

Board Office Use: Legislative File Info.	
File ID Number	19-0625
Introduction Date	4/10/19
Enactment Number	Failed - 4/5 Vote Required
Enactment Date	4/10/19 If



# Memo

## Motion Failed - 4/5 Vote Required

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Tim White, Deputy Chief Facilities  
Marion McWilliams, General Counsel

**Board Meeting Date** April 10, 2019

**Subject** Resolution No. 1819-0016a - Declaring Ongoing Emergency Pursuant To California Uniform Public Construction Cost Accounting Act (CUPCCAA), Approved Under Enactment No. 19-0453, and Authorizing Continued Abatement and Repair of the Sewer Line at Community Day School

**Action Requested and Recommendation** Adoption by the Board of Education of Resolution No. 1819-0016a – Declaring Ongoing Emergency Pursuant To California Uniform Public Construction Cost Accounting Act (CUPCCAA), Approved Under Enactment No. 19-0453, and Authorizing Continued Abatement and Repair of the Sewer Line at Community Day School.

**Background and Discussion** On March 20, 2019, by Enactment No. 19-0453, the Board of Education declared an emergency pursuant to the Public Contract Code which authorized the District to enter into emergency contracts for the procurement of equipment and services for emergency abatement and repair of the sewer line at Community Day School. Under the Public Contract Code 22050, the Board shall review the emergency action at its next regularly scheduled meeting and, except as specified below, at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four- fifths vote, that there is a need to continue the action.

At the time of the Board's submission deadline, work on the emergency repairs had commenced but were not yet complete. The repairs and administrative matters, including contract processing, remain outstanding and are expected to be complete by April 24, 2019.

**Fiscal Impact** None

**Attachments**

- Resolution 1819-0016a
- 19-0471 Declaring Emergency Establishing and Authorizing a Budget for Emergency Repair Work In the Impacted Areas - Sewer Line Breakage - Community Day School

**RESOLUTION  
OF THE  
BOARD OF EDUCATION  
OF THE OAKLAND UNIFIED SCHOOL DISTRICT  
NO. 1819-0016a**

**DECLARING ONGOING EMERGENCY PURSUANT TO CALIFORNIA UNIFORM PUBLIC  
CONSTRUCTION COST ACCOUNTING ACT (CUPCAA), APPROVED UNDER ENACTMENT  
NO. 19-0453, AND AUTHORIZING CONTINUED ABATEMENT AND REPAIR OF THE SEWER LINE  
AT COMMUNITY DAY SCHOOL, 4917 Mountain Blvd, Oakland, CA 94619**

**WHEREAS**, in cases of emergency, the Governing Board of the District (“Board”) may proceed pursuant to California Uniform Public Construction Cost Accounting Act (CUPCAA) to immediately replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contract; and

**WHEREAS**, on March 20, 2019, by Enactment No. 19-0453, the Governing Board of the Oakland Unified School found:

- (1) That there was an emergency as defined by applicable statute(s) (“Emergency”);
- (2) That in order to mitigate and minimize as quickly as possible the potential health and safety impact on students, the Repair Work needed to commence immediately and avoid the delays which would result from a competitive bidding process, and that approval of the emergency resolution was necessary to respond to the Emergency;
- (3) That contracts with firms to perform all Repair Work in an amount not to exceed \$500,000, in a form to be approved by the General Counsel, were appropriate and necessary without further advertising for or inviting of bids, and that all steps and all actions necessary to execute and implement those contracts could be delegated and performed by staff; and;

**WHEREAS**, emergency work under section 22035 must be done pursuant to the terms of Public Contract Code section 22050; and

**WHEREAS**, section 22050 requires, in relevant part, that the following steps be taken:

- (4) Pursuant to a four-fifths vote of the Board, the District may repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts;
- (5) If the Board orders any action specified above, the Board shall review the emergency action at its next regularly scheduled meeting and, except as specified below, at every

regularly scheduled meeting thereafter until the action is terminated, to determine, by a four- fifths vote, that there is a need to continue the action;

- (6) When the Board reviews the emergency action, it shall terminate the action at the earliest possible date that conditions warrant so that the remainder of the emergency action may be completed by giving notice for bids to let contracts; and

**WHEREAS**, at the time of the Board's submission deadline, work on the emergency repairs have commenced but are not yet complete. The repairs and administrative matters, including contract processing, remain outstanding and are expected to be complete by April 24, 2019; and

**NOW, THEREFORE, BE IT RESOLVED**, the Governing Board of the Oakland Unified School District hereby resolves, determines and finds the Emergency is still ongoing and that there is a need to continue the action.

