

375 - 11th Street, Oakland, CA 94607

Office of the Secretary: (510) 287-0440

Notice of Time and Location Change

LEGISLATIVE/HUMAN RESOURCES COMMITTEE MEETING Tuesday, May 12, 2020 10:00 a.m. **Teleconference**

Notice is hereby given that the Tuesday, May 12, 2020 Legislative/Human Resources Committee meeting of the Board of Directors has been rescheduled from 10:15 a.m. to 10:00 a.m.

Due to COVID-19 and in accordance with Alameda County Health Order 20-10 (issued April 29, 2020), and with the Governor's Executive Order N-29-20 which suspends portions of the Brown Act, <u>this meeting will be conducted via</u> <u>teleconference only</u>. In compliance with said orders, a physical location will not be provided for this meeting. These measures will only apply during the period in which state or local public health officials have imposed or recommended social distancing.

Dated: May 7, 2020

Kuche S. Cole

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 Legislative/Human Resources Committee Tuesday, May 12, 2020 10:00 a.m.

Location

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Committee Members John A. Coleman {Chair}, Lesa R. McIntosh, and William B. Patterson will participate via teleconference

Public Participation

Dial 855-369-0450 to participate via telephone; *Enter* participant pin 49-281-364 # when prompted

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. *If you participate via telephone and wish to speak on agenda OR non-agenda items you will be asked to:*

- State your name, affiliation if applicable, and topic
- The Secretary will compile a list of those who wish to make public comment and will call each speaker in the order received
- The Secretary will keep track of time and inform each speaker when his/her allotted time has concluded
- Each speaker will be allotted 3 minutes to speak; the Committee Chair has the discretion to amend this time based on the number of speakers

DETERMINATION AND DISCUSSION:

- 1. Legislative Update:
 - Receive Legislative Report No. 03-20 and consider positions on the following bill: SB 1386 (Moorlach) Local Government: Assessments, Fees, and Charges: Water; and receive information on State Government Response and Federal Actions Related to the Coronavirus Disease 2019 (COVID-19)
 - Update on Legislative Issues of Interest to EBMUD
- 2. Administrative Support at the Service Centers

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 <u>www.ebmud.com</u>.

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EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: May 7, 2020

MEMO TO: Board of Directors

FROM: Alexander R. Coate, General Manager And

SUBJECT: Legislative Report No. 03-20

The following issues are being referred to the Legislative/Human Resources Committee for review and recommendation to the Board of Directors for action, as appropriate, on May 12, 2020.

RECOMMENDED ACTION

Approve a support position on SB 1386 (Moorlach) Local government: assessments, fees, and charges: water; and receive information on State and Federal Government Actions Related to the Coronavirus Disease 2019 (COVID-19).

STATE LEGISLATION

RECOMMENDED POSITION

SB 1386LOCAL GOVERNMENT: ASSESSMENTS,SUPPORT(Moorlach)FEES, AND CHARGES: WATER

SB 1386 (Moorlach), as amended on April 1, 2020, would make clarifications to the Proposition 218 Omnibus Implementation Act (Act) to confirm the authority of cities and water agencies to use property-related service charges for funding water services related to fire protection. The Act provides statutory legal guidance on the implementation of Proposition's 218 constitutional provisions.

Fire hydrants and associated infrastructure owned and maintained by a public water supplier, and the water served through them for fire protection, have generally been understood to be part of the property-related water services water suppliers provide to their customers. This is because fire hydrants and the water served through them are designed to serve properties, instead of the general public.

Recently, a number of public water suppliers have received letters challenging the costs associated with the operation and maintenance of fire hydrants and the cost for the water through the hydrants. The letters assert that these costs should not be related to the property-related water service, and are in fact a charge for a general governmental service and not a valid property-related charge. In February, 81 cities and water agencies, including EBMUD, were sued to

challenge the long-standing method of funding water service used in firefighting through property-related water service charges. The lawsuits allege that including these costs in water rates is prohibited by Article XIII D of the California Constitution (Proposition 218).

In November 1996, California voters approved Proposition 218, which amended the California Constitution by adding Article XIII C and Article XIII D. Article XIII D placed substantive limitations on the use of the revenue collected from property-related fees and on the amount of the fee that may be imposed on each parcel. Additionally, it established procedural requirements for imposing new, or increasing existing, property-related fees. The California Supreme Court has determined that water and wastewater service fees are property-related fees.

