



**ALAMEDA RECREATION AND PARK COMMISSION  
REVISED MINUTES FOR REGULAR MEETING**

**DATE:** Thursday, December 14, 2017  
**TIME:** 7:05 p.m. Called to Order  
**PLACE:** City Hall Council Chambers

**ROLL CALL**

**Present:** Chair Limoges, Vice Chair Tilos, Commissioners Chen and Carter.

**Not Present:** Commissioner Delaney

**Staff:** Amy Wooldridge, Recreation and Park Director

**APPROVAL OF MINUTES**

**Minutes of November 9, 2017 Regular Meeting were approved as presented.**

**M/S/C Vice Chair Tilos / Commissioner Chen**

**All present and who attended the November 9, 2017 Regular Meeting in favor with 4 – 0 vote.**

**CHANGES TO THE AGENDA (Chair Limoges)**

- Added time limits to each item.
- Added Unfinished Business to provide opportunity to continue discussions for complex issues or those that haven't reached consensus.
- Will discuss agenda at beginning of each meeting to review order and time allotted for each item.
- Adding Communications which would include Oral and Written Communications.
- Commissioner Carter: Move ARPD Director Report further up in agenda. Chair Limoges: Agreed can then hear what happened over the last month and agendize those items that would like to have further discussion. Vice Chair Tilos: Would still like Director's report after other public items so residents can hear items of their interest first.

**ORAL COMMUNICATIONS**

- Eugene Demmler, President of the Alameda Soccer Club, gave an update on Alameda Soccer Club's improvement of the old tennis courts next to Hornet Field which is almost completed.
  - Grand opening on Feb. 11, 2018 together with San Jose Earthquakes and Navy Seals.

**WRITTEN COMMUNICATIONS**

- Opinion from City Attorney on roles of Recreation and Parks Commission as a result from a Commissioner request. See Exhibit 1.
- Letter from Buena Vista UMC Basketball Program expressing their appreciation for use of Alameda Point Gym and background and history of their group. See Exhibit 2.

**UNFINISHED BUSINESS**

- 4-A** Report on Alameda Recreation and Parks Department Staff Recognition
- ARPD Staff Recognition
    - List provided of staff who worked 5 or more years.
    - Staff will implement an annual recognition event in July and invite Commissioners to attend and assist with handing out awards.

- Commissioner Carter – Requested if it is possible for City Council to do a resolution for long-time staff as part of July Parks & Rec Month resolution. Director Wooldridge stated that it can be included with the proclamation.

#### **4-B** Update on Recreation and Parks Department 2018 User Fee Schedule

- Director Amy Wooldridge gave the report. The 2018 Recreation and Parks Department User Fee Schedule was approved by City Council. Council acknowledged that the fees could be revisited by the Commission after the field allocation policy was in place and Council noted that if Commission chose not to include the 3% increase then they would need to provide a recommendation on how to fund the cost of the registration program.
  - Commissioner Carter: Inquired what the cost of Active Net was and provided her own handout (see Exhibit 3) based on financial numbers provided by the Director. She stated she would like to see the users being charged the extra fee when using their credit cards vs adding 3 percent to the programs. Answer: The contract with Activenet was set up for only one fee charged to the customer. It is not an option at this point to separate the transaction fees out as a separate charge. The Activenet fee is based on 4.25% per credit card transaction and \$1.5% for cash/check transactions. Based on transactions conducted from November 2016 – November 2017, the total transaction charge would be \$83,903 which includes all credit card fees. The previous software cost was \$10,000 plus credit card charges in the amount of \$25,460, which totaled \$35,460. Therefore the net difference of estimated cost for Activenet is \$48,443. The 3% increase is approximately \$56,000 annually, based on the annual transactions from that same period of November 2016 – November 2017, and therefore covers the additional cost for the new program. The FY 2017-18 budget included a one-time \$30,000 line item in anticipation of the the cost of the Activenet training and installation costs.
  - Vice Chair Tilos said it is more efficient to pay with a credit card and helped to clarify the financial numbers. Chair Limoges suggested they look at it in a year to analyze impacts of the new fees and new registration system.

### **NEW BUSINESS**

#### **5-A** Review and Recommend Three Public Art Proposals by Patricia Vader; One is for Parking Lot Adjacent to Washington Dog Park and Two for the Jean Sweeney Open Space Park.

Dorothy Freeman of the Jean Sweeney Open Space Park (JSOSP) committee said the committee saw all the proposed art pieces for the park and they approved those pieces.

- Patricia Vader presented 3 art pieces. One for dog park area and two for JSOSP.
  - Vice Chair Tilos: Interested in seeing more historical art so that it matches the railroad theme of the park. Chair Limoges: It is a big park and feels there is room for all types of art in the park. Commissioner Chen: Agrees with Limoges and particularly likes the sunflower.
  - Motion by Commissioner Tilos to accept Big Ears for the Washington Dog Park. Second by Commissioner Chen. Vote 4 ayes.
  - Motion by Commissioner Carter to accept the Red Butterfly. Second by Chair Limoges. Vote 3 ayes; 1 no by Vice Chair Tilos.
  - Motion by Commissioner Chen to accept the Sunflower. Second by Chair Limoges. Vote: 3 ayes; 1 no by Vice Chair Tilos.

#### **5-B** Review and Recommend Three Public Art Proposals by Denise Hart for JSOSP

- Denise Hart presented 3 art pieces for JSOSP.
  - Vice Chair Tilos: The pieces tie into the mosaic that was approved at the last meeting and is important to have a diversity of artwork in park.

- Motion by Vice-Chair Tilos to accept all three art pieces presented by Denise Hart. Second by Chair Limoges. Vote: 4 ayes.

**5-C** Review and Recommend Public Art Proposal by Counterpoint Studio, LLC for Lincoln and Longfellow Parks.

- Counterpoint Studio proposal given by Director Wooldridge as Counterpoint Studio was unable to attend meeting.
  - Vice Chair Tilos: Confirmed locations. Chair Limoges: Very ethnically diverse community at Lincoln Park and recommends that be reflected. Seems very detailed for a mosaic. Chair Tilos: Regarding Lincoln Park, it would work well there, but would caution with Longfellow as the backside of the wall is heavily used for playing. Suggested going up higher such as 6-8' high because it is used by kids for wall ball and chalk art. Chair Limoges: At Lincoln Park, it is an enormous wall and it may disappear on the wall.
  - Motion by Limoges to accept this art proposal. Second by Vice Chair Tilos. Vote: 3 ayes; 1 noes by Chair Limoges.

