



BUSINESS ACTION ITEM STAFF REPORT

Item 6.D. Authorization for the Chairperson to respond to citizen concerns regarding Government Code 61110.

Summary:

On Friday July 2, 2021 the District received a citizen concern regarding Government Code 61110. This correspondence along with a copy of draft responses is included with this staff report.

Discussion:

The Board may wish to authorize the Chairperson to respond in writing to these concerns.

Enc: Citizen complaint re: Government Code 61110
Draft version of response to citizen 8.12.2021

July 2, 2021

To: San Simeon CSD Directors and General Manager

Subject: Violation of Government Code, Community Service Districts, Chapter 2 Finance, Section 61100(c)

As of today July 2nd, the District appears to be in direct violation of State Community Services District finance laws.

There are multiple violations that have occurred with the budget process and budget itself. The District has now failed to meet the most basic noticing requirements for the new fiscal year budget that started Thursday July 1, 2021.

Government Code Section 61100 for Community Service Districts Chapter 2 Finance (copy attached) unambiguously states:

(c) ON OR BEFORE JULY 1 OF EACH YEAR or, for districts using two one-year budgets or a biennial budget, every other year, THE BOARD OF DIRECTORS SHALL PUBLISH A NOTICE STATING ALL OF THE FOLLOWING:

(1) Either that it has adopted a preliminary budget or that the general manager has prepared a proposed final budget which is available for inspection at a time and place within the district specified in the notice.

(2) The date, time, and place when the board of directors will meet to adopt the final budget and that any person may appear and be heard regarding any item in the budget or regarding the addition of other items.

The required notice was not published on or before July 1st. The Board has not adopted a preliminary budget. The General Manager has not prepared a proposed final budget nor is such available at a time and place specified in the notice. That was not possible again because no notice was published.

As a resident of San Simeon CSD, I am asking that the District 1) investigate this matter; 2) that immediate corrective actions be taken including publication of the required notice; 3) that the notice include a public apology and commitment not to repeat; and 4) that the District look into what appear to be other violations of this Chapter of Community Service District law.

Earlier this year the Board took steps to remove the General Manager from the budget process with changes to District policies. This section of Government Code effectively states that the General Manager is responsible for preparation of the final budget. The District cannot override Government Code. I am asking that the District's General Manager budget related responsibilities be brought back into compliance with the law.

This serious failure-to-notice error is not the fault of the volunteers on the Budget Committee. This is a failure of our General Manager to perform his legally required budget responsibilities. It is also in part our District Counsel's fault for not providing the necessary oversight of the legal requirements of the District.

Copies of properly done Oceano and Los Osos CSD's notices are also included. These are CSD's represented by District Counsel Minnery. Oceano's is notice of a preliminary budget. Los Osos's is notice of final budget. Suggest our General Manager review this section of Government Code with our District Counsel.

These laws are specifically intended to protect communities from financial mismanagement. Again, the District's timely action is requested. It would be reasonable for the community to assume that water and sewer rates will not be raised until full compliance with Gov. Code Section 61100 is completed. Attempting to do retroactive rate increases to July 1 will not be well received.

Sincerely,



Henry Krzciuk
San Simeon Resident

.cc District Counsel Jeff Minnery
San Luis Obispo County Auditor James Hamilton
SLO Deputy District Attorney Kenneth Jorgenson

GOVERNMENT CODE - GOV

TITLE 6. DISTRICTS [58000 - 62262] (Title 6 added by Stats. 1951, Ch. 331.)

DIVISION 3. COMMUNITY SERVICES DISTRICTS [61000 - 61250] (Division 3 repealed and added by Stats. 2005, Ch. 249, Sec. 3.)

PART 3. PURPOSES, SERVICES, AND FACILITIES [61100 - 61226.5] (Part 3 repealed and added by Stats. 2005, Ch. 249, Sec. 3.)

CHAPTER 2. Finance [61110 - 61119] (Chapter 2 repealed and added by Stats. 2005, Ch. 249, Sec. 3.)

61110. (a) On or before July 1 of each year or, for districts using two one-year budgets or a biennial budget, every other year, the board of directors may adopt a preliminary budget that conforms to generally accepted accounting and budgeting procedures for special districts.

(b) The board of directors may divide the preliminary budget into categories, including, but not limited to, the following:

- (1) Maintenance and operation.
- (2) Services and supplies.
- (3) Employee compensation.
- (4) Capital outlay.
- (5) Interest and redemption for indebtedness.
- (6) Designated reserve for capital outlay.
- (7) Designated reserve for contingencies.

(c) On or before July 1 of each year or, for districts using two one-year budgets or a biennial budget, every other year, the board of directors shall publish a notice stating all of the following:

- (1) Either that it has adopted a preliminary budget or that the general manager has prepared a proposed final budget which is available for inspection at a time and place within the district specified in the notice.
- (2) The date, time, and place when the board of directors will meet to adopt the final budget and that any person may appear and be heard regarding any item in the budget or regarding the addition of other items.