SB 1386 would specify that a property-related water service fee or charge by a local agency may include the costs to construct, maintain, repair, or replace public hydrants attached to a water system, and the cost of water, including the associated infrastructure, dispensed through those public hydrants. The bill would confirm the authority of public agencies to use property-related service charges for funding water services related to fire protection and is consistent with the decision in *Glendale Coalition for Better Gov't v. City of Glendale* (2018), 2nd District Court of Appeal (Unpublished). This decision states that fire hydrants used to protect properties from fire and the costs associated with them are property-related services and not general governmental services available to the public in substantially the same manner as property owners.

SB 1386's clarification of existing law would benefit public water agencies by helping to protect agencies, including EBMUD, from litigation regarding property-related service charges for funding water services related to fire protection. SB 1386 would not result in additional costs for EBMUD but may result in lower future costs through avoided litigation and would also ensure that EBMUD has a viable way to fund the significant costs associated with providing water service for fire protection.

EBMUD has not taken positions on similar legislation in the past as there is no recent history of similar legislation to clarify that property-related service charges may include funding water services related to fire protection.

An official support/opposition list for SB 1386 is not currently available.

STATE AND FEDERAL GOVERNMENT ACTIONS RELATED TO THE CORONAVIRUS DISEASE 2019 (COVID-19)

INFORMATION

An overview of key state and federal actions taken in response to the COVID-19 pandemic since the April 14, 2020 legislative report to the Board is provided below.

State Government Actions

Executive Orders

To date, Governor Newsom has issued a total of 38 Executive Orders related to the COVID-19 emergency. Subsequent to the writing of the April 14, 2020 legislative report, 14 additional executive orders have been issued. Information on those executive orders of direct interest to EBMUD is provided below.

April 22, 2020; Executive Order N-54-20; Omnibus

This order was issued to provide extensions relating to DMV-related operations including identification cards, vehicle permits, vehicle registrations; assist recycling centers; and, to suspend for 60 days state requirements for the use of reusable grocery bags, though local jurisdictions with ordinances governing the use of single-use carryout bags prior to January 1, 2015 may remain in place. In addition, of particular interest to EBMUD, the executive order included CEQA-related provisions including:

- Suspending for 60 days the requirement that specified CEQA-related notices be submitted to county clerks for physical posting.
- The suspension for physical posting of specified notices only applies if agencies make the specified notices and materials available to the public in lieu of physical posting by posting the notices on the agency's website, submitting the specified materials to the State Clearinghouse CEQAnet Web Portal, and engage in outreach to any individuals and entities known to be parties interested in the project.
- Suspending the timelines for required tribal consultation for projects that may impact tribal resources.

Staff is considering these provisions in the context of EBMUD operations.

May 4, 2020; Executive Order N-60-20; Stay-at-Home County Variations

This order was issued to direct the State Public Health Officer to establish criteria and procedures to determine whether and how, in light of local conditions, local jurisdictions may implement public health measures, such as stay-at-home orders, that are less restrictive than the statewide measures. In order for a local jurisdiction to implement less restrictive measures the jurisdiction would need to certify that "public health will not be menaced" by the proposed less restrictive local health measures. Local jurisdictions may continue to establish and implement measures that are more restrictive than, or that are in addition to, statewide directives.

May 6, 2020; Executive Order N-62-20; Workers' Compensation Benefits

This order creates a time-limited rebuttable presumption for accessing workers' compensation benefits applicable to Californians who work outside of their homes during the stay-at-home order. Workers must meet certain conditions to be eligible, and eligibility only applies from March 19, 2020, through 60 days after the issuance date of the May 6, 2020 Executive Order.

Legislative Actions

The State Assembly returned from recess on May 4, 2020 and resumed a modified schedule of policy committee hearings. At this time, the State Senate is expected to return from recess on May 11, 2020 and resume a modified schedule of policy committee hearings. Both houses have revised the process for considering policy bills and are sharply reducing the number of bills that will be considered. The process for public engagement is being modified to mitigate COVID-19 concerns with additional changes likely over the coming months to reflect current conditions, the preferences of each house, and lessons learned.

In addition, budget hearings started last month when legislative budget subcommittees for each house convened three hearings to review the state's response to the COVID-19 pandemic to date and the associated spending. The discussions to date have included the expenditure of funds previously appropriated by the legislature, federal funding received to date, anticipated federal funding, and projections of additional COVID-19 related spending over the coming months.

The Senate has also formed a Special Committee on Pandemic Emergency Response that is tasked with reviewing the effectiveness of actions to date and what could be improved. The committee is expected to hold hearings in the coming weeks.

