

# SOUTH COAST HOMEOWNERS ASSOCIATION

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## UPCOMING SOUTH COAST MEETING

### ANNUAL SUMMER LEGAL FORUM

Each summer, we are privileged to have Beth Grimm, Attorney At Law present a legal issues meeting with us. Beth is from the East Bay Area and is active in legislative, educational and writing activities for HOAs. Several topics are discussed in depth with a moderated question and answer session from the audience. Topics under consideration for this year’s event include association minutes, regular and executive session minutes, what they should and should not contain, etc. We will also discuss the use of contractors, licensed and unlicensed, insured and uninsured and the issues that associations face when contracting for services. Other topics are yet to be determined.

**DATE – Tuesday, July 24**

**TIME – 7 – 9 PM**

**PLACE – Encina Royale Clubhouse, 250 Moreton Bay Lane, Goleta**

**Directions: 101 exit Fairview Avenue North to Encina Lane (signal at Fairview Theatres). Right on Encina to 4-way stop. Left onto Moreton Bay Lane – Clubhouse is on your right opposite the flagpole.**

## CHANGES IN VEHICLE TOWING LAWS MAY IMPACT YOUR ASSOCIATION

By: David A. Loewenthal, Attorney at Law  
Loewenthal, Hillshafer & Rosen

**Editor's Note:** Parking is a significant problem at many associations, the regulation of which can be a major hassle for boards and management. Surveys done by South Coast over the years have shown that parking is more problematic than noise, pets, architectural violations, assessment collection, etc. A major revision of the vehicle code, including the repeal of Vehicle Code Section 22658.2, which guided associations on towing requirements, took place last year. Be aware of the many changes that have taken place.

Assembly Bill 2210 ("AB 2210"), which went into effect on January 1, 2007, substantially recasts the provisions of Vehicle Code Section 22658 regarding removal of vehicles parked on private property. Below is a summary of extensive provisions and requirements of this Vehicle Code.

**I. Towing Authority** — The owner or person in lawful possession of private property, including an association of a common interest development, may cause the removal of a vehicle parked on the property to a storage facility that meets the requirements of this code under any of the following circumstances:

- 1) There is displayed, in plain view at all entrances to the property, a sign not less than 17 inches by 22 inches in size, with lettering not less than one inch in height, prohibiting public parking and indicating that vehicles will be removed at the owner's expense, and containing the telephone number of the local traffic law enforcement agency and the name and telephone number of each towing company that is a party to a written general towing authorization agreement with the owner or person in lawful possession of the property. The sign may also indicate that a citation may also be issued for the violation.
- 2) The vehicle has been issued a notice of parking violation, and 96 hours have elapsed since the issuance of that notice.
- 3) The vehicle is on private property and lacks an engine, transmission, wheels, tires, doors, windshield, or any other major part or equipment necessary to operate safely on the highways, the owner or person in lawful possession of the private property has notified the local traffic law enforcement agency, and 24 hours have elapsed since that notification.
- 4) The lot or parcel upon which the vehicle is parked is improved with a single-family dwelling.

## **II. Notice Requirements**

### **1) Notice**

- a. If the Tow Truck Operator knows or is able to ascertain the name and address of the registered and legal owner of the vehicle, he or she must immediately give, or cause to be given, notice in writing to the registered and legal owner of the fact of the removal.
- i) Notice must include: a) the grounds for the removal; and b) indicate the place to which the vehicle has been removed.

- b. If the vehicle is stored in a storage facility, a copy of the notice shall be given to the proprietor of the storage facility.
- i) The notice provided for in this section shall include: a) the amount of mileage on the vehicle at the time of removal; and b) the time of the removal from the property.
- c. If the tow truck operator does not know and is not able to ascertain the name of the owner or for any other reason is unable to give the notice to the owner, the truck operator shall comply with the requirements of subdivision (c) of Section 22853.
- d. The towing company shall also provide to the vehicle owner or the agent a separate notice that provides the telephone number of the appropriate local law enforcement or prosecuting agency by stating “If you believe that you have been wrongfully towed, please contact the local law enforcement or prosecuting agency at [ insert appropriate telephone number].” The notice shall be in English and in the most populous language, other than English, that is spoken in the jurisdiction.
- e. An owner or person in lawful possession of private property, or an association of a common interest development, causing the removal of a vehicle parked on that property shall notify by telephone or, if impractical, by the most expeditious means available, the local traffic law enforcement agency within one hour after authorizing the tow.
- f. An owner or person in lawful possession of private property, an association of a common interest development causing the removal of a vehicle parked on that property, or the tow truck operator who removes the vehicle, shall state the grounds for the removal of the vehicle if requested by the legal or registered owner of that vehicle.
- g. A towing company that removes a vehicle from private property under this section shall notify the local law enforcement agency of that tow after the vehicle is removed from the private property and is in transit.