**5-D** Review and Recommend Two Public Art Proposals by Zachary Coffin; One for Jean Sweeney Open Space Park and One for Towata Park/Shoreline Park at the Bay Farm Bridge

- Zachary Coffin provided two different locations for rock spinners
  - Vice Chair Tilos: Is it one rock for each side of the channel? Answer: Yes, it will be individual rocks – one in Towata Park and one off the trail at Shoreline Park. Commissioner Chen: Are there issues with graffiti? Answer: Occasionally, however; It can be easily be pressure washed if that occurs. Commissioner Carter: Where do you source your rocks? Answer: Sierra Nevada. Chair Limoges: What is the longevity: Answer: About 50 years.
  - Motion by Commissioner Carter to accept rock spinner art proposals. Second by Commissioner Chen. Vote: 4 ayes.

**5-E** Review and Recommend Public Art Proposal by Craig Gray at Main Street Linear Park

- Craig Gray art piece. Director Amy Wooldridge gave presentation as Craig Gray was unable to attend.
  - Location changed to Main Street Linear at Ralph Appezato Memorial Parkway
  - Motion by Chair Limoges to recommend the art proposal. Second by Commissioner Chen. Vote: 3 ayes; 1 noes by Commissioner Tilos.

**REPORTS**

**6-A Recreation Commission Reports**

- Vice Chair Tilos – Noticed Little Library in front of ARPD office and was impressed. Chair Limoges has used it as well.
- Commissioner Chen – Spoke with several tennis court users at Washington who were happy with lighting.
- Commissioner Carter – Attended Woodstock Playground Grand Opening along with Commissioner Delaney. The playground looked durable, fun, creative and challenging. Thanks to Friends of the Parks and Rotary who helped fund it. Met with Assistant City Attorney. He made it clear that Recreation and Parks Commission is an advisory group and not a policy group as she previously believed. He agreed that Commission should be represented equally at the City Council meetings. City Attorney did not agree with by-laws that states Director is the Chief Executive Officer and is willing to work with the Commission on by-laws. Also discussed a 1998 opinion by Attorney General regarding use of public facilities by religious organizations. Provided a copy for the record. Also met with Patrick Russi, Recreation Manager and Dennis McDaniels, Recreation Supervisor to do walk through of Alameda Point Gym. They are going to provide dates when volunteers can do work

and help out. In agreement that some under utilized rooms can be improved for use. Requested another set of bleachers. Attended Dec. 5 City Council meeting for presentation of user fees. Spoke twice. Once under Public Comment and handed out Alameda Point Gym report. Requested that there be public input for revision of athletic facility allocation policy. Also pointed out significant deficit for field users and their fees. Spoke under fee discussion regarding 3% fee on ActiveNet contract. Handed out financial information obtained from Director Wooldridge regarding fees. In response to Assistant City Attorney's memo, is asking how Brown Act and Sunshine Ordinance applies to the Recreation and Parks Commission.

- Chair Limoges, Commissioners Chen and Carter met with Girls in Sports Committee. Interesting discussion.

## **6-C Recreation and Parks Director Amy Wooldridge Report**

### **Mastick Senior Center**

- Holiday Art Boutique held on Tuesday, December 5, from 11:00 a.m. – 2:00 p.m. with 17+ vendors. It was a great event with good sales and received wonderful feedback from participants. The community was impressed that items were made in classes offered at Mastick. It was also a really great marketing opportunity for the Mastick Senior Center by allowing people to see the Center through different eyes.
- Photo in the Alameda Sun of the Mastick Travelers in Italy under the "Sun Shines Everywhere."
- We are carpeting the administration office next week and swapping offices to prepare for 2018.

### **Parks Maintenance**

- Purchased trees and are planting on upcoming Saturday. There are 90 trees between Godfrey Park and Main Street Linear Park. Also planting 120 at Sweeney Park as part of Cross Alameda Trail (CAT).
- New benches installed at Littlejohn Park and Woodstock Park.
- Littlejohn Park Playground was approved by City Council on the December 5<sup>th</sup> meeting and is now ordered.
- The lights are now fixed and back on at Washington Park tennis courts.

### **Admin – Follow up**

- Banner policy

Under the first provision that was approved in July 2017 it states the following:

- 1. Only banners advertising the activities or events of Alameda based non-profits (501(c)3) and Alameda schools are considered**

Thus, any school in Alameda may apply to hang a banner as long as it follows the guidelines of the policy. In the past ARPD has allowed any school to hang banners to promote an upcoming event or fund-raiser or a registration period. Director Wooldridge would consider all of these to fit under the #1 clause. The issue of the size of banners is very clear for outside organizations. Director Wooldridge said the department's interpretation of the rule is that ARPD can't put up any size banner in the parks for their events. ARPD has regularly put up some of the street size banners for events like 4<sup>th</sup> of July, Sand Castle, Haunted House, Holiday Boutique, etc. at the park sites usually for a limited time just prior to the event being held and quickly removed in the following week when an event has finished. If the Commission would like to change these procedures or make some additional clarifications, they can do so at a future meeting.

- Follow up on Alameda Soccer Club improvement project of old tennis courts
  - Recent progress includes the 2" asphalt overlay to prep the existing surface for installation of the court as pictured, completely new fencing around the entire perimeter of the courts (as well as the interior) and installation of the multi colored acrylic surfacing. Goals are expected to be installed and other work on the court to be completed within the next two weeks.

- The President, Eugene Demmler has spent a great deal of time out at the courts the last couple of months. During that time he has received nothing but positive feedback from Alamedans (not affiliated with the club) on our rehab/beautification of this space.
- Restroom at Alameda Point Gym
  - Public Works is soliciting proposals for the design of the modular restroom and connection to utilities. The goal is to have the restroom installed in summer 2018.

### **Recreation Services**

- The Mayor's Tree Lighting Event was well attended and successful.
- Breakfast with Santa and Santa Visits are sold out and is also very successful this year.
- Active Net was launched 12/4. Overall well-received.
- Woodstock Playground Dedication ceremony went well.
- Elks Hoop Shoot finals are on January 5<sup>th</sup>.
- Holiday Vacation camp and open Park & Playgrounds schedule is ready to go over break to serve the needs of Alameda.
- Challenges:
  - Significant amount of staff time put into the migration of registration and other material from CLASS to Active Net system.
  - Looking for more female staff for after school programs.
  - Trying to keep facilities in good shape with the amount of use that they receive.

### **Upcoming Events**

- Estuary Park Grand Opening: Saturday, January 20, 2018. There will be a Little League Challenger demonstration game.