Federal Government Actions

The fourth COVID-19 relief bill, H.R. 266 (McCollum), was signed into law by President Trump on April 24, 2020. H.R. 266, the Paycheck Protection Program and Health Care Enhancement Act, provides interim relief funding to support small businesses, hospitals, and enhance COVID-19 testing. This is in addition to the previously enacted COVID-19 relief bills, which include H.R. 6074 (Lowey), H.R. 6201 (Lowey), and H.R. 748 (Courtney). In total, these four bills have authorized approximately \$3.6 trillion in fiscal support. Congress continues to discuss additional economic stimulus and relief, including potential relief for local government, ratepayer assistance, and funding for infrastructure, although timing and scope remain uncertain.

Staff has been actively engaged in communicating requests to Congress for federal COVID-19 assistance specific to public water and wastewater agencies that are special districts. These requests ask Congress to:

- 1) Create a second Coronavirus Relief Fund to provide funding for special districts that provide drinking water and wastewater treatment services;
- 2) Remove the explicit prohibition for governmental employers, like public water agencies, from receiving payroll tax credit for both the required paid sick leave and the required paid family leave, similar to what was already granted to the private sector in H.R. 6201;
- 3) Include substantive ratepayer assistance specifically for drinking water and wastewater treatment services; and
- 4) Provide funding for any enhanced benefits for essential frontline workers and include public water and wastewater utility workers as eligible essential frontline workers.

In addition, staff has assembled and is leading a coalition of water agencies that serve over half of California's population to advance these requests for the next phase of coronavirus economic and health response legislation. The coalition is comprised of the Alameda County Water District, Contra Costa Water District, Metropolitan Water District of Southern California, San Diego County Water Authority, Santa Clara Valley Water District, and EBMUD. Combined, these agencies provide over 25 million Californians with drinking water. Staff is also working with key associations to secure their support of and advocacy for these requests.

At this time Congress is considering at least one additional relief package and is expected to consider a stimulus effort related to infrastructure at a later date.

NEXT STEPS

Staff is actively pursuing funding eligibility for EBMUD under federal COVID-19 relief packages and is engaged in discussions regarding future federal stimulus efforts. Staff will continue to monitor state and federal government actions in response to COVID-19 and engage as warranted. Staff will continue to provide updates to the Board, as appropriate.

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Attachment

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No. 1386

Introduced by Senator Moorlach

February 21, 2020

An act to amend Section 56000 of the Government Code, relating to local government. An act to amend Section 53750 of, and to add Section 53750.5 to, the Government Code, relating to local government finance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1386, as amended, Moorlach. Local government. Local government: assessments, fees, and charges: water.

The California Constitution specifies various requirements with respect to the levying of assessments and property-related fees and charges by a local agency, including requiring that the local agency provide public notice and a majority protest procedure in the case of assessments and submit property-related fees and charges for approval by property owners subject to the fee or charge or the electorate residing in the affected area following a public hearing.

Existing law, known as the Proposition 218 Omnibus Implementation Act, prescribes specific procedures and parameters for local jurisdictions to comply with these requirements and, among other things, authorizes an agency providing water, wastewater, sewer, or refuse collection services to adopt a schedule of fees or charges authorizing automatic adjustments that pass through increases in wholesale charges for water, sewage treatment, or wastewater treatment or adjustments for inflation under certain circumstances. Existing law defines, among other terms, the term "water" for these purposes to mean any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water from any source.

This bill would specify that "water" for purposes of the Proposition 218 Omnibus Implementation Act also includes the public fixtures, appliances, and appurtenances connected to an above-described system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water from any source. The bill would specify that a property-related water service fee or charge by a local agency may include the costs to construct, maintain, repair, or replace public hydrants attached to a water system, and the cost of water dispensed through public hydrants, to the extent those fees or charges are consistent with the California Constitution.

Existing law, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, provides the exclusive authority and procedure for the initiation, conduct, and completion of changes of organization and reorganization for cities and districts, except as specified.

This bill would make a nonsubstantive change to the provision naming the act.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 53750 of the Government Code is 2 amended to read:

53750. For purposes of Article XIII C and Article XIII D of
the California Constitution and this article, the following words
have the following meanings, and shall be read and interpreted in
light of the findings and declarations contained in Section 53751:
(a) "Agency" means any local government as defined in

7 (a) "Agency" means any local government as defined in
8 subdivision (b) of Section 1 of Article XIII C of the California
9 Constitution.

10 (b) "Assessment" means any levy or charge by an agency upon 11 real property that is based upon the special benefit conferred upon

12 the real property by a public improvement or service, that is

13 imposed to pay the capital cost of the public improvement, the

14 maintenance and operation expenses of the public improvement,

15 or the cost of the service being provided. "Assessment" includes,

16 but is not limited to, "special assessment," "benefit assessment,"

17 "maintenance assessment," and "special assessment tax."

