SONOMA • MARIN
FAIRGROUNDS &
EVENT CENTER
FOURTH DISTRICT AGRICULTURAL ASSOCIATION

October 23, 2022

City of Petaluma
City Council
11 English Street
Petaluma, CA 94952

Dear Councilmembers,

I look forward to hearing the Healthy Democracy report on Monday night. It has been a consuming process for participants, and their time commitment is appreciated. It was a thorough project, and the months dedicated to gathering public input were necessary to collect the information.

Given the lengthy time allocated for outreach, it is disconcerting that the staff is recommending the Council immediately approve a transfer of management of the fairgrounds property to the City of Petaluma, effective January 1, 2024. The recommendation details that the 5-day Sonoma-Marin Fair could continue, albeit on a smaller footprint. Further, on December 31, 2023, all leases between tenants and the 4th District Agricultural Association (schools, small businesses, and the racing promoter) will terminate. The City will become the landlord and may or may not continue the leased occupancy, and if the lease arrangement continues, there will be new terms and conditions.

It seems premature to have this recommendation before the City Council before the study session with Healthy Democracy consultants scheduled for Monday.

Luckily, an alternative recommendation would provide the time needed for stakeholders to respond to this extreme change. The alternative "status quo" option will allow the needed five years for the 4th DAA to explore opportunities, will provide the hundreds of students attending school on the site time to determine their educational path, and will allow breathing room for local businesses leasing from the District to decide if the terms and conditions offered by the City are feasible. Also, it will permit the 4th DAA to be considered for millions of dollars in resiliency funding offered by the California Department of Agriculture (CDFA).

The Staff Report is lofty and provides interesting information about the property – but information already provided by consultants and from online documents.

If taken out of context, there are snippets of 4th DAA financial data in the staff report that would mislead the reader. The report states, "since City staff are not intimately familiar with accounting customs and norms typically utilized by California agricultural associations (I believe the writer means District Agricultural Associations), more research will be necessary to ascertain the sources of certain revenue streams." Given the lack of understanding of DAA financial reporting, budgets, and annual statement of operations reports, it would have been prudent for the information related to the 4th DAA financial condition to be removed from this report until the information could be confirmed.

Should the Council act on the primary staff recommendation and, in essence, assume site control on January 1, 2024, it will be one of the most significant decisions made in this decade for the city government and the people it serves. Surprisingly, the staff is asking you to take a leap of faith with so little information outlined in the report detailing what site control means for the agency.

I don't have the answers, but here are questions I would ask if sitting in your seat:

1. Why now? The action taken by this City Council will pass to the incoming City Council for implementation. It's a heavy lift that will likely have opposition. Shouldn't the incoming Council make this monumental decision?

2. What are the financial projections related to the City managing the fairgrounds property? (The DAA gets state monies for administration, operations, and programming.)

3. The school tenants have realized rent and expanded use of the facility below market average. Will the City as the landlord, be able to keep the leases affordable? Doesn't Proposition 218 require the City to recoup all taxpayer costs when leasing a facility or charging for a service?

4. At the cost of the 4th DAA, the fair board has activated evacuation shelters for people and animals without a declared state or local emergency – no monies from FEMA or local agencies. Can the City of Petaluma use their city's taxpayer dollars to do the same?

5. The California Department of Agriculture (CDFA) has indicated an interest in having the fair property become one of a handful of Resiliency Centers in California. Millions of dollars are earmarked for these projects, and project success will likely bring more funding. Does the City of Petaluma want to be the jurisdiction that turned this opportunity down for Sonoma County? And, related, does the City of Petaluma have $20 million in funding to kick start the facility upgrade?

6. How much immediate capital improvement funds are needed to purchase rolling stock, tables and chairs, stages, pipe and drape, and other equipment required to be an event center?

7. What city department will manage the facility, and does that city department have the capacity to take on a 55-acre facility that requires weekend employees? Does the public believe the city is effectively managing the parks and facilities they work now?

