

Return to:
Burg Simpson Eldredge Hersh & Jardine, P.C.
40 Inverness Drive East
Englewood, CO 80112

RESOLUTION NO.: 2019-05-01

**RESOLUTION
BOARD OF DIRECTORS
MURPHY CREEK METROPOLITAN DISTRICT NO. 3**

**IMPOSING BACKUP FEES FOR RECREATION, SECURITY, CLUBHOUSE, SNOW
REMOVAL, LANDSCAPE MAINTENANCE, AND PEST ABATEMENT**

WHEREAS, pursuant to an Order of the District Court in and for Arapahoe County, Colorado, the Murphy Creek Metropolitan District No. 3 (the "District") was duly and validly organized and exists as a metropolitan district pursuant to C.R.S. §32-1-101, *et seq.* and other applicable Colorado law; and

WHEREAS, pursuant to §32-1-1001(1)(j), C.R.S., the District is authorized to fix and impose fees, rates, tolls, charges and penalties for services or facilities provided by the District which, until paid, shall constitute a perpetual lien on and against the property served; and

WHEREAS, the District is required to operate and maintain certain facilities and improvements throughout the District, including parks, recreational facilities, and landscape improvements (collectively the "Improvements"), which benefit all properties within the District and increase the value of those properties; and

WHEREAS, the District is required to provide snow removal services on certain sidewalks and areas that are adjacent to the District properties and to vacant parcels where the owners do not remove snow; and

WHEREAS, pursuant to an agreement with the Aurora Police Department, the District provides security patrols, especially in areas near vacant properties which are darker than occupied residential homes and where suspects often hide; and

WHEREAS, the District makes available its facilities and services, including use of the clubhouse for meetings and recreation facilities, to all property owners within the District regardless of whether or not the owners reside in the District; and

WHEREAS, the District has ongoing overhead expenses associated with managing the operation and maintenance of these facilities and providing these services; and

WHEREAS, the Board of Directors of the District finds that the Fees set forth herein are: 1) reasonably related to the cost of operating the facilities and providing the services, 2) reasonably imposed on those properties that benefit from the services and/or impose a burden or need for the services on the District; and 3) that imposition thereof is necessary to provide the services and facilities serving the property subject to such Fees; and

WHEREAS, the Board of Directors of the District adopted a Resolution Concerning the Imposition of Operations, Recreation and Landscape Maintenance Fees on November 28, 2018 (the "2018 Fee Resolution") which was intended to impose fees to fund the specific District facilities and services that are set forth in this Resolution; and

WHEREAS, two property owners within the District have brought a legal action challenging the fees imposed by the 2018 Fee Resolution on the grounds that they are "taxes" and not "fees" because they are "not tied to defraying the cost of a particular function or service," are "used to cover the 'day-to-day' general operating expenses of the District," and are "imposed to defray the general expenses of the District," among other reasons; and

WHEREAS, the Board of Directors of the District desires to clarify that the fees imposed in the 2018 Fee Resolution were imposed to defray the cost of particular functions and services of the District based on a rational and reasonable allocation among the various properties in the District that benefit from the facilities and services, and/or impose a burden on the District requiring the expenditure of additional District funds for those facilities and services; and

WHEREAS, the District finds that a continuation of these fees is required in the event that the Court determines that the 2018 Fee Resolution did not specify with sufficient particularity that they were intended to defray the cost of particular services and functions that benefit certain properties; and

WHEREAS, the District's 2019 budget anticipates the following annual cost of providing the specific services and facilities to the District's property owners and residents:

- a. Recreation: \$93,000 direct cost, \$22,650 administrative overhead
- b. Security: \$170,000 direct cost, \$35,900 administrative overhead
- c. Clubhouse: \$226,000 direct cost, \$47,750 administrative overhead
- d. Snow Removal: \$50,000 direct cost, \$10,500 administrative overhead
- e. Landscape: \$438,380 direct cost, \$92,600 administrative overhead; and

WHEREAS, for the purpose of estimating collectible revenue in 2019 that is necessary to fund the budgeted expenses, the District estimates that 94% of individual homeowner fees are ordinarily collectible in the year billed and 75% of vacant or unplatted lot fees are ordinarily collectible in the year billed; and

WHEREAS, the District estimates that the share of expenses attributable to vacant lots should be approximately 24% of the total cost, with vacant lots bearing a higher percentage of snow removal and security costs due to the increased burden placed on the District by those lots for those services, and vacant lots bearing a lower percentage of the clubhouse and recreation costs due to lower use and benefit; and

WHEREAS, the District's Board of Directors finds that

NOW THEREFORE, IT IS RESOLVED by the District's Board of Directors that:

1. **Backup Fees for Platted Lots and Residential Units.** The District imposes the following Backup Fees on each platted lot in the District, or, if under construction (such construction being deemed to commence with the issuance of a building permit), or if completed construction, per residential unit, within the District:
 - a. Recreation Fee: \$6.00 per month
 - b. Security Fee: \$8.00 per month
 - c. Clubhouse Fee: \$17.00 per month
 - d. Snow Removal Fee: \$2.00 per month
 - e. Landscape Fee: \$ 27.00 per month

Collectively, these Fees will be payable to defray the District's costs of providing services during calendar year 2019. The first six months of fees for January-June 2019 are payable as of June 1, 2019, with each month's fees thereafter payable on the first of each month. A credit for each lot or residential unit's Backup Fees shall be provided for the full amount of fees paid (but not costs of collection, interest, or late fees) for that lot or residential unit under the 2018 Fee Resolution. Accordingly, if the full amount of fees were paid for a lot or residential unit under the 2018 Fee Resolution, no additional Backup Fees would be owed by that lot or residential unit.

