



**BOARD OF DIRECTORS
EAST BAY MUNICIPAL UTILITY DISTRICT**

375 - 11th Street, Oakland, CA 94607

Office of the Secretary: (510) 287-0440

Notice of Time Change

PLANNING COMMITTEE

Tuesday, February 13, 2024

9:00 a.m.

Boardroom

375 11th Street

Oakland, CA 94607

Notice is hereby given that the Tuesday, February 13, 2024 Planning Committee meeting of the Board of Directors has been rescheduled from 9:15 a.m. to 9:00 a.m. The meeting will be held in the Administration Building Boardroom at 375 11th Street, Oakland, California.

Dated: February 8, 2024



Rischa S. Cole

Secretary of the District

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**BOARD OF DIRECTORS
EAST BAY MUNICIPAL UTILITY DISTRICT**

375 - 11th Street, Oakland, CA 94607

Office of the Secretary: (510) 287-0440

**AGENDA
Planning Committee
Tuesday, February 13, 2024
9:00 a.m.
Boardroom
375 11th Street
Oakland, CA 94607**

***** Please see appendix for public participation instructions*****

Committee Members: Marguerite Young {Chair}, April Chan and Doug A. Linney

ROLL CALL:

PUBLIC COMMENT: The Board of Directors is limited by State law to providing a brief response, asking questions for clarification, or referring a matter to staff when responding to items that are not listed on the agenda.

DETERMINATION AND DISCUSSION:

1. Policy 3.08 – Advisory Election for Annexations Outside the Contra Costa County Urban Limit Line (Yoloye)

ADJOURNMENT:

Disability Notice

If you require a disability-related modification or accommodation to participate in an EBMUD public meeting please call the Office of the Secretary (510) 287-0404. We will make reasonable arrangements to ensure accessibility. Some special equipment arrangements may require 48 hours advance notice.

Document Availability

Materials related to an item on this agenda that have been submitted to the EBMUD Board of Directors within 72 hours prior to this meeting are available for public inspection in EBMUD's Office of the Secretary at 375 11th Street, Oakland, California, during normal business hours, and can be viewed on our website at www.ebmud.com.



APPENDIX

Planning Committee Meeting

*EBMUD Board committee meetings will be conducted in person and via Zoom.
These meetings are recorded and live-streamed.*

Online*

<https://ebmud.zoom.us/j/94576194030?pwd=dWZlc3hNU3JNUVBQYmNKWjJSNVZQdz09>

Webinar ID: 945 7619 4030

Passcode: 925293

By Phone

Telephone: 1 669 900 6833

Webinar ID: 945 7619 4030

Passcode: 925293

International numbers available: <https://ebmud.zoom.us/u/kdmpbwwlg2>

*To familiarize yourself with Zoom, please visit <https://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Meeting>

Providing public comment - *The EBMUD Board of Directors is limited by State law to providing a brief response, asking questions for clarification, or referring a matter to staff when responding to items that are not listed on the agenda.*

- Each speaker is allotted 3 minutes to speak; the Committee Chair has the discretion to amend this time based on the number of speakers
- The Secretary will track time and inform each speaker when the allotted time has concluded
- Comments on **non-agenda items** will be heard at the beginning of the meeting
- Comments on **agenda items** will be heard when the item is up for consideration
- The Secretary will call each speaker in the order received

In person

- Fill out and submit a blue speaker card which is available in the meeting room

Via Zoom

- Use the raise hand feature in Zoom to indicate you wish to make a public comment
<https://support.zoom.us/hc/en-us/articles/205566129-Raising-your-hand-in-a-webinar>
 - If you participate by phone, press *9 to raise your hand
- When prompted by the Secretary, please state your name, affiliation if applicable, and topic

Submitting written comments or materials


- Email written comments or other materials for the Board of Directors to SecOffice@ebmud.com
- Please indicate the meeting date and agenda item number or non-agenda item topic in the subject of the email. Contact information is optional.
- **Please email by 4 p.m. the day prior to the scheduled regular meeting;** written comments and other materials submitted to the Board of Directors will be filed in the record.


To observe the Planning Committee Meeting,
please visit: <https://www.ebmud.com/about-us/board-directors/board-meetings/>

EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: February 8, 2024

MEMO TO: Board of Directors

THROUGH: Clifford C. Chan, General Manager 

FROM: Olujimi O. Yoloye, Director of Engineering and Construction 

SUBJECT: Policy 3.08 – Advisory Election for Annexations Outside the Contra Costa County Urban Limit Line

SUMMARY

At its November 28, 2023 meeting, the Board approved administrative changes to Policy 3.08 - Advisory Election for Annexations Outside the Contra Costa County Urban Limit Line (ULL) (see Attachment 1) and requested a discussion on available options to oppose annexations outside the Contra Costa County ULL and potential changes to the policy. The annexation process and history/intent of Policy 3.08 will be discussed at the February 13, 2024 Planning Committee meeting.