(d) The board of directors shall publish the notice at least two weeks before the hearing in at least one newspaper of general circulation in the district pursuant to Section 6061.

(e) At the time and place specified for the hearing, any person may appear and be heard regarding any item in the budget or regarding the addition of other items. The hearing on the budget may be continued from time to time.

(f) On or before September 1 of each year or, for districts using two one-year budgets or a biennial budget, every other year, the board of directors shall adopt a final budget that conforms to generally accepted accounting and budgeting procedures for special districts. The general manager shall forward a copy of the final budget to the auditor of each county in which the district is located.

(Repealed and added by Stats. 2005, Ch. 249, Sec. 3. Effective January 1, 2006.)

61111. (a) At any regular meeting or properly noticed special meeting after the adoption of its final budget, the board of directors may adopt a resolution amending the budget and ordering the transfer of funds between categories, other than transfers from the designated reserve for capital outlay and the designated reserve for contingencies.

(b) The board of directors may authorize the general manager to transfer funds between budget categories, other than transfers from the designated reserve for capital outlay and the designated reserve for contingencies.

(Repealed and added by Stats. 2005, Ch. 249, Sec. 3. Effective January 1, 2006.)

61112. (a) In its budget, the board of directors may establish a designated reserve for capital outlay and a designated reserve for contingencies. When the board of directors establishes a designated reserve, it shall declare the exclusive purposes for which the funds in the reserve may be spent. The funds in the designated reserve shall be spent only for the exclusive purposes for which the board of directors established the designated reserve. The reserves shall be maintained according to generally accepted accounting principles.

(b) Any time after the establishment of a designated reserve, the board of directors may transfer any funds to that designated reserve.

(c) If the board of directors finds that the funds in a designated reserve are no longer required for the purpose for which it established the designated reserve, the board of directors may, by a four-fifths vote of the total membership of the board of directors, discontinue the designated reserve or transfer any funds that are no longer required from the designated reserve to the district's general fund.

(d) Notwithstanding any other provision of this section, in a state of emergency or in a local emergency, as defined in Section 8558, a board of directors may temporarily transfer funds from the designated reserve for capital outlay or the designated reserve for contingencies to the district's general fund. The board of directors shall restore these funds to the designated reserves when feasible.

(e) The board of directors of each district that has designated an alternative depository pursuant to Section 61053 and appointed a district treasurer shall adopt and annually review a policy for the management of reserves.

(Repealed and added by Stats. 2005, Ch. 249, Sec. 3. Effective January 1, 2006.)

61113. (a) On or before July 1 of each year, the board of directors shall adopt a resolution establishing its appropriations limit, if any, and make other necessary determinations for the following fiscal year pursuant to Article XIII B of the California Constitution and Division 9 (commencing with Section 7900).

(b) Pursuant to subdivision (c) of Section 9 of Article XIII B of the California Constitution, this section shall not apply to a district which existed on January 1, 1978, and which did not as of the 1977-78 fiscal year levy an ad valorem tax on property in excess of 12¹/₂ cents per one hundred dollars (\$100) of assessed value.

(c) This section shall not apply to any district that has previously transferred services and all of the property tax revenue allocation associated with those services to another local agency.

(Repealed and added by Stats. 2005, Ch. 249, Sec. 3. Effective January 1, 2006.)

61114. The auditor of each county in which a district is located shall allocate to the district its share of property tax revenue pursuant to Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code.

(Repealed and added by Stats. 2005, Ch. 249, Sec. 3. Effective January 1, 2006.)

61115. (a) The board of directors may, by resolution or ordinance, do the following:

(1) Establish rates or other charges for services and facilities that the district provides.

(2) Provide for the collection and enforcement of those rates or other charges.

(3) Among the permissible methods for collection and enforcement are:

(A) To provide that the charges for any of these services and facilities may be collected with the rates or charges for any other services and facilities provided by the district, and that all charges may be billed on the same bill and collected as one item.

(B) To provide that if all or part of a bill is not paid, the district may discontinue any or all services.

(C) To provide for a basic penalty for the nonpayment of charges of not more than 10 percent, plus an additional penalty of not more than 1 percent per month for the nonpayment of the charges and the basic penalty. The board of directors may provide for the collection of these penalties.

(b) The board of directors may provide that any charges and penalties may be collected on the tax roll in the same manner as property taxes. The general manager shall prepare and file with the board of directors a report that describes each affected parcel of real property and the amount of charges and delinquencies for each affected parcel for the year. The general manager shall give notice of the filing of the report and of the time and place for a public hearing by publishing the notice pursuant to Section 6066 in a newspaper of general circulation, and by mailing the notice to the owner of each affected parcel. At the public hearing, the board of directors shall hear and consider any objections or protests to the report. At the conclusion of the public hearing, the board of directors may adopt or revise the charges and penalties. The board of directors shall make its determination on each affected parcel and its determinations shall be final. On or before August 10 of each year following these determinations, the general manager shall file with the county auditor a copy of the final report adopted by the board of directors. The county auditor shall enter the amount of the charges and penalties against each of the affected parcels of real property as they appear on the current assessment roll. The county tax collector shall include the amount of the charges and penalties on the tax bills for each affected parcel of real property and collect the charges and penalties in the same manner as property taxes.

