To: Honorable Mayor and Members of the City Council

From: Councilmember Wengraf

Subject: No Change to the Standards of Inverse Condemnation

RECOMMENDATION
Send a letter (see attached) via fax, urging No Change to the Standards of Inverse Condemnation to the State Legislature’s Wildfire Preparedness and Response Conference Committee Co-Chairs, the Governor, the Assembly Speaker, the Senate President pro Tempore, Senator Nancy Skinner and Assembly Member Tony Thurmond.

FINANCIAL IMPLICATIONS
None

BACKGROUND
Local governments across California have long been at the forefront of wildfire and disaster preparedness and response. With the trends of increasing wildfire severity and our growing tree mortality crisis in California, strengthening safety and other policies to protect against these disasters are critical.

For decades, local governments have relied on the laws to make local governments, and their constituents and businesses, whole after a disaster caused by an investor-owned utility. Liability rules, known as ”inverse condemnation,” offer a strong incentive for utilities to invest in safety, while still providing them the ability to spread the cost to ratepayers if the California Public Utilities Commission (CPUC) determines that the utility acted reasonably. It also levels the playing field by allowing local governments and private citizens to bring investor-owned utilities to the table to settle for damages, rather than languish in court under negligence suits.

The California State Legislature’s Wildfire Preparedness and Response Conference Committee is discussing wildfire safety measures for the state and cities. They are also discussing the possibility of changing inverse condemnation. Inverse condemnation is a legal concept that holds investor owned utilities accountable for damages when their utilities contribute to a disaster. Investor owned utilities, including PG&E, are exploring ways to shift the costs of fires they started to other entities.
ENVIRONMENTAL SUSTAINABILITY
No impact

CONTACT PERSON
Councilmember Wengraf  Council District 6  510-981-7160

Attachments:
1: Letter
September 14, 2018

Senator Bill Dodd, Co-Chair
State Capitol, Room 5064
Sacramento, CA 95814
VIA FAX: (916) 651-4903

Assembly Member Chris Holden, Co-Chair
State Capitol, Room 5132
Sacramento, CA 95814
VIA FAX: (916) 319-2141

RE: Wildfire Preparedness & Response

Dear Senator Dodd & Assembly Member Holden:

As California enters full force into another wildfire season, we appreciate the Legislature’s focus on wildfire preparedness and response. Local governments across California have long been at the forefront of this issue with the trends of increasing wildfire severity and our growing tree mortality crisis in California. We urge the Legislature to focus on strengthening safety and other policies to protect against wildfires and natural disasters.

The City of Berkeley supports the call to action to strengthen California’s fire prevention activities and become more resilient to the increased threat of wildfire. The City of Berkeley has undertaken the following actions to adapt and become more resilient to these disasters through enhanced planning and emergency preparedness efforts:

1. Undergrounded utility wires in almost half of our city’s arterial streets and nearly a third of its collector streets to create safe escape routes for residents and access routes for first responders.
2. Passed two Bond Measures to enhance our fire department’s budget. This provided overtime money to keep all 7 fire stations open, train firefighters to be paramedics, provide citizen emergency training (CERT), replace our radios with ones that are interoperable with all other fire departments, hire two employees to do community outreach in underserved areas, and fund the disaster cache program.
3. Hill residents voted to tax themselves about $45 per year for a chipper program that goes through each neighborhood twice per summer, removing excess vegetation that they leave on the curb.

The City of Berkeley opposes efforts to change “inverse condemnation” laws. For decades, local governments have relied on the laws to make cities and counties, and their constituents and businesses, whole after a disaster caused by an investor-owned utility. This legal standard is critically important. It provides a strong incentive for utilities to invest in safety, while still providing them the ability to spread the cost to ratepayers if the California Public Utilities Commission (CPUC) determines that the utility acted reasonably. It also levels the playing field by allowing local governments and private citizens to bring investor-owned utilities to the table to settle for damages, rather than languish in court under negligence suits.

Changing the rules now would have a lasting negative impact on current and future events, our ability to be made whole after disasters, and potentially our own local exposure to lawsuits. Our City invests heavily in fire prevention. We need our public utilities to be good partners and do the same. We also need them to take financial responsibility for fires ignited by their transformers or wires. Passing the cost onto cities or ratepayers is unjust and further exacerbates the trauma of what people just lived through. Further, it derails their ability to build back and continue as a thriving city.
For these reasons, the City of Berkeley strongly urges you to resist the request to change the liability rules and instead focus on a full examination of safety requirements and standards.

Sincerely,

Berkeley City Council
Berkeley, CA.

cc: Honorable Governor Brown, FAX: (916) 558-3177
Honorable Speaker Anthony Rendon, California State Assembly, FAX: (916) 319-2163
Honorable President pro Tempore, Toni Atkins, California State Senate, FAX: (916) 651-4939
Honorable Senator Nancy Skinner, FAX: (916) 651-4909
Honorable Assembly Member Tony Thurmond, FAX: (916) 319-2115
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