

HEBER PUBLIC UTILITY DISTRICT

REPORT TO BOARD OF DIRECTORS

MEETING DATE: June 21, 2108

FROM: Laura Fischer, General Manager

SUBJECT: Adopt Resolution 2018-07 Adopting Policy Number 3037
Establishing Contributions for Public Purposes

ISSUE: Shall the Board Adopt Resolution 2018-07 to adopt HPUD Policy
Number 3037?

GENERAL MANAGER'S RECOMMENDATION:

Adopt Resolution 2018-07 to establish policy number 3037.

FISCAL IMPACT:

No impact to the budget. All expenditures must be included in the Board approved budget.

BACKGROUND:

From time to time, the HPUD Board receives requests for donations from service organizations, non-profit corporations, school groups, businesses, and individuals.

Although it is common for businesses to make gifts and charitable contributions to generate goodwill for the company, in the public sector, California's Constitution specifically prohibits "gifts" of public resources, often referred to as the ban on "gifts of public funds". It also applies to gifts from either an agency or its officials to private citizens or organizations.

Because this ban is in the state Constitution it applies to all public agencies except charter cities. Special Districts have an additional burden when it comes to these type of expenditures. Not only must they demonstrate that the contribution serves a valid public purpose, but they must also demonstrate that the expenditure falls within the specifically enumerated powers of that particular type of district.

Another legal requirement is the prohibition against using public resources for personal or political purposes. Public resources include public money, and may also include anything paid for with public money, including equipment, supplies, staff time and public agency facilities.

DISCUSSION:

The prohibition against gifts of public funds has implications for charitable donations given by public agencies. Just because the donations request is from a charitable organization, the District must not assume it is appropriate to make a contribution.

There are some circumstances when a public agency support for charitable organizations are appropriate. Some examples are:

- 1) When the charity provides a service that complements or enhances a service that the public agency also provides.
- 2) When there is an identifiable secondary benefit to the public agency.
- 3) When the charity provides a service the public agency should provide but choose not to.

Examples of Ways to Document Benefits Associated With Charitable Support		
Relationship To Public Agency Programs	Example	Nature of Benefit(s)
1. Complementary service	Donation to the Tree Foundation in return for agreement to replace street trees that agency removes because of disease or old age	Tree Foundation has specialized knowledge about trees suitable for area. Tree Foundation shares goal of populating area with more tree, thereby saving energy and enhancing property values for residents. Other grants received by the Tree Foundation mean the agency and those it serves save money on replacing trees.
2. Demonstrable benefit	Boys and Girls Clubs' after-school programs	Such programs reduce the need for law enforcement activities in the area. Programs promote public safety and law-abiding youth in a positive, cost-effective manner.
3. Service the agency could provide but does not	Homeless shelter and associated placement programs	Such programs help end the cycle of homelessness. Reducing homelessness is one of the agency's housing element goals.

Ensuring that the expenditure is legal is the first step, but does not mean that it is the best use of resources. Making donations to charitable causes that are far away from the jurisdiction also presents a challenge because of the distance. It can be more difficult to justify the contribution as creating benefits to the jurisdiction's residents.

The least risky approach is to have the District's governing body make such a decision so the requisite findings on the benefit to the agency and the community it serves can be made. Such a process can also be transparent as placing the item on the agenda gives the public notice that such support is under consideration, and the community can weigh in on the use of public resources for such purposes.

CONCLUSION:

Adopting Resolution 2018-07 adopting policy 3037 will establish the public purposes for which donations and contributions can be made. It establishes the public purpose and some eligible events and activities that fall within the public purpose for the District. It establishes procedures that the requesting agency, group or individual must follow establishes monetary donation limitations.

As it is prudent to establish a policy regarding contributions for public purpose, staff recommends adopting Resolution 2018-07.

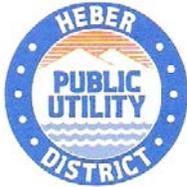
ALTERNATIVES:

1. Do not adopt Resolution 2018-07 establishing Policy Number 3037.
2. Adopt Resolution 2018-07 with changes.
3. Provide alternative direction to staff.

Respectfully Submitted,

Laura Fischer,
General Manager

Attachments: Resolution 2018-07
 Policy 3037 Contributions for Public Purposes



HEBER PUBLIC UTILITY DISTRICT CONTRIBUTIONS FOR PUBLIC PURPOSES

POLICY TITLE: CONTRIBUTIONS FOR PUBLIC PURPOSES

POLICY NO: 3037

ADOPTED VIA RESOLUTION: 2018-07

EFFECTIVE DATE: SEPTEMBER 1, 2018

3036.1 PURPOSE:

The intent of this policy is to establish policy for the Heber Public Utility District to contribute to the betterment of the Heber community it serves through contributions for public purposes within the scope of its jurisdiction.

3036.2 DEFINITIONS:

Public purposes within the jurisdiction of the HPUD are the following:

- 1) Matters pertaining to the HPUD itself;
- 2) Matters pertaining to the water operations of the HPUD; and
- 3) Matters pertaining to the wastewater operations of the HPUD; and
- 4) Matters pertaining to the parks and recreation operations of the HPUD.