## **2) Authorization**

- a. A towing company shall not remove or commence the removal of a vehicle from private property without first obtaining the written authorization from the property owner or lessee, including an association of a common interest development, or an employee or agent thereof, who shall be present at the time of removal and verify the alleged violation.
- b. The written authorization shall include all of the following:
  - i) The make, model, vehicle identification number, and license plate number of the removed vehicle.
  - ii) The name, signature, job title, residential or business address and working telephone number of the person, authorizing the removal of the vehicle.
  - iii) The grounds for the removal of the vehicle.
  - iv) The time when the vehicle was first observed parked at the private property.
  - v) The time that authorization to tow the vehicle was given.
- c. When the vehicle owner or his or her agent claims the vehicle, the towing company prior to payment of a towing or storage charge shall provide a photocopy of the written authorization to the vehicle owner or the agent.

d. If the vehicle was towed from a residential property, the towing company shall redact the name, signature, job title, residential or business address and working telephone number of the person authorizing the removal of the vehicle in the photocopy of the written authorization provided to the vehicle owner.

### **3) Exemptions**

a. General authorization to remove or commence removal of a vehicle at the towing company discretion shall not be delegated to a towing company or its affiliates except in the case of:

- 1) a vehicle unlawfully parked within 15 feet of a fire hydrant;
- 2) in a fire lane;
- 3) in a manner which interferes with an entrance to, or exit from, the private property.

b. In these cases, the towing company and the property owner, or owner's agent, or person in lawful possession of the private property shall have a written agreement granting that general authorization and prior to the removal of that vehicle, a photograph of the vehicle that clearly indicates that parking violation. Prior to accepting payment, the towing company shall keep one copy of the photograph taken pursuant to this paragraph, and shall present that photograph and provide, without charge, a photocopy to the owner or an agent of the owner, when that person claims the vehicle.

### **III. Liability**

1) The owner of a vehicle removed from private property to this section may recover for any damage to the vehicle resulting from any intentional or negligent act of a person causing the removal of, or removing, the vehicle.

2) An owner or person in lawful possession of private property, or an association of a common interest development, causing the removal of a vehicle parked on that property is liable for double the storage or towing charges whenever there has been a failure to comply with the code or to state the grounds for the removal of the vehicle if requested by the legal or registered owner of the vehicle.

3) A person who violates the code may be guilty of a misdemeanor and may be civilly liable to the owner of the vehicle or his or her agent for up to four times the amount of the towing and storage charges.

4) A towing company that removes the vehicle under this section shall be responsible for the following:

- a. Damage to the vehicle in the transit and subsequent storage of the vehicle.
- b. The removal of a vehicle other than the vehicle specified by the owner or other person in lawful possession of the private property.

### **IV. Fees and Storage**

#### **1) Fees**

a. The regular towing charge may only be imposed after the vehicle has been removed from the property and is in transit.

b. Possession of a vehicle under this section shall be deemed to arise when a vehicle is removed from private property and is in transit.

i.) A towing company may impose a charge of not more than one-half of the regular towing charge for the towing of a vehicle at the request of the owner, the owner's agent, or the person in lawful possession of the private property pursuant to this section if the owner of the vehicle or the vehicle owner's agent returns to the vehicle after the vehicle is coupled to the tow truck and before it is removed from the private property.

c. If a vehicle is released within 24 hours from the time the vehicle is brought into the storage facility, regardless of the calendar date, the storage charge shall be for only one day. Not more than one day's storage charge may be required for a vehicle released the same day that it is stored.

## **2) Excessive fees**

1) A charge for towing or storage, or both, of a vehicle under this section is excessive if the charge exceeds the greater of the following:

a. that which would have been charged for that towing or storage, or both, made at the request of a law enforcement agency under an agreement between a towing company and the law enforcement agency that exercises primary jurisdiction in the city or county in which is located the private property from which the vehicle was, or was attempted to be, removed.

b. that which would have been charged for that towing or storage, or both, under the rate approved for that towing operator by the California Highway Patrol for the jurisdiction in which the private property is located and from which the vehicle was, or was attempted to be, removed.