8. Except for Butter and Eggs Day and a few other downtown celebrations, the fairgrounds host cultural and public events far exceeding the size of events held at the Community Center or other facilities within the city limits. Many of these events are promoted by individuals or organizations that cannot provide the level of insurance needed. There is a risk for the facility. The California Fair industry has a self-insurance pool allowing daily renters to purchase general and alcohol liability insurance. Does the City of Petaluma have a program to enable these events to use facilities, even when they are considered hazardous? And, concerning hazardous events, what industry resources are available for local government to identify high-risk rentals?

4th DAA Viability

Can we stop this rhetoric? The report suggests that the 4th DAA is financially unstable, and city staffers are concerned that the 4th DAA may not sustain facility management should a long-term lease be reached. The 4th DAA is financially solid, evident by the annual Statement of Operations filed with CDFA. CDFA evaluates all California fairs by analyzing reserve percentages. Fairs with administration challenges, low reserve percentages, or noted concerns in the biannual audit are included on a "watch list" and have intense oversight. The 4th DAA has never been on this list. To demonstrate, the 4th DAA reported the following reserve percentages in the last few years:

Year: 2019, 63%
Year: 2020, 146%
Year: 2021, 202%

During a recent meeting with city staff and the ad-hoc Council, I explained that the California Fair industry was struggling with the old funding source that derived monies from horse racing. However, in 2018, legislation changed the funding source to sales tax revenues earned at the state's fairgrounds.

The staff called out the 4th DAA financial conditions in 2021. Were 2020 and 2021 challenging years? Of course, but to explain the challenges, we can take a page out of your FY 2022-23 City of Petaluma ADOPTED Operating and Capital Improvement Budget:

> *Excerpt from your report: We have been through a lot in the last few years. Our dedication to the Community and our commitment to prudently manage the City's finances has contributed to our ability to endure these challenging times. As we draft this year's budget document, the impacts of the pandemic have subsided compared to the prior year but remain ongoing and fluid and therefore continue to affect City operations and revenues. Recovery is occurring, and revenues are nearing pre pandemic levels however the nature of the economy – from high inflation, supply chain shortages and ongoing world events – remains unstable…The City's sales tax revenues, the largest portion of General Fund revenues, continue to recover since the onset of the pandemic.*

As part of the selection process to make the shortlist for the resiliency project funding, CDFA analyzed the financial condition of all the fairs. The 4th DAA would not be considered for the resiliency monies if there was a concern at the state level for our financial stability.

Resolution "whereas" paragraph, no restrictions on land use

Staff is requesting the Council approve a resolution regarding the fairgrounds property. One of the paragraphs states:

> *WHEREAS, the City bond indenture for the purchase of the park land included no restrictions on the land's use, nor were deed restrictions on the land's use recorded against the property, and the City continues to own the property in fee subject only to easements that apply to the property;*

On several occasions, the 4th DAA board and staff had asked for a written opinion from the city attorney regarding this legal conclusion. This current opinion contradicts the legal opinions of past City attorneys (see attachments).

For example, in a letter dated March 13, 1978, from City Attorney Klose to the Attorney General's office, Mr. Klose writes, "The real property in question was acquired exclusively for park purposes pursuant to a bond issue approved by the voters of Petaluma on December 14, 1910. To allow commercial usage of the property, as proposed by the Association, would violate Government Code Section 38450, requiring a vote of the people prior to abandonment for park purposes".

Can you share Attorney Danly's written opinion that explains why the City's highly respected, previous attorneys were wrong? I have asked CDFA's attorney to share with you his department's opinion that contradicts Mr. Danly's decision, too. I am confident we will have that for you soon.

Staff's Summary, Page 19

I find the paragraph on the lower portion of page 19 disrespectful to the 4th DAA board of directors. Really? The word "local" is used three times in one sentence. The 4th DAA board has total autonomy in the District's policies, procedures, processes, and facilities management. Our board members have ties to the founding families of your City – families that are significant employers and who have supported decades of Petaluma's celebrated heritage. We have board members or their spouses that are part of the Benedetti, Libarle, Herrerias, McClure, Sonnichsen, and Parks families. Our 200-plus volunteers and employees are Petalumans, many raised in your City or the surrounding rural areas. The 4th DAA stakeholders are likely more "local" than your team.

