total revenue. See instructions ▶

398,889

0

0

279

Form 990 (2019)

Form 990 (2019)

Page 10

Part IX Statement of Functional Expenses

Section 501(c)(3) and 501(c)(4) organizations must complete all columns. All other organizations must complete column (A).

Check if Schedule O contains a response or note to any line in this Part IX ☐

Do not include amounts reported on lines 6b, 7b, 8b, 9b, and 10b of Part VIII.

	(A) Total expenses	(B) Program service expenses	(C) Management and general expenses	(D) Fundraising expenses
1 Grants and other assistance to domestic organizations and domestic governments. See Part IV, line 21				
2 Grants and other assistance to domestic individuals. See Part IV, line 22				
3 Grants and other assistance to foreign organizations, foreign governments, and foreign individuals. See Part IV, lines 15 and 16.				
4 Benefits paid to or for members				
5 Compensation of current officers, directors, trustees, and key employees				
6 Compensation not included above, to disqualified persons (as defined under section 4958(f)(1)) and persons described in section 4958(c)(3)(B)				
7 Other salaries and wages	117,563	70,538	23,513	23,512
8 Pension plan accruals and contributions (include section 401(k) and 403(b) employer contributions)				
9 Other employee benefits				
10 Payroll taxes	9,672	5,804	1,934	1,934
11 Fees for services (non-employees):				
a Management				
b Legal	4,080		4,080	
c Accounting	13,600		13,600	
d Lobbying				
e Professional fundraising services. See Part IV, line 17				
f Investment management fees				

105

Receipts and Revenues	Total gross receipts for filing requirement test: Add line 4 through line 6: This line must be completed. If the result is less than \$50,000, see General Information B		4	330,981	00
	5	Cost of goods sold	5		00
	6	Cost or other basis, and sales expenses of assets sold	6		00
	7	Total costs. Add line 5 and line 6	7		00
	8	Total gross income. Subtract line 7 from line 4	8	330,981	00
Expenses	9	Total expenses and disbursements. From Side 2, Part II, line 18	9	257,665	00
	10	Excess of receipts over expenses and disbursements. Subtract line 9 from line 8	10	73,316	00
Filing Fee	11	Total payments	11		00
	12	Use tax. See General Information K	12		00
	13	Payments balance. If line 11 is more than line 12, subtract line 12 from line 11	13		00
	14	Use tax balance. If line 12 is more than line 11, subtract line 11 from line 12	14		00
	15	Penalties and Interest. See General Information J	15		00
	16	Balance due. Add line 12 and line 15. Then subtract line 11 from the result	16		00
Sign Here	Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.				
Paid Preparer's Use Only	Signature of officer	Title CHAIRPERSON	Date	Telephone 562-940-4189	
	Preparer's signature	MICHAEL P. AMERIO	Date 10/07/21	Check if self-employed <input type="checkbox"/>	PTIN P00914537
	Firm's name (or yours, if self-employed) and address	LUCAS, HORSFALL, MURPHY & PINDROH LLP			Firm's FEIN 95-4659692
		299 N. EUCLID AVENUE, 2ND FLOOR			Telephone 626-744-5100
		PASADENA, CA 91101			
May the FTB discuss this return with the preparer shown above? See instructions <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No					

022

3651204

Form 990 2020 Side 1

LA COUNTY LIBRARY FOUNDATION

95-3766899

Part II Organizations with gross receipts of more than \$50,000 and private foundations regardless of amount of gross receipts - complete Part II or furnish substitute information.

028951 12-22-20

American Cancer Society in the Los Angeles Central Coast area.



Mark Hagander

Partner, Lucas | Horsfall

Mark Hagander, CPA, has two children who enjoy the library, exploring new subjects and the programs there. Mark is part of the LA County Library Foundation to support meaningful programs across the county in the libraries that bring the local communities together and make Los Angeles County a better place to live for all people.

Mark is an audit and accounting principal at Lucas | Horsfall, a regional public accounting firm. He has been in public accounting since 2001 and has worked with closely-held, middle-market companies in many industries and not-for-profits of all sizes.

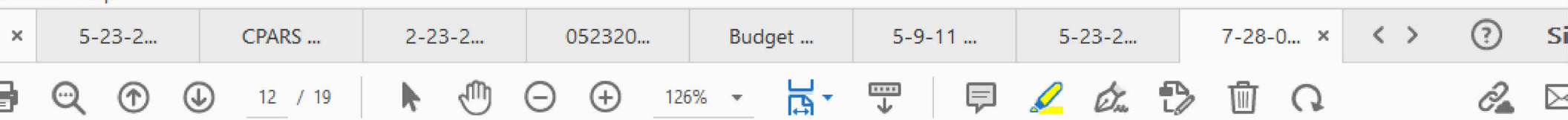
He studied at the University of Redlands, where he majored in accounting and minored in business and economics. He also was a four-year letterman in baseball. Expanding his educational horizons, he studied at the University of Stirling in Scotland, and also coached baseball in Munich, Germany.



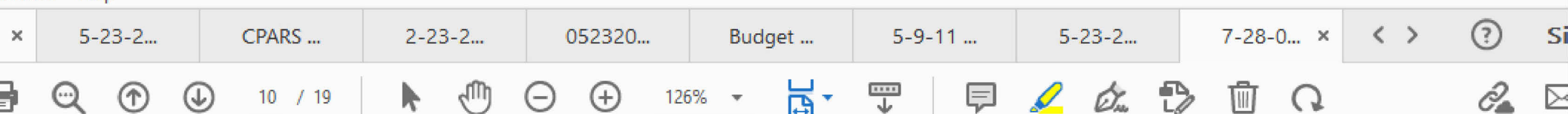
Joanne Kumamoto

Principal Partner, Kumamoto Associates

Kumamoto Associates, a California-based, woman and minority-owned marketing, management and communications consulting firm, is led by Joanne Kumamoto, principal partner, and Alan Kumamoto, founding partner. Kumamoto Associates, in operation



13. The City and County Library shall meet immediately upon approval of this MOU to discuss the use of Set Aside Funds from the date of approval through the following June 30. Thereafter, for the duration of this MOU, the City and County Library shall meet in November of each year to discuss the use of Set Aside Funds in the fiscal year beginning on the following July 1. No less than four weeks before each of the required November meetings, the City Council of City shall take formal action to approve a prioritized list of issues to be discussed at the yearly meeting. If the City Council fails to approve such a list, the County Library shall assume that City issues and priorities remain unchanged from the most recent previously approved list provided by the City. The purpose of these meetings is to reach agreement on an expenditure program for the Set Aside Funds in the next fiscal year; however, these meetings are advisory in nature and nothing in this section is intended to divest the County Library, or the County of Los Angeles, of any authority to



Library, and the cost of providing Base Level services at the Branch.