1 (c) "District" means an area that is determined by an agency to 2 contain all of the parcels that will receive a special benefit from a 3 proposed public improvement or service.

3

4 (d) "Drainage system" means any system of public 5 improvements that is intended to provide for erosion control, for 6 landslide abatement, or for other types of water drainage.

7 (e) "Extended," when applied to an existing tax or fee or charge, 8 means a decision by an agency to extend the stated effective period 9 for the tax or fee or charge, including, but not limited to, 10 amendment or removal of a sunset provision or expiration date.

(f) "Flood control" means any system of public improvementsthat is intended to protect property from overflow by water.

(g) "Identified parcel" means a parcel of real property that an
agency has identified as having a special benefit conferred upon
it and upon which a proposed assessment is to be imposed, or a
parcel of real property upon which a proposed property-related
fee or charge is proposed to be imposed.

(h) (1) "Increased," when applied to a tax, assessment, or
property-related fee or charge, means a decision by an agency that
does either of the following:

21 (A) Increases any applicable rate used to calculate the tax,22 assessment, fee, or charge.

(B) Revises the methodology by which the tax, assessment, fee,
or charge is calculated, if that revision results in an increased
amount being levied on any person or parcel.

26 (2) A tax, fee, or charge is not deemed to be "increased" by an
27 agency action that does either or both of the following:

28 (A) Adjusts the amount of a tax, fee, or charge in accordance

with a schedule of adjustments, including a clearly defined formulafor inflation adjustment that was adopted by the agency prior to

31 November 6, 1996.

32 (B) Implements or collects a previously approved tax, fee, or 33 charge, so long as the rate is not increased beyond the level 34 previously approved by the agency, and the methodology 35 previously approved by the agency is not revised so as to result in 36 an increase in the amount being levied on any person or parcel.

(3) A tax, assessment, fee, or charge is not deemed to be
"increased" in the case in which the actual payments from a person
or property are higher than would have resulted when the agency

40 approved the tax, assessment, fee, or charge, if those higher

1 payments are attributable to events other than an increased rate or

2 revised methodology, such as a change in the density, intensity,3 or nature of the use of land.

4 (i) "Notice by mail" means any notice required by Article XIIIC 5 or XIIID of the California Constitution that is accomplished 6 through a mailing, postage prepaid, deposited in the United States 7 Postal Service and is deemed given when so deposited. Notice by 8 mail may be included in any other mailing to the record owner 9 that otherwise complies with Article XIIIC or XIIID of the 10 California Constitution and this article, including, but not limited 11 to, the mailing of a bill for the collection of an assessment or a 12 property-related fee or charge.

(j) "Record owner" means the owner of a parcel whose name
and address appears on the last equalized secured property tax
assessment roll, or in the case of any public entity, the State of
California, or the United States, means the representative of that
public entity at the address of that entity known to the agency.

18 (k) "Sewer" includes systems, all real estate, fixtures, and 19 personal property owned, controlled, operated, or managed in 20 connection with or to facilitate sewage collection, treatment, or 21 disposition for sanitary or drainage purposes, including lateral and 22 connecting sewers, interceptors, trunk and outfall lines, sanitary 23 sewage treatment or disposal plants or works, drains, conduits, 24 outlets for surface or storm waters, and any and all other works, 25 property, or structures necessary or convenient for the collection 26 or disposal of sewage, industrial waste, or surface or storm waters. 27 "Sewer system" shall not include a sewer system that merely 28 collects sewage on the property of a single owner.

(*l*) "Registered professional engineer" means an engineer
registered pursuant to the Professional Engineers Act (Chapter 7
(commencing with Section 6700) of Division 3 of the Business
and Professions Code).

(m) "Vector control" means any system of public improvements
or services that is intended to provide for the surveillance,
prevention, abatement, and control of vectors as defined in
subdivision (k) of Section 2002 of the Health and Safety Code and
a pest as defined in Section 5006 of the Food and Agricultural
Code.

39 (n) "Water" means any system of public improvements 40 improvements, and the public fixtures, appliances, and

1 appurtenances connected to that system, intended to provide for

2 the production, storage, supply, treatment, or distribution of water3 from any source.

4 SEC. 2. Section 53750.5 is added to the Government Code, to 5 read:

6 53750.5. (a) The Legislature finds and declares all of the 7 following:

8 (1) The provision of fire service is a different and distinct 9 category of service from the water service made available by a 10 water service provider, which aids the fire service provider in 11 providing fire service.

(2) Hydrants owned by water service providers are a public
fixture, appliance, or appurtenance connected to a water system
for the purpose of providing an immediately available water service
and are often used by a water service provider for water system
maintenance.