This is not the first time the 4th DAA board members have been slighted. The fair board has been left out of the room, and it's time for appointed fair representatives to be at the table. As councilmembers, I hope you understand the importance of strong communication between the two governing bodies.

We must work together to make the fairgrounds property a year-round community event center that celebrates our rich agricultural heritage while providing a state-of-the-art resiliency center for northern California and the bay area.

Sincerely,

Tawny Tesconi

Tawny Tesconi
Chief Executive Officer
4th District Agricultural Association

Attachments: Letter dated March 13, 1978 from Attorney Klose to AG Younger
Letter dated August 15, 1990 from Attorney Rudnansky to Beverly Wilson

CITY OF PETALUMA, *California*

POST AND ENGLISH STREETS 94952 · TELEPHONE (707) 763-2613

Office of the City Attorney
P. O. Box 61
March 13, 1978

Evelle J. Younger, Esq.
Attorney General
Department of Justice
555 Capitol Mall - Suite 350
Sacramento, CA 95814

Attention: George J. Roth, Esq.
Deputy Attorney General

Subject: Fourth District Agricultural Association - Use of City Property

Dear Mr. Roth:

I have been forwarded a copy of your September 27, 1977, letter opinion to Mrs. Beverly Wilson, Secretary-Manager of the Sonoma-Marin Fair, wherein you conclude that the Fourth District Agricultural Association is exempt from City Zoning Ordinance regulations. I believe your conclusion is in error in at least two respects, which I summarize as follows:

1. The plain language of Government Code Section 53090 seems clearly to include the Association within the definition of "local agency," and thereby makes the association subject to local zoning ordinances. See Government Code Section 53091.

2. The real property in question was acquired exclusively for park purposes pursuant to a bond issue approved by the voters of Petaluma on December 14, 1910. To allow commercial usage of the property, as proposed by the Association, would violate Govern-

ment Code Section 38450, requiring a vote of the people prior to abandonment for park purposes. See also Government Code Section 38502 forbidding sale or conveyance for other than park purposes without a vote of the people. The Association takes the leased property subject to whatever burdens existed prior to the lease. While fairgrounds and exhibition usage can be construed as consistent with park purposes, commercial subletting cannot, except perhaps in connection with service of the incidental needs of the fairgoers and exhibition patrons.

A N A L Y S I S

1. Government Code Sections 53090 through 53095. I believe that the opinion at 56 Ops.Atty.Gen.210 which your letter heavily relies on errs in its analysis of the status of district agricultural associations in several particulars.

Firstly, the above cited opinion and your letter rather casually dismiss the plain language of the statute in favor of an inconclusive analysis of legislative intent. At 56 Ops.Atty.Gen.212, Select Base Materials v. Board of Equalization (1959) 51 Cal.2d 640, 355 P.2d 672 is cited for the proposition that "The legislative purpose will not be sacrificed to a literal interpretation of the act." Left out is the context of the statement, as stated at 651 Cal.2d 654, 355 P.2d 675-76:

> "... [E]very statute, should be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect." (Citations). If possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose. (Citations). Such purpose will not be sacrificed to a literal construction of any part of the act."

It is apparent that in attempting to avoid a "literal construction" of Government Code Sections 53090 through 53095, the opinion and your letter fail to consider "the significance of every word, phrase, sentence and part of the act in pursuance of the legislative purpose," namely that portion which defines "local agency" as an agency of the state for the performance of governmental or proprietary function within limited boundaries. District agricultural associations fit the definition like a glove.