6. In each fiscal year since 2004-2005 (July 1, 2004 – June 30, 2005), County Library has placed Set Aside Funds in a separate budgetary fund with the intent of improving the Branch's facility and providing more enhanced services and programs at the Branch. The parties agree that the current amount of Set Aside Funds accumulated in this fashion is \$1,945,000, collected over the years as follows: Fiscal Year 2004-05, \$521,000; Fiscal Year 2005-06, \$603,000; Fiscal Year 2006-07, \$821,000. The parties mutually acknowledge that the amount of Set Aside Funds varies from year to year and will continue to do so in the future

7. Absent extraordinary circumstances the County Library shall, for the duration of this



consistent with reductions at other branches such that any percentage cut at the Malibu Branch Library will not exceed the percentage cut at any other branch.

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Gift of Public Funds (Spoiler Alert: It's Illegal)

Friday, October 7, 2016 General Session; 10:30 – 11:45 a.m.

Brian P. Forbath, Stradling, Yocca, Carlson & Rauth, PC

DISCLAIMER: *These materials are not offered as or intended to be legal advice. Readers should seek the advice of an attorney when confronted with legal issues. Attorneys should perform an independent evaluation of the issues raised in these materials.*

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[illegible]

CALIFORNIA PUBLIC FUNDS DOCTRINE

Presentation for the

LEAGUE OF CALIFORNIA CITIES ANNUAL CONFERENCE

OCTOBER 5-7, 2016

Brian Forbath
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CALIFORNIA PUBLIC FUNDS DOCTRINE

1. OVERVIEW

- a. Set forth in *Cal. Const., art. XVI, § 6*
- b. Prohibits the giving or lending public funds to any person or entity, public or private
 - i. Prohibition includes aid, making of gift, pledging of credit, payment of liabilities
 1. Encompasses the giving of monetary funds and any “thing of value”
 - ii. “Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever”
 - iii. “and it shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever”

2. EXCEPTIONS

- a. Expenditures/disbursements for public purpose. *County of Alameda v. Janssen* (1940) 16 Cal 2d 276, 281; *Redevelopment Agency of San Pablo v. Shepard* (1977, Cal App 1st Dist) 75 Cal. App 3d 453; *Schettler v. County of Santa Clara* (1977, Cal App 1st Dist) 74 Cal App 3d 990.
 - i. The public purpose exception is liberally construed
 1. “Determination of public purpose is primarily a matter for the Legislature and will not be disturbed as long as it has a reasonable basis.” *County of Alameda v. Janssen* (1940) 16 Cal 2d 276, 281.
 - a. *County of Alameda* was decided when public funds doctrine was under Art IV § 31 but same standard still applied as seen in several of the examples below
 2. Courts may infer the public purpose from other legislation or the manner in which legislation enacted. *Scott v. State Board of Equalization* (1996, Cal App 3d Dist) 50 Cal App 4th 1597.
 3. Expenditure valid under public purpose exception even if there is an incidental private benefit *Redevelopment Agency of San Pablo v.*

Shepard (1977, Cal App 1st Dist) 75 Cal. App 3d 453 (citing *County of Alameda*).

- ii. Redevelopment is public purpose. *Board of Supervisors v. Dolan* (1975, Cal App 1st Dist) 45 Cal App 3d 237, 245.
- b. Aid granted pursuant to *Cal. Const., art. XVI, § 3*
 - i. *Cal. Const., art. XVI, § 6*: “nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever; **provided, that nothing in this section shall prevent the Legislature granting aid pursuant to Section 3 of Article XVI;**”
 - ii. *Cal. Const., art. XVI, § 3* provides: “No money shall ever be appropriated or drawn from the State Treasury for the purpose or benefit of any corporation, association, asylum, hospital, or any other institution not under the exclusive management and control of the State as a state institution, nor shall any grant or donation of property ever be made thereto by the State, except that notwithstanding anything contained in this or any other section of the Constitution:”
 - 1. can make state money obtained from federal government available or authorize its use for purpose of hospital construction by public agencies and nonprofits organized to construct/maintain such facilities
 - 2. can grant aid to institutions for orphans or abandoned children
 - 3. can aid “needy blind persons” who are not inmates in institution supported in whole/part by state or its political subdivisions
 - 4. can aid “needy physically handicapped” individuals who are not inmates of an institution under supervision of Dept. of Mental Hygiene and supported in whole/part by state or any institution supported in whole/part by a political subdivision
- c. Irrigation districts
 - i. can acquire stock of water corporation which has part of system located in foreign country
 - 1. “provided, further, that irrigation districts for the purpose of acquiring the control of any entire international water system necessary for its use and purposes, a part of which is situated in the United States, and a part thereof in a foreign country, may in the manner authorized by law, acquire the stock of any foreign corporation which is the owner of, or which holds the title to the part of such system situated in a foreign country”

- ii. can generally acquire stock of corporations or interests in rights as necessary for district's purposes
 - 1. "provided, further, that irrigation districts for the purpose of acquiring water and water rights and other property necessary for their uses and purposes, may acquire and hold the stock of corporations, domestic or foreign, owning waters, water rights, canals, waterworks, franchises or concessions subject to the same obligations and liabilities as are imposed by law upon all other stockholders in such corporation"
- d. Public entities can join with other agencies under insurance pooling or JPA agreement for purposes of providing insurance or other payment of various liabilities in tort, workers comp, etc.
 - i. "Provided, further, that this section shall not prohibit any county, city and county, city, township, or other political corporation or subdivision of the State from joining with other such agencies in providing for the payment of workers' compensation, unemployment compensation, tort liability, or public liability losses incurred by such agencies, by entry into an insurance pooling arrangement under a joint exercise of powers agreement, or by membership in such publicly-owned nonprofit corporation or other public agency as may be authorized by the Legislature;"
- e. Public entities can aid veterans via money or credit in acquiring farms, homes, businesses or otherwise paying for them
 - i. "Provided, further, that nothing contained in this Constitution shall prohibit the use of State money or credit, in aiding veterans who served in the military or naval service of the United States during the time of war, in the acquisition of, or payments for, (1) farms or homes, or in projects of land settlement or in the development of such farms or homes or land settlement projects for the benefit of such veterans, or (2) any business, land or any interest therein, buildings, supplies, equipment, machinery, or tools, to be used by the veteran in pursuing a gainful occupation;"
- f. If disaster or emergency declared by the President, the State or a subdivision thereof can aid/assist persons in clearing debris or wreckage from private land or waters if deemed to be in public interest
 - i. public entity must be indemnified by recipient against claims arising from such aid
 - ii. aid/assistance must be eligible for federal reimbursement
 - iii. "Provided, further, that nothing contained in this Constitution shall prohibit the State, or any county, city and county, city, township, or other political

corporation or subdivision of the State from providing aid or assistance to persons, if found to be in the public interest, for the purpose of clearing debris, natural materials, and wreckage from privately owned lands and waters deposited thereon or therein during a period of a major disaster or emergency, in either case declared by the President. In such case, the public entity shall be indemnified by the recipient from the award of any claim against the public entity arising from the rendering of such aid or assistance. Such aid or assistance must be eligible for federal reimbursement for the cost thereof.”

