



Board Agenda Item 26

DATE: January 28, 2025

TO: Board of Supervisors

SUBMITTED BY: Nathan Magsig, Supervisor, District 5
Paul Nerland, County Administrative Officer

SUBJECT: Administrative Policy 48.1 - Naming Rights for Eligible County Facilities and Amendments to Chapter 13.28.020 of Fresno County Ordinance Code

RECOMMENDED ACTION(S):

- 1. Approve final adoption of Administrative Policy 48.1 - Naming Rights for Eligible County Facilities (AP 48.1); and**
- 2. Conduct second hearing to amend Chapter 13.28 of the Fresno County Ordinance Code (Leasing or Licensing of Any Real Property Belonging to, Leased by, or Licensed by the County) by amending and renaming Section 13.28.020 (Informal Bidding Procedures) to Section 13.28.020 (Informal Bidding Procedures, Generally), and adding new Section 13.28.021 (Informal bidding procedures, Naming Rights for Eligible County facilities); adopt the proposed Ordinance; and waive reading of the proposed Ordinance in its entirety.**

Approval of the recommended actions will result in your Board's final adoption of a new Administrative Policy 48.1 (AP 48.1), which will include allowing the Board of Supervisors to grant authority to the County Administrative Officer (CAO) to develop a list of eligible County facilities, defined as both new and existing facilities, for naming rights, and a process to assist the Board of Supervisors in implementing a naming rights program for such facilities.

Any naming rights granted by the County under AP 48.1 shall only be upon approval of the Board of Supervisors.

"Naming rights" are the result of a financial arrangement known as a Naming Rights Agreement between the County and a sponsor (i.e., a successful bidder, in a public bidding process) in which the sponsor pays the County an agreed upon aggregate amount of funds, under a fixed time schedule for paying installments of such amount, in exchange for the right to name a County facility for an agreed upon term. Under the Naming Rights Agreement, the County grants the sponsor a right to license the sponsor's name for the County facility during that term.

The recommended actions will allow the CAO to conduct a public bidding process on behalf of the Board so that the Board can authorize the County to enter into a recommended Naming Rights Agreement, including such license, with a sponsor. The recommended actions will amend County Ordinance Code Section 13.28.020 and create a new Section 13.28.021 to enable the County to conduct a bidding process for the purposes of granting a license to the sponsor to name the County facility under a Naming Rights Agreement and requiring that only monetary bids will be considered. The license needs to be part of the Naming Rights Agreement so that the license and the agreement stay as one and the same transaction.

On December 17, 2024, your Board considered and acted on the newly proposed AP 48.1, and held the first hearing for the proposed ordinance amendments. At that time, your Board set today's date for the second hearing and final adoption of the proposed ordinance amendments. Staff suggest that your Board provide final approval of AP 48.1 because the item that was presented to your Board on December 17, 2024, broadly requested you Board to consider and take action on AP 48.1. Staff believe that it is best to ensure that your Board take this specific action for clarity in the record.

If your Board approves the recommended actions, AP 48.1 will be final and effective immediately, and Chapter 13.28.020 of the County Ordinance code, as amended, will take effect 30 days after final passage, which is February 27, 2025.

This item is countywide.

ALTERNATIVE ACTION(S):

If your Board does not approve the recommended actions, the County would not have a mechanism to accept pledges and payments in exchange for naming rights of eligible County facilities.

FISCAL IMPACT:

The fiscal impact of the recommended actions is unknown at this time. It is anticipated that your Board's approval of the recommended actions will allow the County to develop a program to receive funding in support of capital builds, as well as in support of existing facilities, in exchange for naming rights for eligible County facilities, which will alleviate use of the General Fund.

DISCUSSION:

Board control over the process.

As stated below, any naming rights granted by the County under AP 48.1 shall only be upon approval of the Board of Supervisors.

AP 48.1

The Board of Supervisors currently has Administrative Policy (AP) 48 - Designating County Facilities for designating County facilities in accordance with their functions and/or geographic locations (adopted December 17, 2002, and revised August 6, 2019).

On May 7, 2024, your Board received a report from the Department of Public Works and Planning on Capital Projects. At that time, your Board directed Staff to return to your Board with a policy mechanism to allow for options and a mechanism to bring in funds for capital builds from potential bidders.

AP 48.1 sets the recommended policy of Naming Rights for Eligible County Facilities, which will allow your Board to use AP 48.1 instead of 48 - Designating County Facilities, if your Board desires to monetize the value of the name that your Board designates for a County facility and receive pledges and payments for the name from a sponsor.