DISCUSSION

The District's water supply planning programs and current and future capital improvement programs do not provide for water service extensions beyond the District's Ultimate Service Boundary (USB).

Boundaries Description

The District's water service area encompasses approximately 332-square-miles in incorporated and unincorporated areas within Alameda and Contra Costa counties. The current service area was established during the District's formation, and has been modified over time by annexations, detachments, or other changes of organization. The USB was established by the District more than 50 years ago to define the exterior boundary within which the District plans to provide water service in accordance with District policy, practices, and regulations. Consistent with District policy, the USB sets the limit of future annexations that the District will consider as part of any request for extension of water service.

Beginning in the 1960s, the Legislature enacted laws to improve regional planning and boundary determinations. These laws established Local Agency Formation Commissions (LAFCOs) for each county, including Alameda and Contra Costa counties, and tasked the LAFCOs with establishing local government boundaries. The Alameda and Contra Costa County LAFCOs have exclusive authority to establish special district boundaries and have established a Sphere of

Influence (SOI) and service area boundary for the District, which defines the area that the District can serve. In general, the USB and SOI are the same but not always; the USB is larger than the SOI (see Attachment 2). The service area boundary, which is distinct from the SOI, can only be changed by LAFCO through an annexation resolution.

The Contra Costa County ULL is the area designated by the voters, which limits urban development to certain areas of the county and helps to preserve farmland and open space. The ULL can be changed, in certain limited circumstances, by the County Board of Supervisors. In general, the USB, SOI, and Contra Costa County ULL are the same with only small differences.

Annexation Process

LAFCO has the authority to approve or disapprove proposed annexations and SOI amendments. LAFCO consideration of an SOI amendment and annexation of a project (e.g., a housing development) into the District's USB would begin following completion of the County's approval process. By law, LAFCO is required to consider timely availability of water supplies to meet the project needs. Generally, LAFCO defers to the District on the ability to serve a project and typically requires a Will Serve letter.

As soon as an annexation application is received, LAFCO staff will typically reach out to the District and any other affected agencies to seek input. Once LAFCO determines a project's annexation application meets submission requirements and accepts the application for filing, LAFCO will place it on the next meeting agenda for "information purposes," and will wait 60 days before agendaizing the petition for action. LAFCO will also transmit a copy of the proposal to the District. If the District opposes the annexation, the District will have 60 days to adopt and submit a resolution to LAFCO requesting termination of annexation proceedings.

A request for termination by the District must be supported by substantial evidence and based on financial or service-related concerns. Furthermore, it can be tied to the inadequacy of the District's water supplies in times of drought and concerns that, by serving a project outside the USB, water supplies may be unavailable to existing customers. The substantial evidence would rely on the District's Urban Water Management Plan and other planning documents in making a determination.

If the District transmits a resolution requesting termination, LAFCO would be required to terminate the annexation proceeding no sooner than 30 days following receipt of the resolution, unless LAFCO has been served with notice that an entity is seeking legal action against the termination resolution. If annexation proceedings are not terminated in response to a termination resolution, the District has the ability to submit a resolution objecting to the proceeding. LAFCO will then be required to consider this as part of its decision in the proceeding. If LAFCO ultimately approves an SOI amendment and annexation of a project into the District's USB, the District could consider legal action against LAFCO seeking to overturn its decision. Prior to this, however, the District could also consider pursuing legal action challenging the local agency's approval of the action.

History of Policy 3.08

In December 2002 and January 2003, the Board's Planning Committee reviewed and recommended Board adoption of a policy identifying circumstances under which the District would call for an advisory election regarding a proposed annexation outside the Contra Costa County ULL. Under the policy, an advisory election would be called if a land use planning agency (e.g., Contra Costa County) designates the District as the preferred water service provider for a proposed development outside the Contra Costa County ULL. If the development includes 200 or more dwelling units, and the Board determines not to oppose annexation of the development, the Board must call an advisory election on the question of whether the territory should be annexed to the District. The 200-dwelling unit threshold was selected based on legislation under consideration at the time, which was supported by the District, seeking to improve the link between water supply availability and certain land use decisions by cities and counties. When the legislation was introduced, it proposed a threshold of 200 dwelling units as the trigger for requiring water availability information as part of the local agency approval of specified large development projects. The enacted legislation set a threshold of 500 dwelling units to match the California Environmental Quality Act standard for determining that a development project is of "statewide, areawide, or regional significance."

Advisory Election

Advisory election costs would be borne by the District and an advisory election would not be binding on LAFCO or the County Board of Supervisors. When Policy 3.08 was adopted, the District determined that it did not have the authority to independently call a binding election on a proposed annexation, because the LAFCO statutes vest this authority exclusively with LAFCO. The purpose of an advisory election is to seek general voter opinion regarding a matter, and Policy 3.08 complements and supplements established District policies regarding land use issues and annexations.