- g. Temporary transfers from treasurer of city/county to political subdivision for maintenance purposes when funds in custody and paid solely through treasurer’s office
 - i. only allowed when resolution adopted by city/county governing body directing it
 - ii. cannot except 85% of anticipated revenues of the political subdivision
 - iii. can’t be made before first day of fiscal year or after the last Monday in April of current FY
 - iv. must be replaced from revenues of political subdivision before any other obligation of political subdivision is met from such revenue
 - v. “And provided, still further, that notwithstanding the restrictions contained in this Constitution, the treasurer of any city, county, or city and county shall have power and the duty to make such temporary transfers from the funds in custody as may be necessary to provide funds for meeting the obligations incurred for maintenance purposes by any city, county, city and county, district, or other political subdivision whose funds are in custody and are paid out solely through the treasurer’s office. Such temporary transfer of funds to any political subdivision shall be made only upon resolution adopted by the governing body of the city, county, or city and county directing the treasurer of such city, county, or city and county to make such temporary transfer. Such temporary transfer of funds to any political subdivision shall not exceed 85 percent of the anticipated revenues accruing to such political subdivision, shall not be made prior to the first day of the fiscal year nor after the last Monday in April of the current fiscal year, and shall be replaced from the revenues accruing to such political subdivision before any other obligation of such political subdivision is met from such revenue.”

3. EXAMPLES

a. GENERAL

- i. *Auerbach v. Board of Supervisors* (1999, Cal App 2d Dist) 71 Cal App 4th 1427

1. Background

- a. County sued by taxpayers for transferring money from county funds (12 of 16 of the funds were characterized as trust or agency funds) to general fund to cover cash flow deficits
 - b. Transfers did not affect any amount budgeted by county or any other required appropriation
 2. Court of Appeal affirmed lower court, finding that Supervisors had authority for transfers under Government Code § 25252. Court reasoned that contrary to Plaintiffs' assertion, Government Code § 25252 did not distinguish between county money and funds held in trust by county but not belonging to it
 - a. Government Code § 25252 allowed county funds to be used for general purpose unless irrevocably committed
 3. Found that Plaintiffs did not show that debts paid with funds were illegitimate
 4. Court noted that rule has no effect on transfers between funds of same public entity, only between one political subdivision and another
 - a. This was crux of Court's position that there was no violation of *Cal. Const., art. XVI, § 6*
 - b. Court rejected Plaintiffs' contention that the trust and agency funds were not county funds
 - i. Court said the fact that the funds were carried on county books under particular name which suggests plan for future expenditure reflected only a matter of "administrative or bookkeeping convenience"
 5. Court found transfers valid where none of county funds involved in transfers were political subdivisions for purposes of the definition set forth in Government Code § 8557(c), so the transfers did not fall within *Cal. Const., art. XVI, § 6* prohibition
 - a. Political subdivision defined in Government Code 8557(c) as "any city, county, district or other local governmental agency or public agency authorized by law"
- ii. *Jordan v. Dept. of Motor Vehicles* (2002, Cal App 3d Dist) 100 Cal App 4th 431
 1. Background
 - a. In original action, Plaintiffs sued the State of California and DMV, seeking refund for \$300 smog impact fee imposed on those moving to CA and registering out of state vehicles in CA

- b. Trial court awarded Plaintiffs' counsel approx. \$18 million, holding impact fee was unconstitutional under commerce clause of the U.S. Constitution and Article XIX of the California Constitution.
 - i. Fee and expense award represented 5% of common fund to be established refunds of fee resulting from Plaintiffs' efforts
 - c. State's appeal of fee/expense award was dismissed pursuant to agreement between state and Plaintiffs to conduct arbitration, and in the ensuing arbitration Plaintiffs were awarded approximately \$88 million in fees/expenses
 - i. Arbitration award was vacated by Sacramento County Superior Court following petition by State
 - d. Plaintiffs then appealed the decision to vacate the arbitration award
- 2. Court of Appeal upheld the lower court's decision to vacate the \$88 million arbitration award, finding a violation of public funds doctrine where the \$88 million award was in settlement of a \$18 million dispute
 - a. Court explained that payment of claim exceeding maximum exposure is akin to payment of wholly invalid claim and constitutes invalid gift of public funds
 - b. Court defined gift for purposes of *Cal. Const., art. XVI, § 6* as including "all appropriations of public money for which there is no authority or enforceable claim' even if there is a moral or equitable obligation
 - c. Court considered the settlement of the fee dispute to be a valid public purpose, but State could not be compelled to pay more than the maximum exposure
 - i. Decision notes that this does not mean that "legally insupportable" arbitration award is per gift of public funds as long as award "within amount in dispute"
 - ii. Decision notes that the case was unusual because max exposure determined by trial court prior to arbitration
- 3. Court affirmed trial court's vacating of arbitration award and directed that new arbitration conducted in which award limited to original \$18 million trial court judgment plus interest

b. EMPLOYMENT

i. *Los Angeles Unified School Dist. v. Livingston* (1981, Cal App 2d Dist) 125 Cal App 3d 942

1. Background

- a. LAUSD challenging order dissolving TRO and refusing to grant preliminary injunction
- b. LAUSD had previously obtained TRO to stop director of California Employment Development Department from paying unemployment compensation to LAUSD teachers that administrative law judge had deemed eligible for those benefits

2. LAUSD argued that paying benefits while legal remedy pursued would cause irreparable harm because account would suffer a charge based on benefits paid even if LAUSD succeeds in court re eligibility

- a. LAUSD tried to distinguish similar cases cited in which benefits had to be paid despite pending legal proceedings because those cases dealt with private employer
 - i. Court rejected LAUSD arguments, as there were different benefit financing alternatives made available by legislature for public employers, and the options all required the public employer to assume risk of overpayment

3. Court here did not examine eligibility determination, only order denying preliminary injunction

4. Court found that LAUSD benefit system presenting the risk of erroneous benefit payments did not violate *Cal. Const., art. XVI, § 6* where public purpose of prompt benefit payments served

- a. Determined that it was better to have working system with small percentage of error than none at all
- b. Noted that policy of California Unemployment Insurance Code §§ 1335(c) and 1338, as well as case law require balance of equities pending judicial review of unemployment benefits to be weighted in favor of unemployed worker
- c. Noted paragraph 2 of *Cal. Const., art. XVI, § 6* implies that insurance involves risk and that being unlucky with insurance claims doesn't equate to gift of public funds.

