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MOFD ordinance punishes electric utilities for work during high fire danger

By Nick Marnell

The Moraga-Orinda Fire District board unanimously passed an ordinance Oct. 21 requiring an electric utility that performs fire safety, mitigation or prevention work within the district during periods of high fire danger to notify MOFD within 48 hours of the scheduled activity. The ordinance is similar to one passed by the San Ramon Valley Fire Prevention District earlier this year.

Given the substantial risk of wildfires, the MOFD ordinance also disallows an electric utility like the Pacific Gas and Electric Company to perform scheduled, non-emergency work that requires the deployment of a safety and infrastructure protection team within the district when the National Weather Service has issued a Red Flag Warning for the work area.

"The work could lead to an ignition and cause a wildfire to start," Fire Chief Dave Winnacker told his board. "If PG&E determines that this work merits deployment of an SIPT, the district believes it should be informed of that fact."

The district crafted its ordinance pursuant to Senate Bill 901, which requires utilities to move away from private contractors that provide fire and safety services to "highly skilled personnel in collaboration with public fire agencies." Also, Assembly Bill 2380 states that "firefighting and fire protection services are a municipal function and a public good to be provided by public agencies and their employees."

In addition, a Contra Costa County grand jury, in its 2020 report on wildfire preparedness, recommended that county cities and fire boards consider mechanisms such as the San Ramon Valley Fire ordinance "that enable the fire district or fire department to recover labor and equipment costs from PG&E for overseeing electrical utility work that presents a high fire risk."

A violation of the MOFD ordinance is an infraction, subject to a \$130 fine for the first offense, \$700 for the second offense within one year, and \$1,300 for the third and subsequent offenses within one year. "Our experience with PG&E has been, when it comes to things like notifications, if we ask, it just doesn't have the force of an ordinance," Winnacker said.

PG&E sued San Ramon Valley Fire over its electric utility ordinance but a Superior Court judge dismissed the suit on a procedural issue, finding that the company failed to timely publish a legal notice of its action against the fire district in a local newspaper.

MOFD counsel said that defending its ordinance may result in extra legal fees to the district. "The law is not completely settled in this area, so there is always a risk," Jonathan Holtzman said.

A PG&E spokesman said the company had not seen the MOFD ordinance and could not comment on it.

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