**2/9/18 Revised Addendum per request of the Recreation Commission at the 2/8/2018 Recreation Commission Meeting: Commissioner Carter requested that the Commission hold a special meeting for the Athletic Facility Allocation Policy. Chair Limoges asked Commissioner Carter to prepare a motion for the next meeting at which the Commission will consider whether to hold a special meeting for the Athletic Facility Allocation Policy.**

**ITEMS FOR NEXT AGENDA:** Alameda Food Bank Conceptual Design

**SET NEXT MEETING DATE:** Thursday, January 11, 2018

**ADJOURNMENT:** Commissioner Carter made a motion to adjourn the meeting.

**M/S/C Commissioner Carter / Commissioner Chen. All present in favor with a 4 – 0 vote. Chair Limoges adjourned the meeting at 9:27 p.m.**

# City of Alameda



## Interdepartmental Memorandum

Date: December 11, 2017

To: Amy Wooldridge, Recreation and Parks Director

CC: Jill Keimach, City Manager

Liz Warmerdam, Assistant City Manager

Janet Kern, City Attorney

From: Andrico Q. Penick, Assistant City Attorney

*AP 12/11/17*

RE: Role of Recreation and Parks Commissioner

### QUESTIONS

I have been asked by the Recreation and Parks Director ("Director") and a Recreation and Parks Commissioner ("Commissioner") to answer the following questions:

1. Does the Recreation and Parks Commission ("Commission") have the responsibility for setting fees and charges for the use of recreation and park facilities in Alameda as stated in its Bylaws in Section 2(2)?
2. If the Commission does not have the authority to set the fees and charges what is the proper procedure for communicating its recommendation regarding fees and charges to the City Council?

### CONCLUSIONS

A. The Commission is an advisory body created by the City Council and does not have the authority to set fees and charges for the use of recreation and park facilities in Alameda despite the statement in its Bylaws to the contrary.

B. When staff and the Commission disagree on the recommendation to make to the City Council, both recommendations should be presented to the City Council for its consideration. Both recommendations and the reasons in support should be presented in a fair and objective manner to the City Council by the Director, verbally (as part of the staff presentation) and in writing (as part of the staff report). In this way, the City Council has the benefit of hearing from staff, its Commission as well as from members of the public and can make an informed decision.

## DISCUSSION

I spoke briefly with the Director regarding these questions during the week of November 13, 2017. I also met with the Commissioner on November 29, 2017 in my office. During these conversations I learned that City staff presented the Commission with a series of recommendations regarding fees and charges for 2018. It is my understanding that the Commission was largely in support of staff's recommendation but had 3 – 4 recommendations of their own. Staff was in support of some but not all of the Commission's recommendations, thus raising the above questions.

### Authority to Set Fees

The Recreation and Park Commission is not specially mentioned in the City Charter. Thus they have no Charter derived authority. The Commission was created by statute and their powers and duties are currently codified in Alameda Municipal Code ("AMC") Section 2-12. A copy of which is attached as Exhibit A for your ease of reference. AMC Section 2-12 was last amended on April 5, 2011. The Commission created for itself a set of bylaws. A copy of which is attached as Exhibit B for your ease of reference. The bylaws were last revised on November 4, 1998.

When analyzing the role and responsibility of a public body like the Commission, there is a hierarchy of authority:

First is Charter authority,

Second is statutory authority,

Third are any interpretations of the Charter or statute, and

Last are the Bylaws or other rules and standards (like Robert's Rules) that the body has set for itself.

In this case, the Charter does not grant any authority to the Commission. The legal authority of the Commission is found in AMC 2-12 which states that the Commission's purpose is advisory. The pertinent AMC Sections are 2-12.1 and 2-12.4 which read as follows:

#### 2-12.1 Commission Created; Purpose.

There is hereby created a commission which shall be known as the Recreation and Park Commission, whose purpose shall be to advise, coordinate and give guidance to the acquisition, development, maintenance and operation of parks, playgrounds, and other recreational facilities in the City of Alameda for the promotion of a sound program of community recreation and vocational activities, using to the greatest practicable extent the land, equipment and personnel of the City of Alameda and the Alameda Unified School District.

(Ord. No. 3029 N.S., § 1, 4-5-2011)

#### 2-12.4 - Duties of Commission.

It shall be the duty of the Recreation and Park Commission to:

- a. Advise the Director of Recreation and Parks, the City Council and the Board of Education on all matters pertaining to the establishment and operation of community recreation programs, activities and facilities.
- b. Hold hearings and do all things necessary to inform itself with respect to the promotion and successful operation of City recreational activities.
- c. Establish necessary or proper regulations and rules to carry out the provisions of this section including, but not limited to, the recommendation of rates, fees, and charges in connection with the use of facilities or participation in recreational programs, which shall be included in the City's annual Master Fee Resolution for adoption by the City Council.

(Ord. No. 3029 N.S., § 1, 4-5-2011)

AMC Section 2-12.4c is directly on point. It clearly states that the Commission's duties, among other things are to make "recommendation of rates, fees and charges in connection with the use of facilities or participation in recreational programs. . ."

Some confusion on this point has arisen from the language in the Bylaws in Chapter 1, Article 1, Section 2(2) which states:

"The Recreation Commission has the responsibility for setting fees and charges."

It is well within the authority of the Commission to adopt a set of Bylaws to help govern its activities. Such authority is granted in AMC Section 2-12.3(a). However, to the extent that the Bylaws have been interpreted to mean that the Commission sets the fees as opposed to making a recommendation to the City Council concerning rates and fees, then that interpretation is in error. The Commission cannot grant itself more authority that was delegated to it by the City Council. The City Council's delegation in AMC Section 2-12 gave the Commission the authority to make "recommendation of rates, fees and charges in connection with the use of facilities or participation in recreational programs. . ." AMC Section 2-12 was last amended on April 5, 2011, had the City Council wanted to expand the authority of the Commission, it could have done so in 2011.

#### Presenting Commission Recommendations to City Council

As discussed above, the Commission has a statutory advisory role. However, for the Commission to effectively carry out that role, its recommendations must be fairly and objectively presented to the City Council for the Council's consideration. In my



discussion with the Commissioner, the Director was referred to as the Commission's "Chief Executive Officer". It was stated that the Director owed a duty of loyalty to the Commission and that it would be (or should be) a conflict of interest for the Director to recommend to the City Council anything but what the Commission recommended. This confusion seems to stem from the Bylaws in Chapter 2, Section 1 which states:

The Director of Recreation and Parks shall be the chief executive officer of the Recreation Department and shall be charged with the general organization, administration, and supervision of the program of public recreation in and for the City of Alameda.