**PASSED AND ADOPTED by a four-fifths (4/5) vote** by the Board of Education of the Oakland Unified School District this 10th day of April, 2019; by the following vote, to wit:

PREFERENTIAL AYE:

PREFERENTIAL NOE:

PREFERENTIAL ABSTENTION: **Motion Failed - 4/5 Vote Required**

PREFERENTIAL RECUSE:

AYES:

NOES:

ABSTAINED:

RECUSE:

ABSENT:

**CERTIFICATION**

We hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at a Regular Meeting of the Board of Education of the Oakland Unified School District, held on \_\_\_\_\_, 20\_\_.

Legislative File Info.	
File ID Number:	
Introduction Date:	
Enactment Number:	
Enactment Date:	

**OAKLAND UNIFIED SCHOOL DISTRICT**

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Aimee Eng  
President, Board of Education

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Kyla Johnson-Trammell  
Superintendent and Secretary, Board of Education

Board Office Use: <b>Legislative File Info.</b>	
File ID Number	19-0502
Introduction Date	3/20/19
Enactment Number	19-0453
Enactment Date	3/20/19 os



**OAKLAND UNIFIED  
SCHOOL DISTRICT**  
Community Schools, Thriving Students

**Memo**

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Tim White, Deputy Chief Facilities

**Board Meeting Date** March 20, 2019

**Subject** Declaring An Emergency Pursuant To California Uniform Public Construction Cost Accounting Act (CUPCCAA) For The Procurement Of Equipment, Materials, And Services For Emergency Abatement And Repair Of The Sewer Line At Community Day School

**Action Requested and Recommendation** Approval of Resolution 1819-0016 Declaring An Emergency Pursuant To California Uniform Public Construction Cost Accounting Act (CUPCCAA) For The Procurement Of Equipment, Materials, And Services For Emergency Abatement And Repair Of The Sewer Line At Community Day School, 4917 Mountain Blvd, Oakland, Ca 94619 And Authorizing A Budget For The Emergency Repair Work For Total District Expenditure Not To Exceed \$500,000.00

**Background** Pursuant to the California Uniform Public Construction Cost Accounting Act (CUPCCAA) certain public projects can be exempt from public bidding requirements when 4/5<sup>ths</sup> of the Board finds that emergency work or repairs are needed to maintain public health and safety.

**Discussion** An emergency is a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. Following recent heavy rains, the structural integrity of the sewer line at Community Day School was compromised. The current state of the sewer line requires immediate remediation and repairs ("Repair Work") to maintain health and safety at the school site and avoid the imminent environmental and health/ safety risks of raw sewage. The estimated cost to repair the sewer line is \$485,000.

**Fiscal Impact** Not to exceed \$500,000, Fund 1

**Attachments** Resolution 1819-0016

**RESOLUTION  
OF THE  
BOARD OF EDUCATION  
OF THE OAKLAND UNIFIED SCHOOL DISTRICT  
NO. 1819-0016**

**DECLARING AN EMERGENCY PURSUANT TO CALIFORNIA UNIFORM  
PUBLIC CONSTRUCTION COST ACCOUNTING ACT (CUPCCAA) FOR THE  
PROCUREMENT OF EQUIPMENT, MATERIALS, AND SERVICES FOR  
EMERGENCY ABATEMENT AND REPAIR OF THE SEWER LINE AT COMMUNITY  
DAY SCHOOL, 4917 Mountain Blvd, Oakland, CA 94619 AND AUTHORIZING A  
BUDGET FOR THE EMERGENCY REPAIR WORK FOR TOTAL DISTRICT  
EXPENDITURE NOT TO EXCEED \$500,000.00**

**WHEREAS**, on or about February 26, 2019, after significant rainfall, the sewer line at Community Day School demonstrated signs of disrepair and compromise; and

**WHEREAS**, the District assessed the situation to determine the scope and costs of repairs, whether the work could be handled within the District, and methods for expediting repairs; and

**WHEREAS**, the current state of the sewer line requires immediate remediation and repairs ("Repair Work") to maintain health and safety at the school site; therefore, an Emergency Resolution is required in order and avoid the imminent environmental and health/ safety risks of raw sewage; and

**WHEREAS**, the District estimates the cost of repairs to be at least \$485,000 (four hundred and eighty five thousand dollars) but, given the emergency need for repairs, there is insufficient time to competitively bid the project; and