ii. *Sturgeon v. County of Los Angeles* (2008, 4th Dist) 167 Cal App 4th 630

1. Background

a. County paid judges same benefits as employees and local officers

i. County added these benefits in late 1980s, which were in addition to compensation prescribed by legislature

1. Amounted to \$46,436 in benefits in FY 2007 (approx. \$21 million total), which was approximately 27% of judge salary

b. Plaintiff taxpayer alleged gift of public funds and waste under CCP§ 526a

2. Court reversed trial court decision, finding no gift of public funds under *Cal. Const., art. XVI, § 6* because the benefits at issue promoted public interest of recruiting and retaining judges

a. Court reiterated public purpose/reasonable basis analysis and definition of “gift” for purposes of public funds doctrine as “all appropriations of public money for which there is no authority or enforceable claim, even if there is a moral or equitable obligation”

b. Notes that cases re bonuses for work already performed and benefits to employees are generally uniform in finding public purpose

i. E.g. *Jarvis v. Cory* (1980) 28 Cal 3d 562 and *San Joaquin Employers’ Assn., Inc. v. County of San Joaquin* (1974, Cal App 3d Dist) 39 Cal. App 3d 83

1. Followed rationale of public entity’s interest in recruiting and retaining employees

3. Also finds no waste under CCP § 526a

c. TAXATION

i. *Community Television of So. Cal. v. County of Los Angeles* (1975, Cal App 2d Dist) 44 Cal App 3d 990

1. Background

a. Appeal by County from LA Superior Court order granting summary judgment in favor of Community Television of Southern California (KCET) in action to recover paid real property taxes pursuant to statutory exemption of Cal Rev & Tax Code § 214

- i. Exception allowed certain organizations to avoid paying property tax in consideration for public benefit offered
 - 1. Here it was public TV station
 - b. County claimed that statute under which KCET filed for exception, Cal Rev & Tax Code § 271.4 was unconstitutional as gift of public funds and violation of equal protection
 - c. KCET had acquired property in County on 7/23/70 and filed for property tax exemption on 1/28/71, but was denied as a late filing, which amounted to a waiver under the Cal Rev and Tax Code
 - i. But KCET hadn't acquired the property in time to meet the deadline for the exemption claim
 - 1. Cal Rev & Tax Code § 271.4 allowed welfare exemption to apply retroactively in this circumstance
 - a. Consequently the County challenged the statute's constitutionality
 - i. County argued that its interest in taxes had vested so to allow the debt to be forgiven under Cal Rev & Tax Code § 271.4 would be a prohibited gift of public funds
 - 2. Court of Appeal affirmed summary judgment for KCET
 - a. Court explained that need for exemption trumps the procedural requirements and Cal Rev & Tax Code § 271.4 expressed this
 - 3. Court of Appeal finds that release of tax lien without consideration would violate Article XVI
 - a. But that was not the case here because court found public purpose expressed in Revenue and Tax Code § 214
 - 4. Decision reiterates case law saying that public purpose determination primarily a legislative matter and isn't disturbed so long as there is reasonable basis
- ii. *Edgemont Community Services Dist. v. City of Moreno Valley* (1995, Cal App 4th Dist) 36 Cal App 4th 1157
 - 1. Background

- a. District challenging Riverside Superior Court judgment barring the District from recovering the costs of collecting City's sewer utility user tax
 2. Court of Appeal found that trial court erred in holding that District not entitled to reimbursement for cost of collecting City's utility user's tax on sewer services provided by District on its behalf
 3. Court found that construing Government Code § 37100.5 as allowing this shift in cost of collection violates Art XVI § 6
 - a. Court explained that allowing for such transfer is not per se invalid if purpose of money collected on one entity's behalf is used for benefit of donor agency
 - i. Decision cites *Golden Gate Bridge & Highway Dist. v. Luehring* (1970) 4 Cal App 3d 204 as primary support for this assertion
 - b. Court reached its decision after finding that there was no indication that all or any portion of the tax would be used by City for the exclusive benefit of District residents or purposes specified in resolution under which District was organized
 - c. Court of Appeal ordered the trial court to enter judgment requiring the City to reimburse the District for costs incurred in collecting the City's user utility tax
 4. Court found no support for City argument that cost of collection of tax should be borne by District because tax was incident to services and facilities furnished by District
- iii. *White v. State of California* (2001, Cal App 4th Dist) 88 Cal App 4th 298

1. Background

- a. Recovery Laws enacted by State in wake of 1994 OC financial crisis allocated tax revenue to OC general fund when such revenue had previously been allotted to other County controlled funds and agencies
 - i. Followed prior rejection by OC voters of ½ cent sales tax to help recovery in 1995 after OC filed bankruptcy in 1994
 - ii. 4 recovery bills passed – SB 863, AB 200, SB 1276, AB 1664, among which:
 1. SB 863 reduced property allocation to an OC flood control district and a harbors, beaches

- and parks fund by \$4 million a year, allocated money to general fund of County
- 2. AB 1664 allowed OC to reduce revenue deposited in transportation fund over 15 year period by \$38 million in order to keep in general fund
- 3. SB 1276 allocated some highway user tax funds to transportation fund which would have previously gone to County
 - a. Related to legislative intent to minimize Recovery Laws' effect on agencies
- 4. AB 200 corrected technical issues
 - b. Plaintiff claimed Art IV § 16 of California Constitution violated, which provides that all laws of a general nature have uniform operation and that a local or special statute is invalid in any case where a general statute can be made applicable
 - i. Trial court found no violation
 - c. Plaintiff claimed violation of public funds where transfers did not promote specific interests of the "donor agencies"
 - i. Trial court found no violation
- 2. Court of Appeal upheld Legislative action under Art IV because the Court considered this a unique situation, where OC went bankrupt and taxpayers unwilling to raise taxes for recovery
 - a. Court found legislative action valid, as necessary to protect OC and State where Recovery Laws were narrowly targeted and generally applicable laws wouldn't adequately address issue
 - b. Purpose was clearly set forth in legislation
- 3. Court of Appeal affirmed trial court with respect to public funds doctrine challenge, finding no prohibited gift of public funds because no transfer of funds had been effectuated by the Recovery Laws. Court explained that even if there had been a transfer, legislative findings showed OC needed the money for its recovery and credit standing of public debt issuers constituted a valid public purpose
 - a. Decision reiterates public purpose/reasonable basis analysis
 - b. Court said prohibition regarding gift of public funds is not triggered merely because legislature allocated less tax dollars to

certain local agencies and instead determined that such funds be allocated to general fund to be used for public purpose.