(c) The board of directors may recover any charges and penalties by recording in the office of the county recorder of the county in which the affected parcel is located, a certificate declaring the amount of the charges and penalties due, the name and last known address of the person liable for those charges and penalties. From the time of recordation of the certificate, the amount of the charges and penalties constitutes a lien against all real property of the delinquent property owner in that county. This lien shall have the force, effect, and priority of a judgment lien. Within 30 days of receipt of payment for all amounts due, including the recordation fees paid by the district, the district shall record a release of the lien. In filing any instrument for recordation, the district shall pay the fees required by Article 5 (commencing with Section 27360) of Chapter 6 of Part 3 of Title 3.

(d) A district shall reimburse the county for the reasonable expenses incurred by the county pursuant to this section.

(e) Any remedies for the collection and enforcement of rates or other charges are cumulative and the district may pursue remedies alternatively or consecutively.

(Repealed and added by Stats. 2005, Ch. 249, Sec. 3. Effective January 1, 2006.)

61116. (a) A district may accept any revenue, money, grants, goods, or services from any federal, state, regional, or local agency or from any person for any lawful purpose of the district.

(b) In addition to any other existing authority, a district may borrow money and incur indebtedness pursuant to Article 7 (commencing with Section 53820), Article 7.4 (commencing with Section 53835), Article 7.5 (commencing with Section 53840), Article 7.6 (commencing with Section 53850), and Article 7.7 (commencing with Section 53859) of Chapter 4 of Part 1 of Division 2 of Title 5.

(Amended by Stats. 2010, Ch. 699, Sec. 18.5. (SB 894) Effective January 1, 2011.)

61117. The board of directors may establish a revolving fund pursuant to Article 15 (commencing with Section 53950) of Chapter 4 of Part 1 of Division 2 of Title 5.

(Repealed and added by Stats. 2005, Ch. 249, Sec. 3. Effective January 1, 2006.)

61118. (a) The board of directors shall provide for regular audits of the district's accounts and records pursuant to Section 26909.

(b) The board of directors shall provide for the annual financial reports to the Controller pursuant to Article 9 (commencing with Section 53890) of Chapter 4 of Part 1 of Division 2 of Title 5.

(Repealed and added by Stats. 2005, Ch. 249, Sec. 3. Effective January 1, 2006.)

61119. All claims for money or damages against a district are governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1.

(Repealed and added by Stats. 2005, Ch. 249, Sec. 3. Effective January 1, 2006.)

San Simeon Community Services District



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(805) 927-4778 Fax (805) 927-0399
admin@sansimeoncsd.org

Dear Mr. Krzciuk:

This letter shall serve as a response to your complaint dated July 18, 2021. After a thorough review of your complaint to the County, that has no control of Special District budgets, you omitted some important information regarding Government Code 61110. Government Code 61100 (a) reads in part:

On or before July 1 of each year or, for districts using two one-year budgets or a biennial budget, every other year, the board of directors may adopt a preliminary budget that conforms to generally accepted accounting and budgeting procedures for special districts.

Government Code 61100 describes an option or choice to act or not. The District, **did not adopt a preliminary budget**. This means all aspects of 61110 are not relevant to the San Simeon CSD's operating Budget. The Budget Committee Chair and I discussed this with Legal Counsel and the GES General Manager, and the use of 61110 in its entirety is not mandatory.

Two Budget Committee meetings were held on, May 27th and June 10th, 2021. These committee meetings were open to the public, and you were in attendance. In the past, you have expressed concerns and challenged the cooperation of the GES General Manager in the District's budget process. In an attempt to satisfy your concerns, the GES General Manager opted to play a lesser role in the budget process. Even with these procedural changes, it would seem you are insistent that the budget development is entirely up to the GES General Manager, when in actual fact, the budget process is a collective work of many in preparation of the Board's review and their vote to approve or not to approve.

Mr. Krzciuk, you yourself wrote last year that a fiscal year (FY) budget is only required by September 1st each year. I have attached a copy of this correspondence for your convenience.

As of July 2, 2021 a draft version of the operating budget has been available to the public via the San Simeon CSD web site. The public hearing notice has been posted in two local newspapers, well within the 15-day noticing time frame. Also, the proposed final budget is on the August 12, 2021 Board meeting agenda for the Boards consideration.

The Budget Committee Chairperson, William Maurer and I are in agreement with staff and Legal Counsel that the SSCSD is 100% in compliance for the 2021/2022 fiscal year. We request that you, the Lead for Nextdoor, please remove the incorrect posting with an explanation of how your assertion of Government Code 61110 is incorrect. The post that you made is completely misleading to the Community.

Best Regards,

Gwen Kellas
Chairperson San Simeon CSD

Cc: SLO County Auditor

DRAFT