This is a fine description of a chief executive officer for a nonprofit or for-profit corporation. However, the Director is actually a member of City staff. She takes her direction from the City Manager as set forth in the City Charter. While it is true that the Director and her staff have a role in providing administrative support for the Commission and for the smooth running of the Recreation and Parks Department, that authority and responsibility does not arise by virtue of the bylaws. Thus it is not a conflict of interest for the Director to make a recommendation to the City Council which is different from, but in addition to, the recommendation of the Commission. Given the fact that the Commission has an advisory role and the Director has the responsibility for the operational management of the Recreation and Parks Department, there will likely be occasions where the two disagree. Neither the recommendation of the Director or that of the Commission is superior to the other. Both must be fairly presented to the City Council and it is the City Council that makes the decision.

In addition to the two issues listed above, I noticed a couple of other small clarifications that should be made to the Bylaws. The Commission as a body may wish to review and revise its Bylaws.

Please feel free to distribute this memo to the Commission as a public record as you deem appropriate.

Respectfully Submitted.

**ALAMEDA RECREATION COMMISSION**

**BY-LAWS**  
**ARTICLE 5**  
**COMMITTEES**

**SECTION 1.** Special committees may be appointed as occasion requires.

**APPOINTMENT**

**SECTION 2.** Standing committees shall be appointed at the stated meeting in June.

RECREATION DEPARTMENT  
CITY OF ALAMEDA  
BY-LAWS, RULES AND REGULATIONS  
of the  
ALAMEDA RECREATION COMMISSION

**CHAPTER 1 - BY LAWS**  
**ARTICLE 1**  
**THE COMMISSION**  
**PURPOSE OF THE COMMISSION**

**SECTION 1.** The purpose for which the Recreation Commission is created is to facilitate the integration and cooperation of the City of Alameda of Alameda County in promotion of an adequate program of community recreation for the people of the City of Alameda.

**SECTION 2.** The duties of the Commission shall be:

- (1) To advise the City Council in all matters pertaining to the creation and operation of community recreation programs and activities.
- (2) The Recreation Commission has the responsibility for setting fees and charges.
- (3) To investigate and recommend to the City Council plans and suggestions for the development of recreational activities, for the establishment of parks, playgrounds, recreation centers and any and all other matters and things which shall promote and provide activities of such character for the people of the City of Alameda.
- (4) To hold hearings and to do any and all other things necessary to fully inform it with respect to the need of the City of Alameda for Recreation areas and activities.
- (5) Make any and all rules and regulations necessary or proper to carry out the provisions of this ordinance.
- (6) To hold meetings for the transaction of its business and regular meetings of the Commission shall be held on a day certain in each month, which day shall be determined by Commission.

**MEMBERS OF THE COMMISSION**

**SECTION 3.** The Recreation Commission shall consist of five (5) regular voting members. The five regular members, all of whom shall be required to meet the qualifications established for membership on other City boards, shall be nominated by the Mayor.

**APPOINTMENT AND TERMS OF OFFICE**

**SECTION 4.** All regular members shall be approved by the Council of the City of Alameda. Members of the Commission shall be appointed for terms of four (4) years, or until their successors are appointed and qualified. All terms shall begin on the 1st meeting of October

**VACANCIES**

**SECTION 5.** Vacancies in the appointive membership of the Commission shall be filled for the unexpired term and appointees to such vacancies shall be selected in the manner hereinabove provided by the Mayor whose nominee has failed to serve his full term on the Commission.

**ARTICLE 2**

**OFFICERS OF THE COMMISSION AND ELECTION**

**SECTION 1.** The officers of the Recreation Commission shall be a chair and vice-chair who shall be elected annually (and take office) by the Commission at the stated meeting of the Commission in October.

**OFFICERS TO BE CITIZEN MEMBERS**

**SECTION 2.** The chair and vice-chair shall be selected from the other members of the Commission.

**SECRETARY**

**SECTION 3.** The secretary of the Commission shall be the Director of Recreation and Parks.

**FILLING VACANCIES**

**SECTION 4.** In the event of the resignation or death of any officer, the Commission shall elect a successor to that office not later than the next stated meeting after an appointment to fill the Commission vacancy.

**ARTICLE 3**

**MEETINGS**

**ADMINISTRATIVE YEAR**

**SECTION 1.** The administrative year shall begin on the first day of July.

**STATED MEETINGS**

**SECTION 2.** The stated meetings of the Commission shall be held on the second Thursday of each month at 7:00 p.m. in the City Hall, unless otherwise ordered by the Commission.

**SPECIAL MEETINGS**

**SECTION 3.** Special meetings may be called by the chair, or in response to a request made by at least three voting members of the Commission, and the object of the special meeting shall be stated in the call.

## QUORUM

**SECTION 4.** A quorum shall consist of a majority of the voting members of the Commission.

Note: Wherever there are discrepancies in the By Laws the Brown Act will take precedence.

## ORDER OF BUSINESS

**SECTION 6.** The following shall be the order of business of the Commission:

- (1) Role call.
- (2) Approval of minutes.
- (3) Hearing of groups or individual citizens can be taken out of order.
- (4) Communications.
- (5) Reports from Recreation and Park Director.
- (6) Status Report on Ongoing Projects Report.
- (7) Unfinished Business.
- (8) New Business
- (9) Oral Communications, General
- (10) Set Date for Next Meeting
- (11) Adjournment.

## ARTICLE 4

### DUTIES OF OFFICERS DUTIES OF CHAIRMAN

**SECTION 1.** The chair shall preside at the meetings of the Commission and shall perform such other functions as are delegated to the Chair by the Recreation Commission. The chair shall be ex-officio a member of all committees with the privilege of voting.

### VICE CHAIR

**SECTION 2.** The vice chair shall act as and perform the duties of the chair in the absence or at the request of the chair.

### SECRETARY

**SECTION 3.** The secretary of the Commission, with the assistance of a staff member who shall be selected by the Director of Recreation and Parks and who shall be an employee of the Recreation Department, shall keep a journal of its proceedings, and shall conduct such correspondence as the Commission may direct.

## ARTICLE 5

### COMMITTEES

**SECTION 1.** Special committees may be appointed as occasion requires.

### APPOINTMENT

**SECTION 2.** Standing committees shall be appointed at the stated meeting in June.

## ARTICLE 6

### COMMUNICATIONS COMMUNICATIONS MUST BE RECEIVED EARLY

**SECTION 1.** Matters coming from the public and from civic organizations to be placed on the agenda for consideration and action at the stated meeting of the Commission on the second Thursday each month, must be received in writing no later than two weeks prior to the Recreation Commission meeting.

**ARTICLE 7**  
**RULES OF ORDER**

**SECTION 1.** Robert's Rules of Order Revised shall be the standard of parliamentary practice in all meetings of the Commission and of its committees.

**ARTICLE 8**  
**AMENDMENTS**

**SECTION 1.** These By Laws and rules may be altered, amended or repealed at any stated meeting of the Commission by a majority vote of the whole Commission.