- i. As this did not constitute transfer of funds between public entities
- c. Court noted that funds were not specifically raised for purpose of transferring agencies, but were levied as general property and sales taxes and then allocated
 - i. This rationale and the rationale reflected in item 4 below paralleled the primary reasoning relied on by the Court of Appeal in rejecting public fund doctrine violation in *California Redevelopment Assn. v. Matosantos* (2013, Cal App 4th Dist) 212 Cal App 4th 1457
 1. Concerning state legislation that transferred tax increment funds from redevelopment agencies
4. Court explained that even assuming allocations could be viewed as transfers between agencies, funds were from sales and property taxes and same general group of taxpayers would benefit
 - a. Decision notes that under Art XVI § 6 “showing of public benefit to the transferor agency [per *Edgemont* and *Golden Gate*] is only necessary where there is not a substantial identity between the taxpayers who paid the taxes and those who will benefit”

d. OTHER APPLICATIONS

- i. *County of Riverside v. Idyllwild County Water Dist.* (1978, Cal App 4th Dist) 84 Cal App 3d 655
 1. Background
 - a. District adopted resolution requiring all tax exempt entities to agree to pay capital cost charge in addition to service charges based on rate schedule applicable to all users as a condition of sewer service
 - b. Trial court said County was not obligated to pay under Art XIII § 3 as it was exempt from property taxes and special assessments which is how capital cost charge was characterized
 2. Court affirmed trial court, finding that County agreement to pay invalid special assessment charge to District by means of signing a user’s agreement to pay charges amounted to prohibited gift of public funds

- a. Consequently, the agreement did not function as a waiver of the County's right to contest charge, as County was not empowered to enter into the agreement
- ii. *California Housing Finance Agency v. Elliott* (1976) 17 Cal 3d 575
 1. Background
 - a. CHFA made loans to private housing sponsors and mortgage lenders at below-market rates, refinanced existing mortgages and created a supplemental bond security fund in connection with the construction/development/acquisition of low rent and mixed income housing
 - b. Loan funds were to come from bond proceeds which CHFA Chairperson refused to issue in part because he argued it was unconstitutional gift of public funds
 - c. Program was undertaken pursuant to Health and Safety Code § 41000 et seq.
 2. Court found that legislature acted reasonably in concluding that such housing developments serve a public purpose and that CHFA used funds as provided by the legislation, which Court regarded as having been carefully designed to achieve the public purpose
 3. Court noted that non-state entities benefitted only as incident to public purpose

Library, and the cost of providing Base Level services at the Branch.

6. In each fiscal year since 2004-2005 (July 1, 2004 – June 30, 2005), County Library has placed Set Aside Funds in a separate budgetary fund with the intent of improving the Branch's facility and providing more enhanced services and programs at the Branch. The parties agree that the current amount of Set Aside Funds accumulated in this fashion is \$1,945,000, collected over the years as follows: Fiscal Year 2004-05, \$521,000; Fiscal Year 2005-06, \$603,000; Fiscal Year 2006-07, \$821,000. The parties mutually acknowledge that the amount of Set Aside Funds varies from year to year and will continue to do so in the future

7. Absent extraordinary circumstances the County Library shall, for the duration of this

Kelsey Pettijohn

Subject: Item 7B, library foundation grant

FILED

City of Malibu
Office of the City Clerk

Meeting Date 6/13/22

Agenda Item # 7B



From: Suzanne Guldemann

Sent: Thursday, June 9, 2022 9:47 AM

To: Paul Grisanti <pgrisanti@malibucity.org>; Bruce Silverstein <bsilverstein@malibucity.org>; Mikke Pierson <mpierson@malibucity.org>; Karen Farrer <kfarrer@malibucity.org>; Steve Uhring <suhring@malibucity.org>; John Cotti <john.cotti@bbklaw.com>; Steve McClary <SMcClary@malibucity.org>; Kelsey Pettijohn <kpettijohn@malibucity.org>

Subject: Item 7B, library foundation grant

Dear Council Members,

The people of Malibu want and need a community center in western Malibu, one that includes library services. We have the land for such a resource, but a minority majority of just two of you opted to give away \$500,000 that should have been dedicated to making that dream a reality. I was extremely discouraged when you made the decision, but you now have an opportunity to reassess this act of misplaced altruism. This is an important decision, one that deserves the input of the entire council. A community center with library services is in our reach, but not if you give away the set aside funds specifically set aside to fund it. How does that help our community? This is money our community has paid for out of our taxes and that can and should be used to provide necessary community amenities. Why chose to forgo funding that could help put needed amenities in reach?

A community center with library services would serve our residents and our visitors. Our seniors have been pushed out of City Hall. They have almost no space for their classes and activities. The population center of Malibu is roughly at Point Dume, but we don't have library services, a community room or a park where children can safely play. A park and library services like story time, maker space, wifi and computer access, and meeting and activity space would be a welcome addition for visitors as well as for residents.

Please reconsider, and reverse this decision. Commit to building a park and a community center with library services on the Heathercliff property, for all of our sakes, and for the sake of a better future for Malibu. And if you aren't willing to do that, at least stop telling your Parks and Recreation Commission that there is no money to even discuss future amenities, because we'll know that you aren't really committed, and that you would rather throw that money away than use it for its intended purpose.

Thank you,

Suzanne Guldemann

Kelsey Pettijohn

Subject: ► NO WAY! Laura Rosenthal's \$500,000 Endowment to LA Library Foundation ► NO WAY



From: Sam Hall Kaplan [REDACTED]
Sent: Monday, June 13, 2022 6:32 AM
To: LSGLA [REDACTED]
Cc: City Council <citycouncil@malibucity.org>; Steve Uhring <suhring@malibucity.org>; Bruce Silverstein <bsilverstein@malibucity.org>; Steve McClary <SMcClary@malibucity.org>; Kelsey Pettijohn <kpettijohn@malibucity.org>; John Mazza [REDACTED]; K Hill [REDACTED]; Paul Taublieb [REDACTED]; ryan embree [REDACTED]; Jefferson Wagner [REDACTED]; Mari Ellen [REDACTED]; Bill Sampson [REDACTED]; Jae Flo [REDACTED]
Subject: Re: ► NO WAY! Laura Rosenthal's \$500,000 Endowment to LA Library Foundation ► NO WAY

LYNN:

I Thank you, and so should the concerned residents of Malibu.

And this, from my personal lawyer, a strong suggestion that the state's Attorney General's Office should be alerted, and copied:

<https://oag.ca.gov/charities/complaints>.

It has set up a separate office and is investigating several charitable "foundations."

This should be meat for its tigers.

Sam

<p>FILED</p> <p>City of Malibu Office of the City Clerk</p> <p>Meeting Date <u>6/13/22</u></p> <p>Agenda Item # <u>7B</u></p>
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On Jun 13, 2022, at 2:49 AM, LSGLA [REDACTED] > wrote:

Good day,

I, emphatically, object to this fraudulent approval by Council Members Farrer and Pierson of a \$500,000 Endowment to Laura Rosenthal's LA Library Foundation!