(3) Hydrants are generally designed, installed, and used to
provide an immediately available supply of water to extinguish
fires that threaten structures and other improvements on property
served by the water service provider, and are not for the purpose
of extinguishing wildfires or fires that threaten personal property,
vacant lands, or structures without water service.

(4) Hydrants generally are not available to the public at largein substantially the same manner as they are to property owners.

(5) The fact that water from a hydrant could be used for a
purpose other than property protection in an emergency does not
make either the hydrant or the water dispensed from the hydrant
available to the public at large in substantially the same manner
as to property owners.

(6) The water dispensed through a public hydrant owned by a
water service provider is a property-related water service provided
to all property owners, as an incident of property ownership,
because the water is immediately available to be used to extinguish
a direct threat to structures and other improvements on property

35 and concurrently benefits all parcels, which are threatened with

36 damage or destruction by the fire not being extinguished.

37 (7) There are water service costs associated with maintaining,

38 repairing, and replacing hydrants and costs associated with the

39 water dispensed through hydrants to protect real property.

SB 1386

(b) To the extent consistent with the requirements of Section 6 1 2 of Article XIII D of the California Constitution, fees or charges for property-related water service may include the costs to 3 construct, maintain, repair, or replace public hydrants attached 4 5 to a water system, and the cost of water dispensed through public hydrants. The fee or charge may be fixed and collected consistent 6 with Section 53069.9 of the Government Code, or consistent with 7 any other method consistent with Section 6 of Article XIII D of the 8 9 California Constitution. (c) This section is declaratory of existing law. 10

SECTION 1. Section 56000 of the Government Code is
 amended to read:

13 56000. This division shall be known, and may be eited, as the

14 Cortese-Knox-Hertzberg Local Government Reorganization Act

15 of 2000.

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EAST BAY MUNICIPAL UTILITY DISTRICT

DATE:	May 7, 2020
MEMO TO:	Board of Directors
THROUGH:	Alexander R. Coate, General Manager
FROM:	Clifford C. Chan, Director of Operations and Maintenance
SUBJECT:	Administrative Support at the Service Centers

INTRODUCTION

During the March 26, 2019 Budget Workshop, AFSCME Local 2019 and IFPTE Local 21 raised concerns about the clerical staffing levels at the service centers (yards). Since that time, staff has worked to clarify and evaluate work processes, distribute work assignments, and prioritize workloads for those clerical staff. In addition, staff has been evaluating the need for additional staffing to support the service centers. This item will be discussed at the May 12, 2020 Legislative/Human Resources Committee meeting.

DISCUSSION

Each of the four service centers performs maintenance and construction of water distribution pipelines and appurtenances. Prior to 2015, three service centers performed maintenance and construction and one only provided maintenance support. The service centers that performed maintenance and construction were staffed with two clerical positions and the service center that only provided maintenance support had one clerical position. Since 2017, the service centers have had six clerical staff.

Currently, two service centers have two clerical staff and two have one clerical staff. There are currently six administrative clerical staff (Senior Administrative Clerks and Administrative Clerks) supporting the division's four service centers. In May 2019, staff met with Local 2019 to discuss short- and long-term plans to evaluate and address clerical resources for the service centers. The District has made progress on the short- and long-term plans.

In 2018, the Dispatch Center moved from Central Area Service Center to the Administration Building, which removed some staff from the service center who assisted with clerical duties. However, the nature, character, and flow of the clerical work also shifted and changed. For example, access to mobile computing technology by field staff has shifted the way field work is entered into the work order system. Paper work order forms that had been entered by clerical staff are now completed by field staff, improving data quality and efficiency.

Administrative Support at the Service Centers Legislative/Human Resources Committee May 7, 2020 Page 2

The District also distributed some work assignments from service centers with one clerical staff to those that have two staff, and has clarified clerical work processes and responsibilities. The pandemic has provided valuable information regarding work process improvements and the ability to complete assignments remotely. In addition, an analysis of the work assignments found that managing and processing encroachment permits makes up a large portion of the clerical staff's work. The District is currently evaluating the efficacy of centralizing permit management and processing as a result of an Internal Audit report conducted in 2019; the analysis is expected to be completed by June 2020.

NEXT STEPS

There are many uncertainties in the scope and workload of clerical staff in the service centers. The replacement of the existing work management system, Human Resources Information System, and Materials Management and Financial Information Systems will likely change work processes dramatically and is expected to reduce clerical workload. In addition, some clerical tasks related to obtaining and tracking permits may also change. The outcome of the work process evaluation will help inform the future staffing needs to be considered in the FY22/23 budget process beginning later this year.

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