**CHAPTER 2**  
**THE DIRECTOR OF RECREATION**

**SECTION 1.**                   **CHIEF EXECUTIVE OFFICER**

1.       The Director of Recreation and Parks shall be the chief executive officer of the Recreation Department and shall be charged with the general organization, administration, and supervision of the program of public recreation in and for the City of Alameda.

**ATTEND MEETINGS OF COMMISSION**

2.       The Director shall attend all meetings of the Commission as a professional consultant except when the appointment of the Director is under consideration, and shall attend meetings of committees of the Commission when requested.

**PREPARATION OF BUDGET ESTIMATES**

**SECTION 3.** The Director shall annually collect and assemble such information relating to the needs of the recreation system for the Recreation Commission as they may request or the Director may deem necessary.

## 2-12 - RECREATION AND PARK COMMISSION.<sup>[7]</sup>

### Footnotes:

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**Editor's note**— Ord. No. 3029 N.S., § 1, adopted April 5, 2011, amended 2-12 in its entirety and enacted new provisions as set out herein. The former 2-12 pertained to Housing Commission and derived from Ord. No. 2387 N.S.; and Ord. No. 2533, § 14.

#### 2-12.1 - Commission Created; Purpose.

There is hereby created a commission which shall be known as the Recreation and Park Commission, whose purpose shall be to advise, coordinate and give guidance to the acquisition, development, maintenance and operation of parks, playgrounds, and other recreational facilities in the City of Alameda for the promotion of a sound program of community recreation and vocational activities, using to the greatest practicable extent the land, equipment and personnel of the City of Alameda and the Alameda Unified School District.

(Ord. No. 3029 N.S., § 1, 4-5-2011)

#### 2-12.2 - Membership; Appointment; Term of Office; Removal; Vacancies.

- a. The Commission shall consist of five (5) members, all of whom shall, at the time of their appointment and continuously during their incumbency, be residents of the City.
- b. Upon nomination of the Mayor, the City Council shall appoint, between May 1 and July 1 of each year, such members as are necessary to maintain a full Commission, for terms commencing on the first day of July following such appointment and continuing for four (4) years thereafter until the successor of such member is appointed and qualified.
- c. No person shall be eligible for the office held by that person for two (2) consecutive terms immediately prior to the term for which the person seeks appointment.
- d. A member of the Commission may be removed by the vote of a majority of the Council. A vacancy in the office of a member shall be filled for the unexpired term by nomination and appointment by the Mayor and the City Council, respectively, for the duration of the unexpired term of office.

(Ord. No. 3029 N.S., § 1, 4-5-2011; Ord. No. 3050 N.S., § 1, 7-5-2012)

#### 2-12.3 - Meetings; Officers; Voting.

- a. The Commission shall meet as necessary to perform the duties outlined in subsection 2-12.4. Meetings shall be held on a fiscal year schedule, running July 1 through June 30. The Commission shall have the power to establish rules for its proceedings. The Commission shall select from its regular membership a Chairperson and a Vice-Chairperson, who shall serve in such office for a term of one (1) year commencing July 1 and until their successors are selected and qualified.
- b. The votes of a majority of the entire membership of the Commission shall be necessary to take any action thereof.

(Ord. No. 3029 N.S., § 1, 4-5-2011)

2-12.4 - Duties of Commission.

It shall be the duty of the Recreation and Park Commission to:

- a. Advise the Director of Recreation and Parks, the City Council and the Board of Education on all matters pertaining to the establishment and operation of community recreation programs, activities and facilities.
- b. Hold hearings and do all things necessary to inform itself with respect to the promotion and successful operation of City recreational activities.
- c. Establish necessary or proper regulations and rules to carry out the provisions of this section including, but not limited to, the recommendation of rates, fees, and charges in connection with the use of facilities or participation in recreational programs, which shall be included in the City's annual Master Fee Resolution for adoption by the City Council.

(Ord. No. 3029 N.S., § 1, 4-5-2011)

December 12, 2017

Dear Members of the Alameda Recreation and Park Commission:

On behalf of the Buena Vista UMC Basketball Program, we would like to acknowledge and express our appreciation for the many decades that Alameda Point Gymnasium has served as a center of play for the Buena Vista program, its teams and players. Thank you for granting our scheduling requests to accommodate our fall/winter league schedules. We look forward to continuing this strong, working partnership that has benefited a generation of Alameda children and their families.

BVUMC's basketball program has served the Alameda community for more than 20 years. During that time, Alameda Point Gym has played a pivotal role in our program's mission "to provide youth and families the opportunity to play basketball in a safe, well-organized environment that helps foster values of teamwork, cultural awareness and community service."

Buena Vista teams are open to youth and families of all ethnicities, religions and basketball skill levels. We do not conduct tryouts. Our program's vision seeks to emphasize basketball "as a means to greater ends of building self-esteem, confidence, relationships, and personal growth."

An important component of the program is to incorporate civic responsibility into the children's lives. Team members of all ages have volunteered throughout Alameda in past years, for beach cleanups, food bank drives, city maintenance projects and more. Almost all the families served by the program live in Alameda or attend Buena Vista UMC and spend significant time in Alameda.

As one of the first tenants of the gym, we can attest to the importance that having access to this space has meant to the vitality of our program. The continuous stretch of practice time from September to March and league play within that is most appreciated. Our basketball practices at Alameda Point Gym are not just about skill building and scrimmages, but serve as a gathering time for young people who learn to respect their coaches, bond as teammates, and build a foundation to lead fruitful lives.

Best regards,

BVUMC Basketball Board

Rev. Michael Yoshii, Gavin Tachibana, Kevin Connolly, Darren Fong, Lilybell Nakamura, Jack Woo, Ryan Fong

cc:

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OFFICE OF THE ATTORNEY GENERAL  
State of California

DANIEL E. LUNGREN  
Attorney General

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OPINION	:	
	:	No. 97-809
of	:	
	:	June 2, 1998
DANIEL E. LUNGREN	:	
Attorney General	:	
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CLAYTON P. ROCHE	:	
Deputy Attorney	:	
General	:	
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THE HONORABLE STEVE BALDWIN, MEMBER OF THE CALIFORNIA ASSEMBLY, has requested an opinion on the following questions:

1. May a private nonprofit religious school deny admission to a student solely on the basis that the student's religious beliefs are inconsistent with the religious beliefs of the school?
2. May a city lease a public building to a private nonprofit religious school without requiring that the school be open to all religious beliefs of prospective students?
3. May a city refuse to lease a public building to a private nonprofit religious school solely on the basis that the school is not open to all religious beliefs of prospective students?