These fees are intended to generate \$856,800 of gross revenues of which it is anticipated for budget purposes that \$805,392 will be collectible in 2019.

2. **Backup Fees for Unplatted Lots or Tracts.** The District imposes the following Backup Fees on each acre of vacant or unplatted land which is not otherwise included in the description of land subject to Backup Fees in paragraph 1 above:
 - a. Recreation Fee: \$27.00 per acre per month
 - b. Security Fee: \$82.00 per acre per month
 - c. Clubhouse Fee: \$38.00 per acre per month
 - d. Snow Removal Fee: \$28.00 per acre per month
 - e. Landscape Fee: \$140.00 per acre per month

Collectively, these Fees will be payable to defray the District's costs of providing services during calendar year 2019. The first six months of fees for January-June 2019 are payable as of June 1, 2019, with each month's fees thereafter payable on the first of each month. A credit for each property's Backup Fees shall be provided for the full amount of fees paid (but not costs of collection, interest, or late fees) for that property under the 2018 Fee Resolution. Accordingly, if the full amount of fees were paid for a property under the 2018 Fee Resolution, no additional Backup Fees would be owed by that property.

These fees are intended to generate \$284,200 in gross revenues of which it is anticipated \$213,150 will be collectible in 2019.

3. **Backup Agricultural Land “Fair Share” and Abuse Prevention Pest Abatement Fee.** The District finds that the District was organized by developer/property owners with the intention of creating an urban or suburban community within the City of Aurora without agricultural land contained within its boundaries. The undeveloped land held within the boundaries of the District was always intended to be developed for residential or commercial real estate development purposes and not held or used for agricultural purposes. Nonetheless, certain land that is being held for real estate development within the boundaries of the District is purportedly being used for agricultural purposes not as a bona fide agricultural endeavor, but instead for abusive and tax avoidance purposes. The presence of agricultural land and ancillary cattle grazing and attendant weeds imposes unfair burdens and expenses on the District. For example, the District has been required to devote additional resources for pest abatement and damage to District property. Mature trees have been destroyed by pests on agricultural property that could not be eradicated due to its agricultural use. The District has had to spend large sums of money for landscaping costs due to these pests. The presence of agricultural land further discourages development of said land and increases the share of the District’s costs allocated to remaining property owners. To prevent abuse, to properly allocate costs of the District’s services, to impose costs and burdens of agricultural land fairly on the property owners, and to insure that owners who seek “agricultural” designation for their property pay their fair share of costs, the District imposes an additional Backup Pest Abatement Fee of \$220.00 per month per acre of unplatted land that is zoned Agricultural (including any class of grazing land). This is allocated \$140.00 per month per acre for landscaping and \$80.00 per month per acre for security. The intent of this fee is to offset the District’s additional costs and to discourage these nuisances and pests attendant with agricultural use of property that damage District property.

The first six months of fees for January-June 2019 are payable as of June 1, 2019, with each month’s fees thereafter payable on the first of each month. A credit for each property’s Backup Pest Abatement Fees shall be provided for the full amount of fees paid (but not costs of collection, interest, or late fees) for that property for Agricultural Land “Fair Share” and Abuse Prevention General Operations and Maintenance Fees paid under the 2018 Fee Resolution. Accordingly, if the full amount of fees were paid for a property under the 2018 Fee Resolution, no additional Backup Fees would be owed by that property.


4. **Late Fees and Penalty Interest.** Any Fee that is not paid in full within Fifteen (15) days after the scheduled due date shall be assessed a late fee in the amount of Fifteen Dollars (\$15.00) pursuant to §29-1-1102(3) C.R.S. Interest will also accrue on any outstanding Fee, exclusive of assessed late fees and interest, at the rate of 18% per annum, pursuant to §29-1-1102(7) C.R.S. Costs of collection and attorneys’ fees shall also be added to any unpaid Fees pursuant to the District’s collection policy as may be amended from time to time.
5. **Payment.** Payment for each Fee shall be made payable to Murphy Creek Metropolitan District No. 3, c/o Cherry Creek HOA Professionals, 14901 E Hampden Ave. #320, Aurora, CO 80014.

6. **Fees Constitute Lien.** The Fees imposed hereunder each shall, until paid, constitute a perpetual lien on and against the property served, and any such lien may be foreclosed in the manner as provided by the laws of the State of Colorado for the foreclosure of mechanic's liens, pursuant to §32-1-1001(1)(j), C.R.S.
7. **Collection Procedures.** The District shall undertake collection efforts for any amounts outstanding, including late fees, interest, reasonable cost of collection and attorneys' fees, in accordance with applicable District resolutions, Colorado law and Federal law.
8. **The Property.** This Resolution shall apply to all property within the District's boundaries, as set forth in Exhibit A, attached hereto and incorporated herein by this reference, and to any additional property included into the District after the date of this Resolution.
9. **Replaces Prior Resolution.** This Resolution supplements and provides a backup fee to the 2018 Fee Resolution, adopted November 28, 2018. The intent of this Resolution is that no additional fees will be collected for any month in which fees were paid under the 2018 Fee Resolution. In the event that the 2018 Fee Resolution is declared invalid for any reason, this Resolution will remain in effect and provides a necessary backup method for defraying the District's costs of providing necessary services and facilities. This Resolution shall continue in effect until repealed, subject to annual budget appropriation of the District

RESOLVED this 15th day of May, 2019.

**BOARD OF DIRECTORS
MURPHY CREEK METROPOLITAN
DISTRICT NO. 3**

(SEAL)



President

ATTEST

By:



Secretary