While the opinion correctly points out some characteristics of associations in common with state agencies, 56 Ops.Atty.Gen. 214, it ignores those that are held in common with local agencies clearly covered under Government Code Section 53090, e.g. formation by local residents (Agr. Code § 3951; all references are to Agr. Code), articles of association required to be filed (§ 3952), independent corporate powers (§ 3954), officers and directors to be district residents (§ 3956), county representation (§ 3957). Note further that other local districts which clearly fall under Government Code Section 53090 are created directly by statute, and not "by vote of local persons operating under a statute." 56 Ops.Atty.Gen.214. Refer to the Deerings Uncodified Water Acts or the appendix of West's Water Code for extensive examples of agencies so created by statute, which, I think you will concede, are clearly subject to Government Code Section 53090.

Once ascertained, legislative intent will be given effect though it may not be entirely consistent with the strict letter of a statute. But where a statute is free from ambiguity and uncertainty, it needs no construction, and it will be enforced as written. 45 Cal.Jur.2d 635, Malone v. State Employees Ret. Syst. (1957) 151 Cal.2d 562, 312 P.2d 296. As the foregoing analysis makes clear, the legislative intent with regard to district agricultural associations is not indicated in any fashion and in the face of unambiguous language in Government Code Section 53090, includes the very characteristics possessed by the districts - an agency of the state operating within fixed boundaries - it must yield to local control in zoning matters.

Your letter states that "it is well established" that district agricultural associations operate in a field preempted by state mandate. It may be well established with the Attorney General's office, but it is hardly well established anywhere else, particularly in the courts.

Based upon the questionable legal underpinnings of the conclusions stated in your letter, I would be prepared to advise my City's Council to authorize litigation to enforce the City Zoning Ordinance on the basis of Government Code Sections 53090 ff alone.

2. The real property in question is subject to limitation to park uses, by state statute, and cannnot be devoted to other uses inconsistent therewith.

It is Hornbook law that applicable statutes are an integral part of a lease, and affect its interpretation. Miller & Starr Current Law of California Real Estate (1971 edition) 401, and citations therein. Likewise, it is fundamental that a lessee succeeds only to those rights possessed by its lessor. 30 Cal.Jur.2d 141; Walther v. Sierra Railway Co. 141 Cal. 288, 74 P 840.

Government Code Section 38450 requires a vote of the electors of a city prior to the abandonment of a park use. The real estate in question was acquired for park purposes with proceeds of a general obligation bond issue approved by the electors of the City on December 14, 1910.

While I believe that fair and exhibition purposes are consistent with use of these lands for park purposes, commercial subletting of the premises, as the Association apparently intends to do, is inconsistent with such a use. Since the city is restricted from such activity, so must be the Association.

Based on the aforementioned authorities, I am prepared to recommend litigation to my client, the City Council, to enforce the City's Zoning Ordinance and other restrictions on the subject real property. I believe, however, that you should be given the opportunity to re-examine the question and advise your client accordingly.

In the event that an actual violation of the Zoning Ordinance occurs during my pendency of your review, I will also seek permission from my client to commence litigation. By copy of this letter your client is so advised.

I trust that this matter may be resolved amicably, and I would welcome any questions or discussion you may have.

Very truly yours,

P. Lawrence Klose
City Attorney

PLK:mi

cc Mayor and members of the City Council
City Manager
Director of Community Development
Henry E. Tomasini, President, Fourth District Agricultural Assoc.
Beverly Wilson, Secretary, Fourth District Agricultural Assoc.

City of Petaluma 11 English Street
Post Office Box 61 - Petaluma, California 94953

OFFICE OF THE CITY ATTORNEY (707) 778-4362

August 15, 1990

Beverly C. Wilson
Fourth District Agricultural Association
Post Office Box 182
Petaluma, California 94952

RE: Fairgrounds Lease

Dear Ms. Wilson:

Recently, the City Council of Petaluma has raised concerns regarding the type of uses being allowed by the District on the fairgrounds. It is our understanding that the District has been subleasing the fairgrounds to individuals or entities for commercial purposes.

The purpose of this letter is to provide you with our analysis regarding this issue and as a springboard for further discussions with the District regarding the concerns of the City Council and the legality of the District's actions under the lease with the City.