CONCLUSIONS

1. A private nonprofit religious school may deny admission to a student solely on the basis that the student's religious beliefs are inconsistent with the religious beliefs of the school.
2. A city may lease a public building to a private nonprofit religious school without requiring that the school be open to all religious beliefs of prospective students.
3. A city may not refuse to lease a public building to a private nonprofit religious school solely on the basis that the school is not open to all religious beliefs of prospective students.

## ANALYSIS

### 1. Denying Student Enrollment

The first question presented for analysis is whether a private nonprofit religious school may deny admission to a student solely because the student's religious beliefs are in conflict with the religious beliefs of the school. We conclude that the school may do so.

We note initially that a private nonprofit religious school is not part of the public school system required by the Constitution. (Cal. Const., art. IX, § 5.) If a private full-time day school has filed the requisite private school affidavit (see Ed. Code, § 33190), students attending the school are exempt from public school attendance (see Ed. Code, §§ 48200, 48222).

We also note that a private school normally would not be subject to either the equal protection clause of the Fourteenth Amendment of the United States Constitution Footnote No. 1 or its California equivalents (Cal. Const., art. I, § 7). Footnote No. 2 As explained by the court in *Air Line Pilots Ass'n v. Dept. of Aviation* (7th Cir. 1995) 45 F.3d 1144, 1149: "As a general rule, the conduct of private parties lies beyond the Constitution's scope." The court, however, enumerated four situations where "governmental authority dominates an activity to such an extent that its participants must be deemed to act with the authority of the state, [and] constitutional restraints apply." (*Ibid.*) These are (1) where there is a "'symbiotic relationship' between the private actor and the state," (2) "where the state commands or encourages the private discriminatory action," (3) "when a private party carries on a traditional public function," and (4) "when the involvement of governmental authority aggravates or contributes to the unlawful conduct." (*Ibid.*)

Of these four tests, it might superficially appear that a private religious school "carries on a traditional public function" for purposes of constitutional analysis. However, this test is applicable only when the state delegates to a private party public functions under circumstances that leave no alternative source of benefits for its citizens. (See *Flagg Bros., Inc. v. Brooks* (1978) 436 U.S. 149, 157-164.) Such is not the case with respect to private schools, religious or otherwise; California has its own system of public schools for its citizens. Accordingly, we find no constitutional impediment under the equal protection clause with respect to a private nonprofit religious school denying admission to a prospective student solely because his or her religious beliefs are inconsistent with the religious beliefs of the school.

Indeed, we find constitutional language that generally protects the school's decision to exclude those who do not subscribe to its religious beliefs. The "religion clauses" are contained in the First Amendment of the United States Constitution: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." Footnote No. 3 California has its own constitutional counterparts: "Free exercise and enjoyment of religion without discrimination or preference are guaranteed. . . . The Legislature shall make no law respecting an establishment of religion . . . ." (Cal. Const., art. I, § 4.)

In *Molko v. Holy Spirit Assn.* (1988) 46 Cal.3d 1092, 1112-1113, the court explained the principles to be applied in analyzing the religion clauses:

"The religion clauses protect only claims rooted in religious belief. [Citation.] The free exercise clause protects religious beliefs absolutely. [Citation.] While a court can inquire into the *sincerity* of a person's beliefs, it may not judge the truth or falsity of those beliefs. [Citation.] The government may neither compel affirmation of a religious belief [citation], nor penalize or discriminate against individuals or groups because of their religious beliefs [citation], nor use the taxing power to inhibit the dissemination of particular religious views. [Citation.]

"However, while religious *belief* is absolutely protected, religiously motivated *conduct* is not. [Citations.] Such conduct 'remains subject to regulation for the protection of society.' [Citation.] Government action burdening religious conduct is subject to a balancing test, in which the importance of the state's interest is weighed against the severity of the burden imposed on religion. [Citation.] The greater the burden imposed on religion, the more compelling must be the government interest at stake. [Citations.] A government action that passes the balancing test must also meet the further requirements that (1) no action imposing a lesser burden on religion would satisfy the government's interest and (2) the action does not discriminate between religions, or between religion and nonreligion. [Citation.]"

The religion clauses were more recently described in *Rowe v. Superior Court* (1993) 15 Cal.App.4th 1711, 1725, as follows:

". . . Commonly referred to as the establishment and free exercise clauses, they together permit and require that government maintain a 'benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference.' [Citation.]

"The 'benevolent neutrality' required by the First Amendment involves a delicate balance between the avoidance of sponsorship on the one hand and interference on the other. The United States Supreme Court has noted that the two religion clauses exist in 'tension' with one another [citations] and has 'struggled to find a neutral course between [them], both of which are cast in absolute terms, and either of which, if expanded to a logical extreme, would tend to clash with the other.' [Citation.]"

The free exercise clause "does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).'" (*Employment Div., Ore. Dept. of Human Res. v. Smith* (1990) 494 U.S. 872, 879, quoting *United States v. Lee* (1982) 455 U.S. 252, 263, fn. 3.) **Footnote No. 4**

Here, not only is the free exercise clause implicated, so also is the constitutional right to associate with those of similar beliefs. "Congress shall make no law . . . prohibiting . . . the right of the people peaceably to assemble . . ." (U.S. Const., 1st Amend.) "[I]mplicit in the right to engage in activities protected by the First Amendment [is] a corresponding right to associate with others in pursuit of a variety of political, social, economic, educational, religious, and cultural ends." (*Roberts v. United States Jaycees* (1984) 468 U.S. 609, 622.) In *Widmar v. Vincent*,

*supra*, 454 U.S. at 269, the court recognized religious worship and discussion as "forms of speech and association protected by the First Amendment. [Citations.]" Clearly, the operation of a private nonprofit religious school implicates constitutional rights of the free exercise of religion, speech, and association.

With these constitutional freedoms and rights in mind, we examine whether there is a "valid and neutral law of general applicability" that would prevent a private religious school from denying admission to a student with contrary religious beliefs. Only one statute appears to require analysis, the Unruh Civil Rights Act (Civ. Code, § 51; "Act"). **Footnote No. 5** Section 51 states in part:

"All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, or disability are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."

In interpreting the language of section 51, we apply well established rules of statutory construction. "Statutes must be construed so as to give a reasonable and common-sense construction consistent with the apparent purpose and intention of the law makers - a construction that is practical rather than technical, and will lead to wise policy rather than mischief or absurdity. [Citation.]" (*People v. Turner* (1993) 15 Cal.App. 4th 1690, 1696; see also *Harris v. Capitol Growth Investors XIV* (1991) 52 Cal.3d 1142, 1165-1166.) "Judicial doctrine governing construction of a law to avoid unconstitutionality is well settled. If "the terms of a statute are by fair and reasonable interpretation capable of a meaning consistent with the requirements of the Constitution, the statute will be given that meaning, rather than one in conflict with the Constitution."" (*Rowe v. Superior Court, supra*, 15 Cal.App.4th at 1722.)