**WHEREAS**, the District is subject to the California Uniform Public Construction Cost Accounting Act (Pub. Contract Code, § 22000, et seq., "CUPCCAA"), which requires that construction contracts of \$200,000 or more be formally and competitive bidding; and

**WHEREAS**, an exception to PCC § 22000 and the CUPCCAA competitive bidding requirements exists in cases of emergency when repair and/or replacements are necessary; and

**WHEREAS**, in cases of emergency, the governing board of the District ("Board") may proceed pursuant to the CUPCCAA to immediately replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts (Pub. Contract Code, § 22035); and

**WHEREAS**, an emergency is a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services (Pub. Contract Code, § 1102); and

**WHEREAS**, emergency work under section 22035 must be done pursuant to the terms of Public Contract Code section 22050; and

**WHEREAS**, section 22050 requires, in relevant part, that the following steps be taken:

- (1) Pursuant to a four-fifths vote of the Board, the District may repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts;
- (2) Before taking any action pursuant to paragraph (1), the Board shall make a finding, based on substantial evidence set forth in the minutes of its meeting, that the emergency will not permit a delay resulting from a competitive solicitation for bids, and that the action is necessary to respond to the emergency;
- (3) If the Board orders any action specified above, the Board shall review the emergency action at its next regularly scheduled meeting and, except as specified below, at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths vote, that there is a need to continue the action. If the Board meets weekly, it may review the emergency action in accordance with this paragraph every 14 days;
- (4) When the Board reviews the emergency action, it shall terminate the action at the earliest possible date that conditions warrant so that the remainder of the emergency action may be completed by giving notice for bids to let contracts; and

**WHEREAS**, immediate action must be taken by the District at the Community Day School site Repair Work including, without limitation, the following:

1. Taking all actions required to make the school site safe, healthy, and secure and to prevent and minimize any possible injury to persons or the environment,
2. Procuring and/or performing other associated services and public works required to resume and continue the use of the damaged property at Community Day School; and

**WHEREAS**, the Repair Work must be performed without delay to respond to the emergency and to mitigate and minimize as quickly as possible the potential health and

safety impact on students, teachers, and other District staff at the School, other users, and the general public; and

**WHEREAS**, because of the requirement that Repair Work be done without delay, District staff must be able to negotiate contracts to direct firms to perform the work related to the emergency without following formal bidding practices; and

**NOW, THEREFORE, BE IT RESOLVED**, the Governing Board of the Oakland Unified School District hereby finds, determines, declares, orders, and resolves as follows:

1. That the above recitals are true and correct;
2. That there is an emergency as defined by applicable statute(s) ("Emergency");
3. That the Board of Education hereby finds that in order to mitigate and minimize as quickly as possible the potential health and safety impact on students, the Repair Work must commence immediately and therefore will not permit the delays which would result from a competitive bidding process, and that approval of this resolution is necessary to respond to the Emergency;
4. That the Board of Education hereby resolves to execute contracts in an amount not to exceed \$500,000 in a form to be approved by the General Counsel, as appropriate and as necessary with firms to perform all Repair Work, without further advertising for or inviting of bids, and to take all steps and perform all actions necessary to execute and implement those contracts; and
5. That District staff report on the status of this Emergency to the District's Board at the Board's next regularly scheduled Board meeting and at all subsequent regularly scheduled Board of Education meetings until the Board terminates the Emergency action.

**PASSED AND ADOPTED by a four-fifths (4/5) vote** by the Board of Education of the Oakland Unified School District at a Special Meeting this 20th day of March, 2019; by the following vote, to wit:

PREFERENTIAL AYE: None  
 PREFERENTIAL NOE: None  
 PREFERENTIAL ABSTENTION: None  
 PREFERENTIAL RECUSE: None  
 AYES:  
 NOES: None  
 ABSTAINED: None  
 RECUSE: None  
 ABSENT: None

Shanthy Gonzales, Jumoke Hinton Hodge, James Harris, Gary Yee, Roseann Torres, Vice President Jody London, President Aimee Eng


**CERTIFICATION**

We hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at a Special Meeting of the Board of Education of the Oakland Unified School District, held on March 20, 2019.

Legislative File Info.	
File ID Number:	19-0502
Introduction Date:	3/20/19
Enactment Number:	19-0453
Enactment Date:	3/20/19 os



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 Aimee Eng, President, Board of Education



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 Kyla Johnson Trammel, Secretary, Board of Education