The property in question was purchased by the City in 1911. The money used to purchase the property was obtained through a bond issue approved by the voters of Petaluma in December of 1910. The proposition before the voters read in its pertinent part:

> "...shall the City of Petaluma incur a bonding indebtedness of $20,000 to pay the cost of acquiring certain lands for public purposes for a public park..." (emphasis added)

As you are undoubtedly aware, the property has been leased to the Fourth District Agricultural Association through a number of different leases. The last lease was made on January 1, 1973 for a term of 25 years with an option to renew for 25 more years. The lease in its pertinent part states:

> "It is mutally understood and agreed that the Lessee [District] shall have the right to use said premises demised herein for all fair and exhibition purposes authorized and permitted under the laws of the State of California as they may exist from time to time...It is understood and agreed that the Lessee shall have full and complete control of and over the property covered by this lease, and all the improvements and property now or hereinafter located or placed thereon..." (emphasis added)

I have been advised that the Agricultural District is and has in the past subleased the property to commercial enterprises such as H&R Block and presently to a flower stand.

As more fully explained below, it appears that such leasing activities are beyond the intended scope of the lease agreement and may be in violation of the District's statutory purpose and authority.

The critical issue in regards to this analysis of whether or not the District is in violation of its lease, is whether or not the subleasing of the City's property by the District to commercial enterprises constitutes a use of the property for "all fair and exhibition purposes authorized and permitted under the laws of the State of California..."

The subleasing of the property to such commercial enterprises as H&R Block and to an entity for the sale of flowers cannot conceivably be considered a "fair" or "exhibition." In addition, it would appear that the subleasing of the property for such purposes by the District would be an overstepping of its statutory purpose as defined by Food and Agricultural Code Section 3951.

Even assuming the District would have the ability to lease property it owns to such enterprises, it is clear that the property in question is owned by the City and merely leased by the District and thus subject to the restrictions for fair and exhibition purposes. The use and subleasing of the property by the District for purposes not authorized by the lease would be a violation of the lease which would allow its termination.

In addition, such uses appear to be in direct conflict with the use permit issued to the District in 1977. As you recall, the use permit allowed for the use of land for purposes listed on an exhibit. Neither the H & R Block lease or the flower stand lease falls within any of those express uses. Although I would anticipate that the District would argue that it is exempt from Petaluma's zoning regulations, I believe such a position in the present context would be erroneous. All legal authority to date holding that agricultural districts are exempt from local zoning ordinances all dealt with the situation where the district actually owned the property in question. In the instant case, the agricultural district does not own the property but merely leases from the City. Further, cases which indicate that the exemption/immunity is extended to lessees again are cases where the district or public entity actually owned the property. In essence, the exemption/immunity is passed through to the lessee. However, the initial exemption/immunity is derived from ownership of the property. Therefore, there appears to be no authority that the District is exempt from Petaluma's zoning ordinance and the restrictions of the use permit issued in 1977 since it does not own the property but is merely leasing the property from the City. Therefore, it would appear that the City may have the ability to

revoke the conditional use permit and terminate the lease. Finally, for the City to allow the continued commercial subletting of its premises by the Association would require a vote of electors of the City prior to such an abandonment for park use under Government Code Section 38450.

Although the City does not necessarily desire at this time to invoke such drastic remedies, it is concerned about the District's use of the land and the violation of the lease with the City. In this regard, the City would like to arrange a meeting with representatives of the District to discuss this matter in the hopes that the District and the City can voice their concerns and positions and hopefully resolve this matter in an amicable fashion.

Therefore, once you have had an opportunity to review this letter and discuss its contents with the appropriate District representatives, I would ask that you contact my office so that we may arrange a meeting within the next month.

The sending of this letter and the contents herein are not meant nor should it be interpreted as waiving any rights and remedies including but not limited to termination of the lease, the City may have under the terms of the lease. Nor is the letter meant nor should it be interpreted as waiving any violations of the lease by the District.

I look forward to hearing from you and hopefully resolving these issues in an amicable fashion. Thank you in advance for your anticipated courtesy and cooperation.

Very truly yours,

Richard R. Rudnansky
City Attorney

RRR:fmk
cc John Scharer
Warren Salmons
letter 47
LETTER