Recently the California Supreme Court examined the requirements of the Act with respect to membership in the Boy Scouts of America. (*Curran v. Mount Diablo Council of the Boy Scouts* (1998) 17 Cal.4th 670.) After reviewing the legislative history of the statute and prior judicial decisions, the court observed:

". . . [A]lthough past California decisions demonstrate that the Act clearly applies to any type of for-profit commercial enterprise, and to nonprofit entities . . . whose purpose is to serve the business or economic interests of its owners or members, no prior decision has interpreted the 'business establishments' language of the Act so expansively as to include the membership decisions of a charitable, expressive, and social organization, like the Boy Scouts, whose formation and activities are unrelated to the promotion or advancement of the economic or business interests of its members. (See, e.g., *Hart v. Cult Awareness Network* (1993) 13 Cal.App.4th 777 [organization established to educate the public about the harmful effect of cults is not a business establishment for purposes of the Unruh Civil Rights Act].) In our view, given the organization's overall purpose and function, the Boy Scouts cannot reasonably be found to constitute a business establishment whose membership decisions are subject to the Act." (*Id.*, at p. 697; fn. omitted.)

The court described the Boy Scouts' educational function as particularly significant in finding that the organization was not a "business establishment" for purposes of the Act:

". . . The record establishes that the Boy Scouts is an organization whose primary function is the inculcation of a specific set of values in its youth members, and whose recreational facilities and activities are complementary to the organization's primary purpose. . . . Scouts meet regularly in small groups (often in private homes) that are intended to foster close friendship, trust and loyalty, and scouts are required to participate in a variety of activities, ceremonies, and rituals that are designed to teach the moral principles to which the organization subscribes." (*Id.*, at pp. 697-698.)

Similarly, here, a private nonprofit religious school has as its "overall purpose and function" the education of children in keeping with its religious beliefs. The "inculcation of a specific set of values," with programs "designed to teach the moral principles to which the [school] subscribes," prevents such a school from being considered a "business establishment" whose student admission practices would be subject to the Act. Footnote No. 6 Such construction of the Act is consistent with the requirements of the Constitution. (See *Curran v. Mount Diablo Council of the Boy Scouts*, *supra*, 17 Cal.4th at 722-729 (conc. opn. of Kennard, J.).)

No other constitutional or statutory provision appears to be relevant to our discussion. We thus conclude that a private nonprofit religious school may deny admission to a student solely on the basis that the student's religious beliefs are inconsistent with the religious beliefs of the school.

## 2. Leasing City Property

The second question presented is whether a city may lease a public building to a private nonprofit religious school without requiring the school to be open to all religious beliefs of prospective students. We conclude that a city may do so.

For our purposes we may assume that (1) the city has made the public building available to all private organizations or persons who might wish to utilize it, (2) the city has not restricted the building's use to religious schools, and (3) the lease has been negotiated in an arms-length transaction showing no preference to the religious school and for an adequate consideration.

A city may generally lease property to private individuals or organizations. (See Cal. Const., art. XI, §§ 3, 5; Gov. Code, §§ 37350, 37380, 37395.) The issue to be resolved is whether the establishment clause of the First Amendment of the United States Constitution and its California counterpart, as quoted above, require a city to lease its property for a school only upon the condition that the school be open to all religious beliefs. Under the establishment clause, recent case law has focused upon whether the alleged violation may be construed as an "endorsement" of a particular religion. (See *Hawley v. City of Cleveland* (6th Cir. 1994) 24 F.3d 814, 822.)

In *Christian Science v. City and County of San Francisco*, *supra*, 784 F.2d 1010, the Ninth Circuit Court of Appeals considered whether the San Francisco Airport Commission could lease

space at the San Francisco Airport for a Christian Science Reading Room. The court found that the commission's prior policy of allowing the religious group to rent space at the airport was purely secular, to obtain revenue, since (1) a standard lease was used that applied to all tenants, (2) the rent schedule was one that applied to all tenants, (3) the transaction was an arms-length real estate transaction without additional motivation, and (4) there was no purpose to advance religion. (*Id.*, at p. 1014.) The religious benefit received by the group in operating the reading room was determined by the court to be only "incidental" and thus permissible under *Widmar v. Vincent*, *supra*, 454 U.S. at 273-274. (*Ibid.*) Finally, the court pointed out that there were no "entanglements" with religion since the commission did not tell the religious group how to run its reading room, and the religious group did not tell the commission how to run the airport. (*Id.*, at p. 1015; see also generally, *Walz v. Tax Commission* (1970) 397 U.S. 664, 695.) The court upheld the lease under both federal and state Constitutions on the basis that the commission's prior policy did not favor or prefer any religion or religion as a whole and did not have the direct, immediate, or substantial effect of promoting religious purposes. (*Id.*, at pp. 1014-1015; see also *California Teacher's Association v. Riles* (1981) 29 Cal.3d 794, 806; 25 Ops.Cal.Atty.Gen. 309 (1953).)

Likewise, in *Woodland Hills Homeowners Organization v. Los Angeles Community College District* (1990) 218 Cal.App.3d 79, the court concluded that a lease of surplus property by a school district to a religious group did not violate either the federal or state Constitutions. The surplus property was offered by competitive bid for general uses, including "institutional, community or residential purposes," and the religious group was the sole bidder. The court found that (1) the purpose of the lease was to generate revenue for the school district, (2) there was no governmental sponsorship or promotion of religious objectives by virtue of the lease since all religious and secular groups had an equal opportunity to lease the property, and (3) any "entanglements" were merely those which usually occur between a landlord and tenant. (*Id.*, at pp. 94-95.) The court noted that the California Constitution "has never been interpreted . . . to require governmental hostility to religion, nor to prohibit a religious institution from receiving an incidental benefit from a statute which has a secular primary purpose." (*Id.*, at p. 93.)

These California cases are supported by cases in other jurisdictions. In *Brashich v. Port Auth. of New York* (S.D.N.Y. 1979) 484 F.Supp. 697, affirmed (2d Cir. 1980) 628 F.2d 1344, 791 F.2d 224, the court approved the placing of three religious chapels at John F. Kennedy Airport. The court concluded that although "the Port Authority has made accommodations for religion, it has not established religion." (*Id.*, at p. 704.) The same conclusion was reached by the court in *Hawley v. City of Cleveland*, *supra*, 24 F.3d 814, where the city leased space for a Catholic chapel at the Cleveland Hopkins International Airport. The court concluded:

". . . [T]he chapel serves the secular purpose of accommodating the religious needs of travellers and providing them with a place for rest and comfort. Moreover, because a reasonable observer would not conclude that the city endorses religion by allowing the diocese to maintain the chapel, the chapel's lease and its authorizing ordinance do not constitute an endorsement of religion, and thus their primary effect is one that neither advances nor inhibits religion. We find, finally, that the chapel's lease and its authorizing ordinance also do not foster an excessive government entanglement with religion. Accordingly, the lease and the ordinance do not violate the Establishment Clause of the First Amendment. (*Id.*, at p. 822, fn. omitted.)