## **3) Storage**

1) Payment: A person operating or in charge of a storage facility where vehicles are stored pursuant to this section shall accept a valid credit card or cash for payment of towing and storage by a registered owner or the owner's agent claiming the vehicle.

2) Location of Facility: A vehicle removed from private property pursuant to this section shall be stored in a facility that meets all of the following requirements:

a. Is located within a 10-mile radius of the property from where the vehicle was removed.

i) The 10-mile radius requirement of subparagraph (A) does not apply if a towing company has prior general written approval from the law enforcement agency that exercises primary jurisdiction in the city in which is located the private property from which the vehicle was removed, or if the private property is not located within a city, then the law enforcement agency that exercises primary jurisdiction in the county in which is located the private property.

b. Remains open during normal business hours and releases vehicles after normal business hours.

i) A gate fee may be charged for releasing a vehicle after normal business hours, weekends, and state holidays. However, the maximum hourly charge for releasing a vehicle after normal business hours shall be one-half of the hourly tow rate charged for initially towing the vehicle, or less.

ii) "normal business hours" are Monday to Friday, from 8 a.m. to 5 p.m., except state holidays.

## TIPS FROM THE POOL GUY

**By: Brandon Fennell  
Avalon Pool and Spa Service**

**Editor's Note:** Avalon Pool and Spa Service is a South Coast member. Many association pools are 25-35 years old and in need of major maintenance. Here is something to consider. Mr. Fennell's contact information appears in the sponsor section at the end of the newsletter.

For Homeowner's Associations that have swimming pools, an effective way to save energy and related costs is to consider the installation of a variable speed pump.

A variable speed pump:

- Self adjusts its speed and consequently uses less power, even though it will run longer. This keeps the pool cleaner as a result.
- Is super quiet, 7-10 decibels, quieter than a whisper
- Tells you when your filter needs cleaning.
- Uses 1/10th of the horsepower of other pumps or about 100 watts of electricity - other pumps typically operate at 2600 watts
- Features built-in blockage detection and safety shut-off along with totally enclosed design, assuring long equipment life

Some considerations – Variable speed pumps:

- Require 220 voltage
- Cost in the range of \$900 -\$1300 and require 2-3 hours for installation

### **“ANNUAL MINUTES DISCLOSURE STATEMENT” (It's not what you may think)**

From time to time, mailings go out to HOAs and other corporations from the “California Corporate Headquarters, Compliance Division” asking for the payment of up to \$150 for an “annual minutes disclosure statement”. Be advised that this is a private solicitation, not from the state government and the form that they will produce is not required for you as a homeowners association. Your board and annual meeting minutes meet the state records requirement and the two filings with the California Secretary of State, SI-100 and SI-CID (Statements of Information) are not prepared by this company. You must file with the Secretary of State every two years and filings are due in the month your association incorporated.

## MANAGING UNIT OWNER'S EXPECTATIONS

By: Jim and Adra Rand

**Editor's Note:** The Rands recently moved back to the South Coast from New England. They have been long-term friends of mine as Jim worked with my dad at Raytheon in the 70s and 80s. Perhaps your association could adopt a welcoming meeting to new residents if you don't already do so. I welcome their contribution to the newsletter.

The family had just bought a condominium and was looking forward to their new mode of living. The father was thinking of the spare time he would have to use their new motor home. Free from the yard work, the house painting and care of the outside of their old house, he dreamed of motoring to exciting places. His large motor home would be parked just outside his unit and come Friday night, it would be off to places that they had not had the time to visit. His wife likewise thought that the new unit would be great for their 4 dogs-everybody would love them. The two teenage children looked forward to having their cars at the new condo and the son thought that his new muffler would be cool. They all knew their new condo had a large deck for barbecues and the children could set up their stereo with its 16 inch twin speakers.

Trustees and property managers often wonder where new unit owners and residents get their expectations of what condominium living is all about. Sure the new unit owners get the condo "docs" and maybe a unit owner's manual before closing on their new unit. Some new unit owners read some, all, or none of what is furnished. Even after reading some of the material, it is still difficult, sometimes, to make the mental transition from the flavor of individual home ownership to the closer living of condominium ownership. Some have said the realtors seldom, if ever, speak of the restrictions of condo living or the need for rules to live by so that the close living works. Some find out about the restrictions when they may get a note from the management company, or a neighbor decides to be "overprotective" about the problems of barking dogs, biting dogs, cars blocking access, too many cars, too loud music and so on.