For a development of 200 dwelling units or less that is located outside Contra Costa County's ULL and is not covered by Policy 3.01 - Annexations, Policy 3.08 states that the District shall oppose annexation, and that the Board shall determine at a regularly scheduled meeting whether to call an advisory election on the question of whether the development should be annexed to the District. For developments of 200 or more dwelling units located outside the ULL, the Board shall consider the matter, and if it determines not to oppose the annexation, it shall call an advisory election. Because the results of an advisory election are purely advisory in nature and are not legally controlling, the advisory election on the question of whether a project should be annexed to the District would not control the District's position on the project and would not control Contra Costa County LAFCO's decision on the proposed annexation and SOI amendment.

When calling for an advisory election, an agency must determine the geographic extent of the election. An advisory election may be called within the District's service area or a portion thereof, and if certain conditions are met, may be extended to territory outside the District's service area. Thus, if the Board were to call an advisory election on the question of whether a

project that is outside the USB should be annexed to the District, it would be required to determine the geographic scope of the area to be included.

An advisory election must be held on a date for which the District is already authorized to hold a regular or special election, and may be consolidated with another election as long as doing so does not exceed the capacity of the ballot for that election. To call an advisory election, the Board must adopt and submit a resolution calling the election to the applicable county board of supervisors. A resolution must be submitted at least 88 days prior to the date on which the advisory election is to be held, and the District may not withdraw a resolution calling an advisory election later than 83 days before the election.

Fiscal Impact

The costs of advisory elections can be significant. If the timing of an advisory ballot measure were to allow for consolidation with a general election, the estimated total cost of an advisory election for the District would be approximately \$640,000 (based on current estimated election costs of \$4.00 per voter in Contra Costa County). If it were not possible to consolidate an advisory ballot measure with a general election due to the timing of the LAFCO process, then the costs would be substantially greater. It should also be noted that the District does not have the authority to impose fees to cover election costs on territory situated outside the District's service area.

NEXT STEPS

Because Policy 3.08 complements and supplements established District policies regarding land use issues and annexations, staff is seeking guidance from the Planning Committee on whether to pursue changes to Policy 3.08.

CCC:OOY:kn

Attachments: 1. Policy 3.08
2. District Service Boundary



**ADVISORY ELECTION FOR ANNEXATIONS
OUTSIDE THE CONTRA COSTA COUNTY
URBAN LIMIT LINE**

Policy 3.08

EFFECTIVE 28 NOV 23
SUPERSEDES 14 SEP 10

IT IS THE POLICY OF THE EAST BAY MUNICIPAL UTILITY DISTRICT TO:

Call an advisory election if EBMUD is designated as the preferred water service provider by a local planning agency in its environmental documentation when the proposed development is located outside the Urban Limit Line adopted by Contra Costa County in 2000.

Purpose The purpose of the election shall be to submit to the voters within the EBMUD service area the question of whether territory outside said Urban Limit Line should be annexed to EBMUD.

- Events Triggering an Advisory Election**
- EBMUD is identified by a local planning agency in its environmental documentation as the preferred provider to deliver potable water service to a residential development of 200 or more dwelling units located in territory beyond the Contra Costa County Urban Limit Line. In such cases, the matter shall be placed on the agenda for consideration by the Board of Directors at a regularly scheduled public meeting. If the Board of Directors determines not to oppose annexation of such territory to EBMUD, EBMUD shall call an advisory election on the question of whether such territory should be annexed to EBMUD. The advisory election shall occur prior to the time the Contra Costa County Local Agency Formation Commission is scheduled to consider annexation of the territory to EBMUD and, when possible, shall be consolidated with a general election.
 - If a local agency designates EBMUD as the preferred provider for water service to a residential development in territory outside the Contra Costa County Urban Limit Line that is less than 200 dwelling units and is not covered by the provisions of Policy 3.01– Annexations, then EBMUD shall oppose the annexation and the Board of Directors shall determine, at a regularly scheduled public meeting, whether to call an advisory election on the question of whether such territory should be annexed to EBMUD.
 - This policy shall be applied consistent with and in furtherance of the provisions of Policy 3.01 – Annexations.

Authority Resolution No. 33347-03, January 28, 2003
Amended by Resolution No. 33564-06, November 14, 2006
Amended by Resolution No. 33687-08, October 14, 2008
Amended by Resolution No. 33780-10, September 14, 2010
Amended by Resolution No. 35373-23, November 28, 2023

- References**
- Policy 3.01 Annexations
 - Policy 3.05 Considerations for Extension of Water Service Beyond the Ultimate Service Boundary
 - Policy 3.07 Responsibility to Serve Water Customers during Water Shortage

District Service Boundary