In addition, we are reviewing financial documents for the Foundation from 2018 to 2022. We haven't received all the requested information; such as expense receipts and paid invoices. Of special interest is the \$300,000 the Foundation received in 2019.

Furthermore, the parties involved with the \$300,000 giveaway in 2019, should be held, personally, liable to return the funds and make the fund whole.

In light of these serious transgressions, it is incumbent upon Council Members Silverstein and Uhring along with Mayor Grisanti to censure Council Members Farrer and Pierson and investigate these potential illegal actions; its resulting consequences and any harm to the community. Is it a violation of their oath of office? Is this actionable beyond just a reprimand or censure?

According to the IRS guidelines for 501 charitable status; if the organization participates in lobbying or political activity it will lose its tax exempt status. Laura Rosenthal works for DDC Public Affairs in Washington, DC. Draw your own conclusions here...

The following for your information, a continuation of my opinion:

In addition to the **\$500,000 giveaway** concocted by Farrer, Pierson and Rosenthal, potentially violating the **MOU** agreement between **City of Malibu** and **LA County Library**, and using our taxpayer money, referred to as **Malibu Library Set Aside Funds** which **ARE** to benefit **Malibu Library** (our Library is in shameful condition, while funds go elsewhere). Apparently our library is of no concern to some...

- The kicker, Rosenthal's request is for an **Endowment** to be set-up with the \$500,000 giveaway. Then the **Library Sub-committee** consisting of Farrer and Pierson approved it. And then, two council members, Farrer & Pierson approved \$500,000 to set-up an **Endowment**. I believe it was Karen who announced during the meeting it had been approved by the the Sub-Committee! Farrer and Pierson are the only subcommittee members. Outrageous!
- **Facts** can be found via the Agenda for 5/23 and City of Malibu Youtube channel to view the actual council meeting.

Thanks to Council Member Steve Uhring, this 'approval' will receive more scrutiny today during the City Council meeting.

Respectfully,

Lynn Saunders
Malibu Resident 1990



Kelsey Pettijohn

Subject: Item 7B, meeting of June 27, 2022



From: Bill Sampson [REDACTED]
Sent: Monday, June 27, 2022 8:26 AM
To: City Council <citycouncil@malibucity.org>
Subject: Item 7B, meeting of June 27, 2022

Councilmembers:

<p>FILED City of Malibu Office of the City Clerk Meeting Date <u>6/27/22</u> Agenda Item # <u>7B</u></p>

Giving money away on the eve of another depression is foolhardy. Rescind the minority approval of the giveaway of \$500,000 engineered by Koch Brothers lobbyist Laura Rosenthal and a minority of the City Council. This expenditure of OUR public funds is doubtless illegal to say nothing of foolish with NO safeguards enacted at all. You, as a body, have already given away \$300,000 of our money that served only to overpay an "executive director" and now you have approved a so-called endowment which is nothing other than a promotion for a lobbyist to claim she can raise money. Keep Malibu's money in Malibu. In the next few years we are highly likely to experience a depression given the Fed's determination to put people out of work so we should keep our money here.

Bill Sampson

Kelsey Pettijohn

Subject: Item 7B, City Council Agenda, July 11, 2022

FILED	
City of Malibu Office of the City Clerk	
Meeting Date	<u>7/11/22</u>
Agenda Item #	<u>7B</u>



From: Bill Sampson <[REDACTED]>
Sent: Thursday, July 7, 2022 1:21 PM
To: City Council <citycouncil@malibucity.org>
Cc: Steve Uhring <suhring@malibucity.org>; Paul Grisanti <pgrisanti@malibucity.org>; Bruce Silverstein <bsilverstein@malibucity.org>; Mikke Pierson <mpierson@malibucity.org>; Karen Farrer <kfarrer@malibucity.org>
Subject: Item 7B, City Council Agenda, July 11, 2022

Councilmembers:

The unseemly decision of two of the council on May 23, 2022, to make a gift of public funds properly controlled by Malibu for the benefit of Malibu citizens is a classic example, at best, of haste makes waste. We taxpayers were treated to the spectacle of the two person subcommittee of Farrer and Pierson voting as a sub-committee to recommend making of the gift and THEN the disingenuous by omission statement at the "full" council meeting by Mrs. Farrer that the council (missing two members from that particular meeting) should approve the gift since the subcommittee had recommended the gift. So, naturally, the subcommittee again voted to give the money away although this time over the vigorous and virtuous opposition of councilmember Uhring.

The abomination probably would not have occurred without the encouragement of lobbyist Rosenthal but I am not privy to all of her communications with the misguided council members who visited this travesty upon us taxpayers. The lobbyist, despite her residence, does NOT work for the city but works for the donee - no credence whatsoever should be given to any pleas that the gift will result in a "trickle down" effect to Malibu's benefit. All of us live on septic systems and eventually painfully learn precisely what trickles down. It's time to stop this illicit flow.

The gift should be rescinded forthwith. As others have written and spoken it is/was probably illegal. Irrespective of legality, giving Malibu's money away is simply poor stewardship of our city's limited funds.

Bill Sampson

Kelsey Pettijohn

Subject: Item 7B, Library Set-Aside Funds, Council Meeting of July 11, 2022
Attachments: City Manager Steve McClary.docx



From: LSGLA [REDACTED]
Sent: Thursday, July 7, 2022 5:40 PM
To: Kelsey Pettijohn <kpettijohn@malibucity.org>; City Council <citycouncil@malibucity.org>
Cc: Steve Uhring <suhring@malibucity.org>; Bruce Silverstein <bsilverstein@malibucity.org>; Steve McClary <SMcClary@malibucity.org>; Paul Grisanti <pgrisanti@malibucity.org>; Karen Farrer <kfarrer@malibucity.org>; Mikke Pierson <mpierson@malibucity.org>
Subject: Item 7B, Library Set-Aside Funds, Council Meeting of July 11, 2022

Hello Kelsey and City Councilmembers:

Please be advised, this letter was sent to City Manager Steve McClary today.

Please include in the documents regarding the Agenda Item 7B for the City Council Meeting 7/11/22.

Respectfully submitted,

Lynn Saunders

Lynn Saunders
[REDACTED]

<p>FILED City of Malibu Office of the City Clerk Meeting Date <u>7/11/22</u> Agenda Item # <u>7B</u></p>

**Please be advised this communication is confidential and is not to be shared, copied or forwarded without the permission of the author. If you've received this message in error, please delete and advise the sender.*

Dear City Manager Steve McClary:

I recommend an indefinite delay by City Council of the \$500,000 Endowment to LA County Library Foundation, until such time, as a proper evaluation of the 'Foundation' and the legality of actions by the 'Foundation', it's relationship with LA County Library, LA County Library Commission, and if LA County Board of Supervisors has been apprised of or approved the use of Malibu Library Set-Aside Funds as set forth by the MOU agreement - which in this layperson's opinion it clearly violates. As per the MOU, an annual meeting in November is to be held to decide approvals. Did such meetings occur in 2019 and 2021? Furthermore, to ascertain if the actions by the 'Foundation' are in compliance with IRS 990 to maintain charitable tax-exempt status as a 501(c)(3).