Having been both a unit owner and the President of the Board of Trustees of a 108 unit condominium on 200 acres in New England, I've had the opportunity to see and observe expectations from both sides. When we moved in to our present condominium in Goleta, my wife (who has also been a condominium trustee) and I had the delightful experience of receiving a new resident's orientation even though we are currently renters. All new residents including tenants are required to attend the orientation before moving in. Topics covered during the orientation were:

- 1) an age check(it's an over 55 community);
- 2) statement of the monthly assessment including items covered;
- 3) lifestyle and amenities including such things as pool use, clubhouse use, social events and so on;
- 4) rules governing pets;
- 5) procedures for architectural approval of unit improvements along with required inspections;
- 6) auto number limits and guest parking practices;
- 7) carport assignments;
- 8) camper and trailer parking;

- 9) use of the car wash area;
- 10) public (unit owner) Laundromat use;
- 11) trash and recycling procedures;
- 12) carport storage;
- 13) insurance;
- 14) water damage;
- 15) termite/pest control;
- 16) a reminder to not install items in the ceiling since the ceiling is the location of the electric heat elements;
- 17) a note that the association is located in the proximity of an airport;
- 18) rental conditions; and
- 19) providing the directions to the property manager's office and phone number.

A listing of outside services used and recommended by residents, but not endorsed by the association was provided. Also provided was a one page "highlights of the association" including number of units, size, amenities, and listing of the items covered by the monthly association fee. Still further a map of the layout of units and a phone book of unit owners was included.

Separate sheets covering the rules for use of the swimming pool and the golf course were part of the handout.

The final handout was the book of Association Rules and Recommendations. Following the orientation each unit owner or renter was required to sign a statement that they had been briefed and that they had received the materials described above.

The orientation/briefing was conducted by two long term volunteer residents of the community and was accomplished in a mature matter-of-fact way yet professional manner. The tone of the briefing was given with a realization that even though the briefing was given to all incoming residents, it didn't mean that there would be no future issues requiring board or management intervention. The orientation will or would have the most effect on new residents who may not have read all the material provided, misunderstood some of the regulations, might think that a particular item wouldn't matter, or that a particular regulation might not apply to them. Having heard the complete orientation, it would be hard to say you didn't know what living at this condominium would be like and what was expected of a condominium residents. Likewise you would have understood what services the association would or would not provide.

It goes without saying, that there are the limited hard cases where even the best briefing will not protect trustees or managers from future heartburn. From our own experience as both unit owners and members of the board of trustees, we wish we had set up such a professional briefing for each of our incoming residents at our previous condominium. The briefing would not have eliminated all troublesome issues, but it most certainly would have reduced the number.

## **WATER BILLING CHANGES**

In mid-April, I was contacted by one of our long-time area property managers regarding proposed changes in water rates for the Goleta Water District. He was concerned that in his association, water costs would increase by 45%, which would cause a \$12 increase in the monthly assessment just for this one expense item.

Three years ago, the Carpinteria Water District raised rates substantially for master-meter users like condominiums. Cost increases of 75% or more were not uncommon and many associations had to special assess to cover the higher costs as the rate increase occurred mid-year for these associations and averaged \$30-\$35 per month. State water and other capital and fixed costs were cited as the reason for the major increase in rates.

A recent California Supreme Court interpretation of state law now requires government agencies to hold a hearing when the fee structure for utility and other services is to be changed. The City of Santa Barbara, Carpinteria Water District and Goleta Water District all recently held hearings regarding the changes in water charges. Special notification is required of the hearing to all property owners and customers within the district boundaries.

I emailed a copy of the Goleta notice to all the associations on our South Coast email list several days before the notice was mailed by the water district. The Goleta notice did not go out to all property owners and ratepayers within the district, however. Protests can be registered with the district during the period prior to the hearing, but Goleta's notice was not clear as to the information required to be provided in the protest. If 50% + 1 users protested the changes, then the district could not impose the new charges. The total number of users is estimated at 15,500 so 7,751 protest would have to be received. Calls by several managers and board members regarding notification and protest procedures received conflicting responses. Several days before the hearing, the District determined that its mailing list did not contain all that should have been notified and a second hearing has been scheduled for **July 9 at the Goleta Union School District, 401 N. Fairview Ave at 7PM.**

Several days before the initial Goleta hearing which was held on May 22, I emailed our group again and asked for input as to how the proposed changes would impact your association. 20 associations responded representing 1,752 dwelling units within the District. Associations with master meters serving their units reported estimated cost increases of \$5 to \$23 per unit per month. Meters with landscaping use only had minimal impact on costs.

