

ORDINANCE NO.
20-04

**AN URGENCY ORDINANCE OF THE MORAGA-ORINDA FIRE
PROTECTION DISTRICT OF CONTRA COSTA COUNTY, CALIFORNIA
REQUIRING ELECTRICAL UTILITIES TO PROVIDE NOTICE OF WORK
IN HIGH FIRE-RISK AREAS AND RESTRICTING CERTAIN ELECTRICAL
UTILITY WORK DURING RED FLAG WARNING PERIODS**

SECTION ONE. Findings. The Moraga Orinda Fire District hereby finds and declares as follows:

(a) The Moraga-Orinda Fire Protection District ("District") is the sole and exclusive provider of fire protection, prevention, and suppression services within its jurisdictional territory, as determined by the Contra Costa County Local Agency Formation Commission and in accordance with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code § 56000 *et seq.*).

(b) In the wake of recent catastrophic wildfires in California, and pursuant to Senate Bill 901 and rules of the California Public Utilities Commission ("CPUC"), publicly owned California electric utilities are required to prepare plans for constructing, maintaining, and operating their electrical lines and equipment in manners that minimize the risk of wildfire.

(c) Senate Bill 901 added Section 764 (b) to the Public Utilities Code, which requires An electrical corporation that has a contract for private fire safety and prevention, mitigation, or maintenance services shall make an effort to reduce or eliminate the use of contract private fire safety and prevention, mitigation, and maintenance personnel in favor of employing highly skilled and apprenticed personnel to perform those services in direct defense of utility infrastructure in collaboration with public agency fire departments having jurisdiction.

(d) On February 6, 2019, the PG&E Corporation and Pacific Gas and Electric Company (collectively "PG&E") submitted to the CPUC a "Wildfire Safety Plan" for minimizing risk of further wildfires caused by PG&E equipment, as required by Senate Bill 901. This plan was updated on February 28, 2020.

(e) Section 5.3.5.2 of PG&E's 2020 Wildfire Safety Plan states that "PG&E's land and environmental management and customer care teams work closely with PG&E's vegetation management team to overcome these challenges as quickly as possible. They coordinate and plan the work in order to reach out to landowners, communities, and local governments to address concerns in advance of the proposed vegetation management activities. They also coordinate with local, state, and federal agencies to obtain necessary permits and conditions."

(f) Certain portions of the District fall within the Very High Fire Hazard Severity Zones as identified on the most recent California Department of Forestry and Fire Protection Fire and Resource Assessment Program map; and/or within the Tier 2 - Elevated and Tier 3 - Extreme zones as identified on the most recent California Public Utilities Commission Fire-Threat Map;

and/or locally designated Wildland Urban Interface – Fire Areas supported by a finding of fact and as defined in MOFD Ordinance 20-02 which areas are hereafter referred to as high fire risk areas ("HFRA").

(g) PG&E's Wildfire Safety Plan proposes to deploy Safety and Infrastructure Protection Teams ("SIPT") to support PG&E's work in a HFRA. The SIPT is to be comprised of individuals with training in fire prevention, fire suppression, and emergency medical response, and are to be located at the site that specified work by PG&E crews is to be conducted.

(h) PG&E has developed criteria to be considered on a daily basis, when engaging in fire prevention fire safety and prevention, mitigation, or maintenance services, in order to ensure fire safety, which include: considering weather, topography, and fuel types. PG&E and requires personnel to record consideration of the criteria.

(i) In order to ensure the public's safety and the orderly provision of emergency services in the District, and to comply with Public Utilities Code section 764, an electrical utility must coordinate with the exclusive provider of fire emergency services when engaging in private fire safety and prevention, mitigation, or maintenance services.

(j) To reduce the risk of loss of life and property due to uncontrolled wildfire, the District has instituted a burn ban during high fire danger periods.

(k) Due to the topography, climate, and vegetative fuel types prevalent in the District, historical fire activity has occurred between June and December.

(l) As shown in Table 2 of PG&E's 2020 Wildfire Safety Plan, numerous near miss events such as unplanned outages, faults, and conventional blown fuses that could result in electrical utility-caused wildfire ignition have occurred within PG&E's service area. In 2018, 34,066 of these near-miss events occurred and an additional 20 events resulted in utility-caused ignitions which burned 167,162 acres resulting in 85 fatalities and the loss of 18,805 structures. In 2019, 46,105 near-miss events occurred while 21 utility-caused ignitions burned 79,959 acres, resulting in the loss of 374 structures.

(m) Given the substantial risk of wildfires, the District has determined it is unsafe for electric utilities to perform scheduled, "non-emergency" work that requires the deployment of a SIPT or any other personnel to engage in fire safety, prevention, or mitigation services within the High Fire Risk Areas of the District's jurisdictional boundaries during periods when the National Weather Service has issued a Red Flag Warning for the work area.

SECTION TWO. The Board of Directors, as the governing body of the Moraga-Orinda Fire District, does ordain as follows:

Section 1. Definitions.