A Board Member of LA County Library Foundation, a former Malibu City Councilmember, Laura Rosenthal works for DDC Public Affairs in Washington, DC. - a lobbying, influence, political strategists and advisers for PACs. I wonder if California Attorney General Bonta or the IRS will find this to be a violation of charitable tax-exempt status as a 501(c)(3) or any other offenses. In addition, to your knowledge has Laura Rosenthal ever registered as a paid lobbyist?

The Director of LA County Library Foundation has been resistant to answering questions and providing documentation, other than my initial request of IRS 990 Tax Filings for 2019 and 2020 with P&L's and 2021 IRS 990 Filing of an Extension and a Profit & Loss printout for 2021.

As a reminder, Laura Rosenthal's request on behalf of the 'Foundation' in the amount of \$300,000 - granted by Malibu City Council from the Malibu Library Set-Aside Funds was to hire a director and **not funded**.
Mysteriously, it was funded a year or more later by

Reva Feldman? A 'Foundation' with no documentation, restrictions or due diligence and minimal credentials and resources at the behest of Laura Rosenthal.

Andrea Carroll was hired as the Director of the 'Foundation' in 2019; by whom or her qualifications are unknown as no information has been provided. I do know she was employed by LA County with an approximate salary of \$48,000. In 2021, Andrea Carroll's salary is \$140,000 annually, with taxes paid by the 'Foundation' approximately \$153,000. She works four days per week, 40 hours - closed Fridays. She is the sole employee. However, the potentially illegal transfer of funds from LA County Malibu Set-Aside Funds took place over a three year period, not two;

2019 3/22 \$12,500 4/9 \$50,000 7/16 \$37,500 10/23 \$37,500 Total \$137,500 • 2020 2/7 \$37,500 4/20 \$37,500 9/4 \$37,500 Total \$112,500 • 2021 1/19 \$50,000 Total \$50,000.

The address and phone number for the 'Foundation' are the LA County Library Administrative Offices in Downey. After further checking on my part, with the intent to visit the office to review records; Board Meeting Minutes, By-laws, Memorandums, Receipts, Invoices, Approvals and Authorizations - there is no office. Ms. Carroll conducts 'Foundation' business, remotely. Board Meetings are also held remotely - although I have yet to be provided any basic information; frequency of meetings, minutes, decisions, et al.

With regard to 'Funding to Affiliates' on 2021 Profit & Loss dated 12/30/21, an approval of \$4,800 to LA County Library employees to attend a Strategic Library Planning Retreat in 2022. No details of a retreat were forthcoming by Ms. Carroll. Nor how this figure was calculated with no details. This seems highly irregular.

The request came from Grace Reyes, Administrative Deputy of LA County Library to fund weekend travel related expenses and fees for herself, Director Skye Patrick and five other employees for a Strategic Library Planning Retreat. Finally, Ms. Carroll provided Councilmember Uhring, at his request, with a copy to me, of the 11/8/21 email request from Ms. Reyes. I had made several requests previously and for file notes or memos from their meeting 11/16/21. My requests were unanswered.

There are other questions that should be addressed regarding the 'Funding of Affiliates' for the years; 2019, 2020 and 2021. An example, if documents had been provided a number of questions would not have gone unanswered. For example, the 'Foundation' has funded a pet project, the Opera series and the Claremont Library(exact number not available as documents never provided)of 5th District Board of Supervisor, Kathryn Barger. Who makes these decisions? Are all Supervisors Districts equally supported?

The Board of LA County Library Foundation, LA County Library Commission, Administration of LA Public Library and a Malibu City Councilmember, Karen Farrer, overlap. Perhaps this isn't unusual, however, conflicts of interest may be at cross-purposes when it comes to decision-making. I question the ethics and legality of Mrs. Farrer as a Councilmember voting to use Malibu Library Set-Aside Funds to gift a \$500,000 Endowment to the 'Foundation' and for the second year, Councilmember Farrer is an appointed member of the LA County Library Commission acting in an advisory position to the LA Board of Supervisors regarding Libraries.

Another consideration is, this is a request to establish an 'Endowment'. I suggest legal counsel weigh-in and advise Council how this could potentially impact the city and the name, Malibu. Due diligence must be exercised before endorsing this 'Foundation'.

Will future City Councils feel obligated to fund the Endowment on an annual basis. Is this use of Set-Aside Malibu Library funds for outside agencies and communities, legal? Is it in compliance and in good standing with the MOU Agreement?

I find Councilmembers Farrer and Pierson's actions as Library Sub-Committee Members and their forced vote and approval as City Councilmembers on May 23, 2022, with a 2 to 1 margin, unconscionable, and subject to an investigation of improper procedures, possible conflicts of interest and behavior unbecoming of City elected officials.

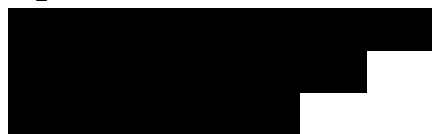
Thank you for your time and consideration. I have spent weeks examining this entanglement and I am, adamantly, opposed to supporting a \$500,000 Endowment using Malibu Library Set-Aside Funds. The \$300,000 gift in 2019 was a serious error in judgment by the City Manager and any (unknown) City Councilmembers. If it is established these actions were illegal and or in violation of the MOU Agreement, restitution must be addressed.

It is with great relief, we finally have you as our official City Manager. Thank you! In gratitude🙏

Warmest regards,

Lynn

Lynn Saunders



ls/7-7-22

Malibu City Manager McClary
Malibu Library Set-Aside Funds
LA County Library Foundation

Kelsey Pettijohn

Subject: Library Sub-Committee Agenda 7b July 11, 2022



From: LSGLA [REDACTED]

Sent: Monday, July 11, 2022 12:40 PM

To: Kelsey Pettijohn <kpettijohn@malibucity.org>; City Council <citycouncil@malibucity.org>; Steve McClary <SMcClary@malibucity.org>

Cc: Bruce Silverstein <bsilverstein@malibucity.org>; Steve Uhring <suhring@malibucity.org>; Paul Grisanti <pgrisanti@malibucity.org>; Mikke Pierson <mpierson@malibucity.org>; Karen Farrer <kfarrer@malibucity.org>

Subject: Library Sub-Committee Agenda 7b July 11, 2022

Good day City Council and City Manager:

It is with great disappointment that I am compelled to ask for the immediate resignation by Councilmember Farrer from the Library Sub-Committee due to her conflicts of interest and other actions under scrutiny. The obvious conflict is her appointment as a LA County Commissioner to advise BOS re libraries for the past year with a new reappointment, recently.