Here, we believe that a lease of a public building to a private nonprofit religious school in an arms-length transaction without preference being given to religion *per se* would not constitute a violation of either the federal or state Constitutions. (See 45 Ops.Cal.Atty.Gen. 89 (1965); 43 Ops.Cal.Atty.Gen. 62 (1964); 25 Ops.Cal.Atty.Gen. 309, *supra*.) As reaffirmed by the United States Supreme Court in *Corporation of Presiding Bishop v. Amos* (1987) 483 U.S. 327, 334:

"This court has long recognized that the government may (and sometimes must) accommodate religious practices and that it may do so without violating the Establishment Clause.' . . . There is ample room under the Establishment Clause for 'benevolent neutrality which will permit religious exercise to exist without sponsorship and without interferences.' . . ."

We conclude that a city may lease a public building to a private nonprofit religious school without requiring that the school be open to all religious beliefs of prospective students.

### 3. Refusing to Lease City Property

The final question presented is whether a city may refuse to lease a public building to a private nonprofit religious school solely on the basis that the school is not open to all religious beliefs of prospective students. We conclude that the city may not so refuse.

With respect to the equal protection clause of the federal Constitution, it is evident that the city's leasing policy would divide potential private religious school lessees into two groups: those who would not allow admission to students of all religious beliefs, and those who would. Whether a city may make such a division is not easily resolved. In what the United States Supreme Court has characterized as an "extraordinarily sensitive area of constitutional law," "we can only dimly perceive the lines of demarcation" between permissible and impermissible government action involving religious institutions. (*Lemon v. Kurtzman* (1971) 403 U.S. 602, 612.)

On the one hand, the city's interests would include preventing religious discrimination on public property, fostering educational opportunities for all students, and avoiding giving the city's "imprimatur of approval" to the school's religious creed, whatever it might be. The establishment clause "prohibits government from appearing to take a position on questions of religious belief . . ." (*Id.*, at pp. 593-594; see *Church of Lukumi Babalu Aye, Inc. v. Hialeah* (1993) 508 U.S. 520, 532-533; *Allegheny County v. Greater Pittsburgh ACLU* (1989) 492 U.S. 573, 605; *Corporation of Presiding Bishop v. Amos*, *supra*, 483 U.S. at 335; *Woodland Hills Homeowners Organization v. Los Angeles Community College Dist.*, *supra*, 218 Cal.App.3d at 92-93.)

On the other hand, the interests of the school officials include, as discussed in answer to the first question, the free exercise of religion clause, the freedom of speech clause, and the freedom of association clause of the state and federal Constitutions. (See *Widmar v. Vincent*, *supra*, 454 U.S. at 269-270.)

Weighing these competing interests, we find that although a state or local government may not discriminate against religious groups, a religious group is not subject to the same

requirement, even when on public property. While the city may wish to foster educational opportunities, the public school system, including charter schools, is available as an alternative, as well as other religious schools that accept students of all religious faiths. **Footnote No. 7** Moreover, as discussed above, courts have rejected the claim that an arm's-length lease of public property to a religious group gives the government's "imprimatur of approval" and "endorsement" to the religious beliefs of the group. (See *Hawley v. City of Cleveland*, *supra*, 24 F.3d at 822; *Christian Science v. City and County of San Francisco*, *supra*, 784 F.2d at 1014-1017; *Brashich v. Port Auth. of New York*, *supra*, 484 F.Supp. at 703; *Woodland Hills Homeowners Organization v. Los Angeles Community College Dist.*, *supra*, 218 Cal.App.3d at 94-95.)

While the issue is not free from doubt, we believe that a court would side with the private religious school officials' free exercise of religion, speech, and association constitutional rights, regardless of which balancing test (the compelling state interest test or rational basis test) is used. (See *Christian Science v. City and County of San Francisco*, *supra*, 784 F.2d at 1012-1013.)

In answer to the third question, therefore, we conclude that a city may not refuse to lease a public building to a private nonprofit religious school solely on the basis that the school is not open to all religious beliefs of prospective students.

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**Footnote No. 1**

"No state shall make or enforce any laws which shall . . . deny to any person within its jurisdiction the equal protection of the laws."

**Footnote No. 2**

California courts have interpreted these provisions in the same manner as federal courts have interpreted the Fourteenth Amendment. (See *Dept. of Mental Hygiene v. Kirshner* (1965) 62 Cal.2d 586, 588; *In re Evans* (1996) 49 Cal.App.4th 1263, 1270; *Reece v. Alcoholic Bev. Etc. Appeals Bd.* (1976) 64 Cal.App.3d 675, 679.)

**Footnote No. 3**

These federal constitutional protections are enforceable against the states through the Fourteenth Amendment. (See *Everson v. Board of Education* (1947) 330 U.S. 1, 8; *Cantwell v. Connecticut* (1940) 310 U.S. 296, 303-304.)

**Footnote No. 4**

"[A] neutral law of general application need not be supported by a compelling state interest . . ." (*People v. Peck* (1996) 52 Cal.App.4th 351, 358.) However, if the government burden is upon not only an individual's free exercise of religion right but also upon some other constitutional right such as freedom of speech or freedom of association (U.S. Const., 1st Amend.), a compelling state interest might be required for imposition of the state burden (see *Employment Div., Ore. Dept. Of Human Res. v. Smith*, *supra*, 494 U.S. at 881; *Widmar v. Vincent* (1981) 454 U.S. 263, 269-270; *Christian Science v. City and County of San Francisco* (9th Cir. 1986) 784 F.2d 1010, 1012-1013; *Smith v. Fair Employment & Housing Som.* (1996) 12 Cal.4th 1143, 1164-1165).

**Footnote No. 5**

All references hereafter to the Civil Code are by section number only.

**Footnote No. 6**

The legislative history of the Act fully supports the conclusion that the Legislature intended to exclude religious schools from the purview of the Act. (See *Curran v. Mount Diablo Council of the Boy Scouts*, *supra*, 17 Cal.4th at 709-715 (conc. opn. of Mosk, J.).)

**Footnote No. 7**

Indeed, we have not been apprised that a Catholic school *would* deny admission to a Jewish child or a Muslim school *would* deny admission to a Buddhist child. We assume that the question presented has a factual basis.

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