(a) "High Fire Risk Area" means the portions of the District that fall within the Very High Fire Hazard Severity Zones as identified on the most recent California Department of Forestry and Fire Protection Fire and Resource Assessment Program map; and/or within the Tier 2 - Elevated and Tier 3 - Extreme zones as identified on the most recent California Public Utilities Commission Fire-Threat Map; and/or locally designated Wildland Urban Interface – Fire Area.

(b) "Safety and Infrastructure Protection Team" or "SIPT" means personnel used by an electrical utility to perform fire safety, prevention, and mitigation functions to manage wildfire

risk.

Section 2. Notice of Utility Work. In order to ensure the public's safety and for the District to carry out its duties as the exclusive provider of fire prevention, fire suppression, and emergency response within its service area, any electrical utility engaging a SIPT or otherwise engaging in fire safety, prevention, or mitigation services in an area designated as a High Fire Risk Area during any time between June 1 and December 1 or when the District has imposed an Open Burning Ban, must provide notice to the District as follows.

(a) Requirements of Notice. The electrical utility shall provide in its notice the location, time, and type of work the utility is undertaking. The notice must be sent to: utility.notification@mofd.org.

(b) Timing of Notice. The electrical utility must provide the District with no less than 48 hours notice before starting any scheduled work. When the electrical utility must make critical or emergency repairs in situations where it is not possible to give the required 48 hours notice, the electrical utility must provide notice at the earliest possible time.

(c) Additional Notice. In addition to the notice prior to starting work, the electrical utility shall provide to the District a copy of the form used to document the daily safety briefing at the work site the utility is required to complete for each day of work, no later than three days after each working day.

Section 3. Restrictions on Utility Work During Red Flag Warnings. An electrical utility is prohibited from conducting scheduled, non-emergency work which requires engaging a SIPT or any other personnel to engage in fire safety, prevention, or mitigation services within the High Fire Risk Areas of the District's jurisdictional boundaries during periods when the National Weather Service has issued a Red Flag Warning for the work area.

Section 4. Penalties.

Any violation of this ordinance is an infraction. The electrical utility shall be subject to a fine of \$130.00 for the first offense, \$700.00 for the second offense within one year; and \$1300 for the third and subsequent offenses within one year.

SECTION THREE. SEVERABILITY

If any section, subsection, subdivision, paragraph, sentence, clause, phrase or word in this Urgency Ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining provisions of this Ordinance. The Board hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, phrase or word of this Urgency Ordinance regardless of the unconstitutionality or invalidity of any other section, subsection, subdivision, paragraph, sentence, clause, phrase or word herein.

SECTION FOUR. ENVIRONMENTAL DETERMINATION

The proposed Ordinance is not a "Project" because it has no potential for causing a

significant physical impact on the environment and therefore is not subject to review under the California Environmental Quality Act ("CEQA," Public Resources Code Section 21000 *et seq.*). In addition, the proposed Ordinance is exempt under the definition of a "Project" in Section 15378(b)(3) of the regulations implementing CEQA (the "CEQA Guidelines," Title 14 of the California Code of Regulations, Sections 15000 *et seq.*) in that the proposed Ordinance concerns a government funding mechanism or fiscal activity that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. The Ordinance is also exempt under CEQA Guidelines Section 15307 as an action to protect natural resources and protection of the environment.

SECTION FIVE. URGENCY FINDINGS

The District Board of Directors hereby finds and determines that this Urgency Ordinance is necessary because of the facts set forth in the Findings.

SECTION SIX. DECLARATION OF URGENCY/EFFECTIVE DATE

Based on the forgoing Recitals and findings, all of which are deemed true and correct, this Urgency Ordinance is urgently needed for the immediate preservation of the public health, safety and welfare within the meaning of Article IV, Section 8(d) of the California Constitution. This Urgency Ordinance shall take immediate effect and be in full force upon its passage and adoption.

SECTION SEVEN. NOTICE TO UTILITIES

Upon adoption of this Urgency Ordinance, the Clerk of the District shall provide a copy of this Ordinance to all electrical utilities providing service within the jurisdictional boundaries of the District.

PASSED, APPROVED and ADOPTED this 21 day of October at the regular meeting of the District Board of Directors held virtually on October 21, 2020, on a motion made by Director **Jex** seconded by Director **Baitx**, and duly carried with the following roll call vote:

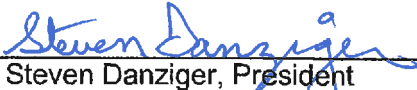
AYES: DIRECTORS BAITX, DONNER, JEX, JORGENS, AND DANZIGER

NOES: NONE

ABSENT: NONE

ABSTAIN: NONE

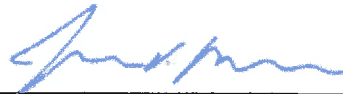
ORDINANCE 20-04


Steven Danziger, President
Board of Directors

ATTEST:

APPROVED AS TO FORM:


Marcia Holbrook District
Secretary/Clerk


Jonathan V. Holtzman
District Counsel