

## REQUEST FOR ACTION, As Revised

<b>Subject</b>	Recreational Facilities User Fee				
<b>Preparer</b>	Howard Kam, Jr.	<b>AOUO Title</b>	Unit 3209		
<b>Date</b>	January 4, 2020	<b>For Board</b>	x	<b>Action</b>	<b>Info</b>

### EXECUTIVE SUMMARY

The January 2020 Newsletter reported 2019 recreational facilities usage as follows: Cabana 1 at 316, Cabana 2 at 216, Cabana 3 at 357 and Clubroom at 853. It would be interesting to learn what it costs the Association to clean and maintain each of these facilities after each use by residents fortunate enough to reserve them. Since demand apparently exceeds their availability, and certain residence appear to use them more frequently than others with the costs being solely borne by the Association.

Section 528 of the Internal Revenue Code enables the Association to be tax exempt if it satisfies the definition test of a “homeowners association”. The five basic definitional tests are the: (1) Exempt Purpose Test, (2) Exempt Function Income Test, (3) Exempt Function Expense Test, (4) No Private Inurement Test, and (5) Election to apply section 528 for that tax year.

Under the “No Private Inurement Test”, Section 528(1)D) of the Internal Revenue Code specifically provides that “no part of the net earnings of such organization inures (other than by acquiring, constructing, or providing management, maintenance, and care of association property, and other than by a rebate of excess membership dues, fees, or assessments) to the benefit of any private shareholder or individual.”

The term “private inurement” is further defined in the nonprofit section of Treasury Regulations and refers to an instance when the earnings or resources of an organization are used to disproportionately benefit any person or group of persons of the organization. More so, if these persons are those in a position to control or influence the organization such as board members.

Hence, by its very nature the reservation process and exclusivity use of the cabanas and clubroom without a user fee charge potentially exposes the Association to a private inurement risk.

### RECOMMENDATION

Recommend that the Board study and assess a user fee to the residents for the use of the three Cabanas and Clubroom commensurate with the costs to the Association in cleaning and maintaining these exclusive use recreational facilities.

### RATIONALE

1. Resolve the private inurement risk resulting from the disproportionate benefit of residents using the exclusive recreational facilities at the costs borne by the Association.
2. Such user fees are assessed by other associations to defray the costs associated with cleaning and maintaining similar exclusive use recreational facilities and avoid their inurement risk.
3. The Association’s assessment of a user fees which correlates to the AOUO’s costs to clean and maintain such facilities is equitable.
4. User fees will likely reduce frequency of use and make these recreational facilities available to other residents.

5. The Association already assesses user fees for bike and surf board exclusive use storage.
6. Based upon 2019 user statistics, and assumptions used hereinafter, user fees would have amounted to \$77,850 [(Cabanas Usage at 889 x Cleaning & Maintenance of \$30) + (Clubroom Usage at 853 x Cleaning & Maintenance of \$60)].

<b>Exhibits</b> (If applicable)	<b>Index</b>	<b>Title</b>
	A	The Collection Newsletter, January 2020
	B	Bylaws

**FOR BOARD USE ONLY**

**CERTIFICATE OF BOARD ACTION**

	Approved	x	Declined		Noted		Returned		Deferred		Withdrawn
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**Stipulations**

A motion was made by Secretary Ishihara-Wong and seconded by Treasurer Krahulik to refer this request for action to the Governance Committee. There were three votes in favor with President Funakoshi, Vice President Wang, Directors Lew and Ting opposed. The motion failed. The RFA is rejected.

**Coordinating Instructions**

**Distribution Instructions**

<b>Recording Secretary</b>	Desmond Oliveira	<b>Action Date</b>	01/28/20	<b>RFA No.</b>	01-2020
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