As discussed below, there are important policy considerations for your Board, including an agreement and bidding procedures needed under the County's ordinance code, to implement a County naming rights program. Staff will address the specific process to accept pledges and payments of funds in exchange for naming rights through a Management Directive under the County Administrative Officer (CAO).

There are two important principles to be considered and will direct the format of the Management Directive

as follows:

- 1) How to maximize revenue from the then-current sponsor (with an eye toward future sponsors in a naming rights arrangement when the naming rights for the first sponsor expires); and
- 2) Understanding that naming rights creates a close, long-term association between the County's identity and the sponsor's identity.

Use of Naming Rights

"Naming rights" are the result of a financial arrangement known as a Naming Rights Agreement between the County and a sponsor (i.e., a successful bidder, in a public bidding process) in which the sponsor pays the County an agreed upon aggregate amount of funds, under a fixed time schedule for paying installments of such amount, in exchange for the right to name a County facility for an agreed upon term; under the Naming Rights Agreement, the County grants the sponsor a right to license the sponsor's name for the County facility during that term.

Also, a public bidding process under the County's ordinance code is needed for the County to grant a license to the sponsor to name the County facility under a Naming Rights Agreement. As discussed below, the legal authority for the license is in Government Code section 25537(a) (See Discussion, The License and the Ordinance).

This needs to result in a Naming Rights Agreement so that the County is contractually assured that the sponsor honors its pledge (and so that the County does not forego other naming rights opportunities) and is fully and timely paid the expected aggregate amount pledged, and so that the sponsor is assured that its name is associated with the County's facility for the agreed upon term of the Naming Rights Agreement.

A naming right will commit the County to the sponsor's "use" of the County facility, by requiring the County to associate its good name with the sponsor's name. But such use is limited to just that. For example, the sponsor must not have the right to control or have possession of the named facility (e.g., for a library, the sponsor has no greater rights than members of the public to a conference room in its named facility), or even the location on the County facility where the sponsor's name will be placed.

Developing and Implementing a Naming Rights Process

It is important that the County's public bidding process is structured so that it at least meets the reasonable expectations of potential sponsors (e.g., are the terms of a Naming Rights Agreement typical of other agencies' naming rights arrangements for their facilities having naming rights), seeks the widest audience to invite potential sponsors to encourage their sponsorship, is done fairly, and sets forth clear expectations on how long, and under what circumstances the naming rights expire or may be terminated early by the County with no refund (or other thing of value) given to the sponsor.

All of that should lead to the County obtaining the maximum amount of money per year for the term of the Naming Rights Agreement. The length of the term of a Naming Rights Agreement will affect the amount of money per year. For example, a 10- or 15-year term will most likely yield a greater amount of money per year than a 50-99-year term because the sponsor's visibility is usually greatest in the earlier years. A 99-year term is the maximum allowable under the law for any Board action to transfer an interest in County property (See Gov Code sec. 25521).

The CAO's Management Directive will take into consideration the following policy considerations of the Board. In doing so, the CAO will (a) establish pre-bid procedures, (b) use the bidding procedures under County Ordinance Codes discussed below, and (c) establish the elements of primary naming rights conditions, including a proposed form of a Naming Rights Agreement, which will be used for the pre-bid procedures, and the bidding procedures. Any naming rights granted by the County under AP 48.1 shall only

be upon approval of the Board of Supervisors.

First, AP 48.1 delegates authority to the CAO to develop a list of existing and new County facilities eligible for naming rights. This will provide an inventory of eligible County facilities to attract public visibility and interest of potential sponsors. The list could be placed on the CAO's web page for public viewing in advance of any bidding process for naming rights.

Second, the bidding process for naming rights may include the following policy considerations on two primary conditions so that the CAO may publicly seek bids from the highest proposal made by potential sponsors.

- 1) Minimum aggregate dollar amount of the pledge and payments to be made by the successful sponsors, which establishes the minimum expectations for the monetary value of the County facility to be named for the stated term of the Naming Rights Agreement.
- 2) Number of years for the term of the Naming Rights Agreement, including the license for the naming right, which may be up to ninety-nine (99) years. Setting a fixed term, with no renewal right by either party gives the County the most certainty on the future market conditions when a Naming Right Agreement runs its course.

Third, in connection with the minimum aggregate dollar amount (discussed above), and the number of years for the naming right (discussed above), is setting the process on how to monetize (put a dollar value on) and gauge the County's expectations on a successful bid process. The following are suggested factors on which the CAO will establish that minimum dollar amount for bids:

- 1) What is the value of the County's good name? In other words, what County goodwill does the County expect that bidders will monetize as they consider whether and how much to bid?
- 2) What is the prestige (prominence and visibility) of the facility and its location?
- 3) What is the cost and size of the facility?
- 4) What is the purpose of the facility?
- 5) What is the facility's audience - i.e., how would they associate the County with the naming right?
- 6) What is the geographic reach of the facility's identity?