The 'other' actions I am referring to were addressed in my letter to permanent City Manager, Steve McClary.

I would think that Councilmember Farrer would agree with this and do so of her own volition.

Thank you for your time and consideration.

Respectfully submitted,

Lynn Saunders

Lynn Saunders
Malibu Resident 1990

<p>FILED</p> <p>City of Malibu Office of the City Clerk</p> <p>Meeting Date <u>7/11/22</u></p> <p>Agenda Item # <u>7B</u></p>
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Kelsey Pettijohn

Subject: Library Fund



From: Mark Olsen [REDACTED]
Sent: Monday, July 11, 2022 12:06 PM
To: Mikke Pierson <mpierson@malibucity.org>; Bruce Silverstein [REDACTED]; Steve Uhring [REDACTED]
Subject: Library Fund

Hey all,

I'll keep this one short because I know the High School will be the bigger issue tonight and to be honest that one doesn't have a direct impact on me.

What does is this library fund. After all the research the community has done this seems not only like a morally questionable decision but one that potentially could be criminal. The organization has taken a dubious name similar to a legitimate non-profit. When requests have been made it seems all the funds have gone to salaries and corporate retreats. Along those lines it seems this information was well guarded and when asked about office hours (which are required) it took several emails for them to admit they have no office and seemingly only one employee. This really brings the "corporate retreats" into question. In addition if you go to their website they literally do nothing. They just route to other resources. In the end this \$500k will more than likely be used for more of the same which is ridiculous.

I know others will present even more data and I want to keep this short and sweet. But guys this seems like a really bad idea for anyone that wants to keep their name clean in Malibu. Karen and Paul already have a bad rep for being self serving, I'm hopeful you three will stand up and do the right thing here. Get us a library and Chumash museum here at Heathercliff, Hell even give the money to a legit organization, but all the digging this is NOT a legit organization.

Thanks and good luck tonight is going to be a long one.

Mark

<p>FILED</p> <p>City of Malibu Office of the City Clerk</p> <p>Meeting Date <u>7/11/22</u></p> <p>Agenda Item # <u>7B</u></p>
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Kelsey Pettijohn

Subject: Regarding Agenda Item 7B, July 11th, 2022 Regular Council Meeting

From: Mari Stanley [REDACTED]
Sent: Monday, July 11, 2022 5:05 PM
To: Kelsey Pettijohn <kpettijohn@malibucity.org>
Subject: Regarding Agenda Item 7B, July 11th, 2022 Regular Council Meeting



Dear all,
Fast and simple -
I am highly in favor of rescinding the item before you this evening. **STRONGLY
OPPOSED TO PREVIOUS MEETING IN ALL ASPECTS THAT CREATED THE SITUATION
BEFORE US THIS EVENING.**

RESCIND the previous vote tonight as presented in Item 7B

Thank you
Mari Stanley

<p>FILED City of Malibu Office of the City Clerk Meeting Date <u>7/11/22</u> Agenda Item # <u>7B</u></p>

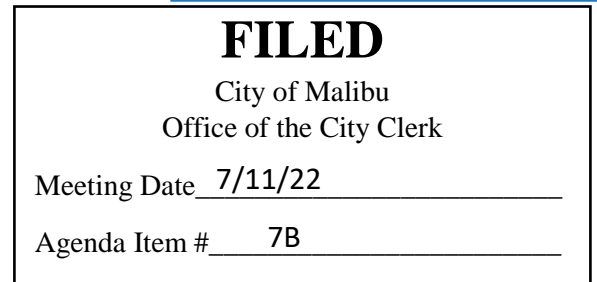
SKYE PATRICK
Library Director



July 8, 2022

Interim City Manager Steve McClary
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265

Dear Mr. McClary,



In light of recent concerns from some City Council and local community members regarding the May 23rd approval of Malibu's library set aside funds to the LA County Library Foundation, the LA County Library is requesting the city rescind the transfer of funds to create an endowment at this time and revisit the matter at our annual city meeting.

The endowment would have allowed for continued support for families who are less fortunate, including those from the City of Malibu as recommended in the most recent library needs assessment. We want the partnership to be with unreserved support.

I want to thank Malibu's Library Subcommittee for their willingness and altruistic approach to support LA County Library by establishing this endowment through the LA County Library Foundation. It was a public statement of your commitment to invest in a system that benefits not only your city but the larger and surrounding communities, of which it's part of.

I also want to thank Dr. Rosenthal for her continued advocacy for the LA County Library. Local community support enables the LA County Library and its staff to continue to be change agents navigating digital literacy and innovative STEM learning with students and the aging population; collaborate with health care partners to disseminate health information and programs; and promote early literacy and higher learning.

Thank you again and please contact my Administrative Deputy, Grace Reyes at 562-940-8416 if you have any additional questions or concerns.

Very best,

Skye Patrick

Cc: Malibu City Council
Malibu City Attorney
Malibu Library Subcommittee
County Counsel

CC: Council; CM; CA ; _____; Ref. Binder; Original to 7/11/22 Agenda File

7400 E Imperial Highway, Downey, CA 90242 | 562.940.8400 | LACountyLibrary.org



COUNTY OF LOS ANGELES SUPERVISORS

HILDA L. SOLIS
1st District

HOLLY J. MITCHELL
2nd District

SHEILA KUEHL
3rd District

JANICE HAHN
4th District

KATHRYN BARGER
5th District

Kelsey Pettijohn

Subject: Council meeting of 8/8/2022, agenda item 7A, Library set aside

FILED

City of Malibu
Office of the City Clerk

Meeting Date 8/8/22

Agenda Item # 7A

From: Bill Sampson [REDACTED]

Sent: Tuesday, August 2, 2022 4:55 PM

To: City Council <citycouncil@malibucity.org>

Cc: Bruce Silverstein <bsilverstein@malibucity.org>; Steve Uhring <suhring@malibucity.org>; Mikke Pierson <mpierson@malibucity.org>; Karen Farrer <kfarrer@malibucity.org>; Paul Grisanti <pgrisanti@malibucity.org>

Subject: Council meeting of 8/8/2022, agenda item 7A, Library set aside

Councilmembers:

I am in favor of rescinding the ill-conceived and possibly illegal gift of funds (\$500,000) to the LA County Library Foundation. That is staff's recommendation and I therefore support that recommendation. It's time to put an end to what was a bad idea.

I would also urge you to consult with the City Attorney concerning what in my opinion was the lobbying activity of Foundation Board member and self-described "political advocate" Rosenthal in connection with her efforts to secure that gift.

Bill Sampson
Malibu