Events that promote public purpose have the effect of:

- 1) Promoting business activity, growth, development, which in turn increase sales and real property tax revenue to the District;
- 2) Promotion of HPUD owned businesses or enterprises;
- 3) Promotion of HPUD, or HPUD sponsored or supported community programs and/or resources that are available to HPUD residents, such programs and resources to include volunteer services and charitable/nonprofit organization programs.
- 4) Promotion of private facilities available for HPUD resident use, including facilities of charitable/nonprofit organizations.
- 5) Promotion of HPUD facilities available for HPUD resident use.
- 6) Promotion of HPUD tourism on a local, state, national or worldwide scale.
- 7) Promotion of HPUD recognition, visibility, and/or profile on a local, state, national or worldwide scale.
- 8) Promotion of open, visible and accessible government by HPUD official appearances, participation and/or availability at an event.

- 9) Promotion of inter-governmental relations, i.e., cooperation and coordination of resources between the HPUD and other government agencies or entities in the Imperial Valley.
- 10) Promotion of HPUD attraction and retention of highly qualified employees, for which any such employee or prospective employee may receive no more than four tickets per event.
- 11) Promotion of public exposure and awareness of, the various recreational, cultural and educational venues and facilities available to the public within the District.
- 12) Meeting and greeting residents and visitors at HPUD held or sponsored events, and to make observations and suggestions as to the conduct and operation of HPUD held events.

3036.3 SCOPE:

This policy applies to all requests for HPUD contributions, including cash, transfers in kind, uncompensated provision of services, sponsorships or advertisements. It is the HPUD's objective to comply with Article XVI, Section 6, of the California Constitution, which prohibits the making of "gifts" of public funds:

"The Legislature will have no power ... to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever ..."

3036.4 POLICY AND PROCEDURE:

The HPUD may only make contributions for public purposes within the jurisdiction of the district.

All requests for HPUD contributions will be made in writing, with the original request submitted to the General Manager's office. Each request will contain the following information on letterhead:

- 1) Name of the requesting agency, group;
- 2) Mission or purpose of the agency or group;
- 3) Name, address and phone number of a contact representative;
- 4) A description of the project, program or event, and how it fulfills a public purpose within the jurisdiction of the HPUD; and
- 5) Contribution being requested from the HPUD.

If the contribution requested totals \$250.00 or more, the requesting agency or group must also provide:

- 1) Proof of good standing/qualification in California, and as a nonprofit recognized by the Internal Revenue Service;
- 2) Audited financial statements for the three years preceding the request;

- 3) Form 900 tax returns for the three years preceding the request;
- 4) A pro-forma budget for the current year; and
- 5) A list of responsible directors and their address and telephone information.

No matter how worthy the cause, the HPUD is prohibited from making outright “donations” (i.e. an outright gift – made without any expectation of tangible value being returned) of public funds or property to be used strictly for charitable or similar purposes.

3036.5 RESPONSIBILITY

A permissible amount of annual contributions will be included in the HPUD operational budget for the HPUD Board approval.

Contribution requests will be reviewed and approved as follows:

- 1) Contributions up to \$100.00 will be reviewed and by the Finance Manager and approved by the General Manager.
- 2) Contributions equal to or greater than \$101.00 may only be approved by the Board of Directors.
- 3) The General Manager shall administer this policy or other related policies in such a way as to achieve the maximum benefit to the residents of Heber and visitors. This policy shall be enforced by the General Manager and his/her agents as he/she may designate to perform said duty.

3036.6 INCLUSION IN POLICY MANUAL:

Upon adoption by the Board of Directors, this policy shall be included in the Policy Manual and become a part thereof.

RESOLUTION NO. 2018-07

A RESOLUTION OF THE HEBER PUBLIC UTILITY DISTRICT ADOPTING POLICY 3037 ESTABLISHING A CONTRIBUTIONS FOR PUBLIC PURPOSES POLICY

WHEREAS, the Heber Public Utility District (HPUD) Board of Directors desires to comply with Article XVI, Section 6, of the California Constitution, which prohibits the making of “gifts” of public funds; and

WHEREAS, the HPUD receives requests for donations from charitable organizations, non-profit organizations, school clubs, service clubs, community events, businesses and individuals; and

WHEREAS, the HPUD acknowledges that many of the donation requests have a direct connection to public purpose; and

WHEREAS, the HPUD acknowledges that Special Districts must also demonstrate that the donation expenditure falls within the specifically enumerated powers of that particular type of Special Districts; and

WHEREAS, the HPUD desires to establish a policy that identifies the eligible contributions for public purposes; and,

WHEREAS, the policy establishes guidelines to contribute to the betterment of the Heber community it serves through contributions for public purposes within the scope of its jurisdiction; and

WHEREAS, the policy lists some of the community events and activities that have the effect of benefiting public purposes within the jurisdiction of the Heber Public Utility District; and

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED by the Board of Directors of Heber Public Utilities District as follows:

1. That the foregoing is true, correct and adopted.
2. That the HPUD Board of Directors hereby adopts the Contributions for Public Purposes Policy Number 3037, which is attached hereto as Exhibit “A” and made a part hereof a Policies and Procedures Manual.

PASSED, ADOPTED AND APPROVED at a regular meeting of the Heber Public Utility District held on the 21st day of June 2018, by the following vote:

HEBER PUBLIC UTILITY DISTRICT

By _____

Martin Nolasco, Jr., President

I, Raquel Carrillo, Heber Public Utility District Board Secretary, do hereby certify that the foregoing Resolution No. 2018-07 was duly and regularly adopted at a regular meeting of the Heber Public Utility District, held on the 21st day of June 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

ATTEST:

By _____

Raquel Carrillo, Board Secretary