I attended the first hearing on behalf of South Coast members. A presentation was made by Goleta Water District staff as to the necessity to collect funds to pay for fixed costs and that meter fees are a more reliable source of revenue than water usage fees which vary based upon the amount of rain that we receive each year. Many HOA members attended the meeting and spoke about the negative impact the proposed fees would have on monthly assessments. Several commentators suggested that water usage fees be increased so as to not penalize those that conserve water. It was also pointed out that master-metered associations cannot qualify for the new "ultra-low flow ½" equivalent" meter rate even though they use less water per unit than that rate allows.

It's not clear at this time whether any of the information that the District has received from the first hearing will be incorporated in any revisions prior to the second hearing. Some of the things that I pointed out to the District Board and staff at the hearing included:

- In fiscal 1997, the District collected \$470,000 in meter fees. In fiscal 2006, that amount had jumped to \$4,117,000, an increase of 775%.
- In the same period, the number of District staff had increased from 43 to 58. I don't know why the District needs additional staff.
- The District borrowed over \$20,000,000 three years ago and did not ask the ratepayers for permission to do so. These are the "Certificates of Participation" that avoid the bond rules that require a vote of all who live in the District. Now the District wants to assess rate payers to pay the financing costs and principal.
- A ¾" landscape meter would only go up \$9 per month but could easily use \$700-\$800 worth of water per month or more. This meter would not be paying its share of the capital costs for which the District says it needs the increase.
- Since 1997, a water user on a ¾" meter using 10HCF (hundred cubic feet) has seen his bill increase by 50% before the proposed changes.
- Many of the master meter associations were built prior to 1980 when service fees were minimal and the larger meters facilitated service and maintenance.
- For those who can itemize tax deductions, increased meter fees are not tax deductible, but increased property taxes to pay for capital improvements are deductible.

To the Goleta District's credit, they have posted a lot of historical financial information on their website that is accessible by the public on their website [www.goletawater.com](http://www.goletawater.com). I was unable to find similar information for Carpinteria. One email I received suggested that the water districts are much like our associations and that they have major repair and replacement costs that have to be paid for from reserves.

The question appears to be how these costs are allocated among users. How much should agriculture users pay? Should there be an increase in the fixed meter charge or should there be an increase in the water usage charge? Should the meter fee increase exponentially based on size of the meter, even though usage is low? Should low volume users pay less per unit of water than large volume users? (This is common in many places). Should there be a bond issue placed before the voters to pay for capital costs? What has the District done to contain costs? (This is the question that associations get all the time and you know all about reviewing costs)

The impact of these changes to associations and the dynamics of association living and costs are not well understood by elected officials and public employees. Participation by HOA members at these hearings and in the media is critical in raising the awareness as these issues and concerns are debated. So if this issue concerns you, please attend the next hearing:

**July 9 at 7 PM  
Goleta Union School District,  
401 N. Fairview Ave**

## **SOUTH COAST NEWSLETTER SPONSORS**

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### **BOOKKEEPING SERVICES**

The Bottom Line  
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First Bank Association Services  
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Santa Barbara, CA 93160  
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## **RESERVE STUDIES**

Stone Mountain Corporation  
Chris Andrews  
P. O. Box 1369  
Goleta, CA 93116  
805-681-1575  
[www.stonemountaincorp.com](http://www.stonemountaincorp.com)

The Helsing Group  
Roy Helsing  
2000 Crow Canyon Place, Suite 380  
San Ramon, CA 94583  
800-443-5746

Reserve Studies, Inc.  
Les Weinberg  
P. O. Box 3037  
Chatsworth, CA 91313-3037  
800-485-8056  
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Goleta, CA 93117  
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Santa Monica, CA 90401  
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Santa Barbara, CA 93103  
805-965-4158

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P. O. Box 8026  
Goleta, CA 93118  
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Carpinteria, CA 93013  
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## **ORGANIZATIONS**

Community Associations Institute –  
Channel Islands Chapter  
P. O. Box 3575  
Ventura, CA 93006  
805-658-1438  
[www.cai-channelislands.org](http://www.cai-channelislands.org)

Executive Council of Homeowners  
ECHO  
1602 The Alameda #101  
San Jose, CA 95126  
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