Each of these factors, taken together, will provide the guidance on setting the minimum bid value.

Fourth, the County will need to establish its own expectations, and inform the potential sponsors of the County's own expectations to ensure a successful bid process, and a successful long-term relationship with the successful bidder. This is accomplished through the public bid process and the resulting Naming Rights Agreement (including the license for the naming) that is part of the public bid process. For example:

- 1) Naming rights should match the County's priorities of expectations (e.g., is it to maximize sponsor revenues (usually, a shorter-term Naming Right) or is it to promote community participation (might be for a longer-term Naming Right)).
- 2) Sponsor should not have any rights with respect to the County facility other than Naming Rights (again, as noted above this means the sponsor should not have any rights regarding the location on the County facility where the sponsor's name will be placed).
- 3) It is anticipated that sponsors will want the right to change the name on the County facility, or transfer their naming rights to another party who might want their own name on the County facility, during the term of the Naming Rights Agreement.

- a. A new name may not be as recognizable or attractive as the original sponsor's name.
 - b. The County will need to accommodate such requests in order to attract sponsors.
- 4) What may be predictable or assumed at the present time as to the County's priorities and expectations and relationship with the sponsor may be uncertain after the County enters into the Naming Rights Agreement, especially such agreements that are for legally long lives. The Naming Rights Agreement needs to identify conditions for the County's right of early termination upon the occurrence of specific events with no refund (or other thing of value) given to the sponsor:
- a. Future contingencies caused to the County's facility (e.g., County closing or substantially reducing office hours due to budget shortfalls or moving operations of a named County facility, or repurposing a named County facility); and
 - b. Future contingencies caused by the sponsor so that the County can "uncouple" quickly to avoid damage to its reputation. AP 48.1 specifies conditions that the CAO's call for bids excludes certain types of sponsors (and their conduct), products or services.
- 5) Pledge/payment. A payment schedule of funds pledged towards a naming rights will be delineated in the Naming Rights Agreement; however, in general, depending on the aggregate amount of the pledge, they shall be paid at a minimum of three installments as follows:
- a. 33% within 10 calendar days of the parties entering into a Naming Rights Agreement;
 - b. 33% within 10 calendar days of the County obtaining a permit to occupy a new County facility, or upon another agreed upon time if it is an existing County facility; and
 - c. 33% within 10 calendar days of the first anniversary of the County obtaining a permit to occupy a new County facility, or upon another agreed upon time if it is an existing County facility.

The License and the Ordinance

The second recommended action seeks your Board's second reading and adoption of an ordinance amendment that would amend County Ordinance Code Section 13.28.020 and create a new Section 13.28.021 to enable the County to conduct a bidding process for the purposes of granting a license to the sponsor to name the County facility under a Naming Rights Agreement, and requiring that only monetary bids will be considered.

The license is the means by which the sponsor's name may be placed on the named County facility. The license needs to be part of the Naming Rights Agreement so that the license and the agreement stay as one and the same transaction.

The legal authority for the license is in Government Code section, 25537(a), which authorizes the Board of Supervisors to prescribe by ordinance a procedure alternative to that required by law for the formal bidding of County property, for the leasing or licensing of any real property belonging to, leased by, or licensed by, the County. This alternative procedure requires that the Board of Supervisors either accept the highest proposal for the proposed lease or license submitted in response to a call for bids posted in at least three public places for not less than 15 days and published for not less than two weeks in a newspaper of general circulation, or reject all bids.

Any naming rights granted by the County under this process shall only be upon approval of the Board of Supervisors.

Current County Ordinance Code Section 13.28.020 is based on the authority of Government Code section,

25537(a). That ordinance code section is general authority and so, new County Ordinance Code Section 13.28.021 is recommended to specifically provide for naming rights.

A redline version of the recommended Ordinance, showing the proposed amendments, accompanies this item.

Final actions

If your Board approves the recommended actions, AP 48.1 will be final and effective immediately, and Chapter 13.28 of the County Ordinance code, as amended, will take effect 30 days after final passage, which is February 27, 2025.

REFERENCE MATERIAL:

BAI #25, August 6, 2019

BAI #11, May 7, 2024

BAI #2.1, December 17, 2024

ATTACHMENTS INCLUDED AND/OR ON FILE:

AP 48.1

Ordinance

Ordinance - Redlined

Ordinance Summary

CAO ANALYST:

Salvador Espino