

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
300 Lakeside Drive, P. O. Box 12688, Oakland, CA 94604-2688

NOTICE OF MEETING AND AGENDA
AUDIT AD HOC COMMITTEE

September 18, 2020
9:30 a.m.

COMMITTEE MEMBERS: Directors Saltzman (Chairperson), Allen, and Dufty

Chairperson Saltzman has called a Meeting of the Audit Ad Hoc Committee on Friday, September 18, 2020, at 9:30 a.m.

Please note, pursuant to Governor Newsom’s Executive Order N-29-20 and the California Shelter-in-Place mandate, which prevents all but essential travel, this meeting will be via teleconference only.

Presentation materials will be available via Legistar at <https://bart.legistar.com>

You may join the Committee Meeting via Zoom by calling 1-669-900-6833 and entering access code 995-1217-5793.

If you wish to make a public comment:

- 1) Submit written comments via email to board.meeting@bart.gov, using “public comment” as the subject line. Your comment will be provided to the committee and will become a permanent part of the file. Please submit your comments as far in advance as possible. Emailed comments must be received before 8:00 a.m. on September 18 in order to be included in the record.
- 2) Call 1-669-900-6833, enter access code 995-1217-5793, and dial *9 to raise your hand when you wish to speak.

Public comment is limited to three (3) minutes per person.

AGENDA

1. Call to Order.
2. [BART Sales Tax Update](#). For information.
3. [Audit Committee Charter](#). For discussion and action.
4. [Office of Inspector General Charter](#). For discussion and action.
5. Public Comment.

Patricia K. Williams
District Secretary

BART provides services/accommodations upon request to persons with disabilities and individuals who are limited English proficient who wish to address BART Board matters. A request must be made within one and five days in advance of a Board or committee meeting, depending on the service requested. Please contact the District Secretary’s Office at (510) 464-6083 for information.

BART SALES TAX UPDATE

BART AUDIT COMMITTEE

SEPTEMBER 18, 2020

HDL FORECASTING PROCESS

- Incorporate the outlook of key economists
- Subscribe to numerous industry publications
- Monitor general economic news such as job losses/growth
- Gather intelligence from clients throughout the State
- Utilize our State contacts and lobbyist to understand & communicate impacts of legislation
- Integrate real-time sales data

BASICS

CDTFA Sales and Allocation Chart

Sales Period	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter		
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
Advance/Clean-Up Payments	27%	46%	27%	27%	46%	27%	27%	46%	27%	27%	46%	27%
Clean-up Dates (Approx.)		2/22			5/23			8/24			11/28	
Remittance Dates (Approx.)	1/24	2/24	3/24	4/24	5/24	6/24	7/24	8/24	9/24	10/24	11/28	12/27

- HdL identifies quarters by calendar year – Example: January to March 2020 defined as 1q20
- HdL Fiscal Year – September to August cash payments
- BART Fiscal Year – July to June cash payments

STATE BUDGET

(-\$54b) deficit in May

Legislature proposed numerous fixes

Governor signed end of June

- lots of provisions, conditions, federal \$ in play

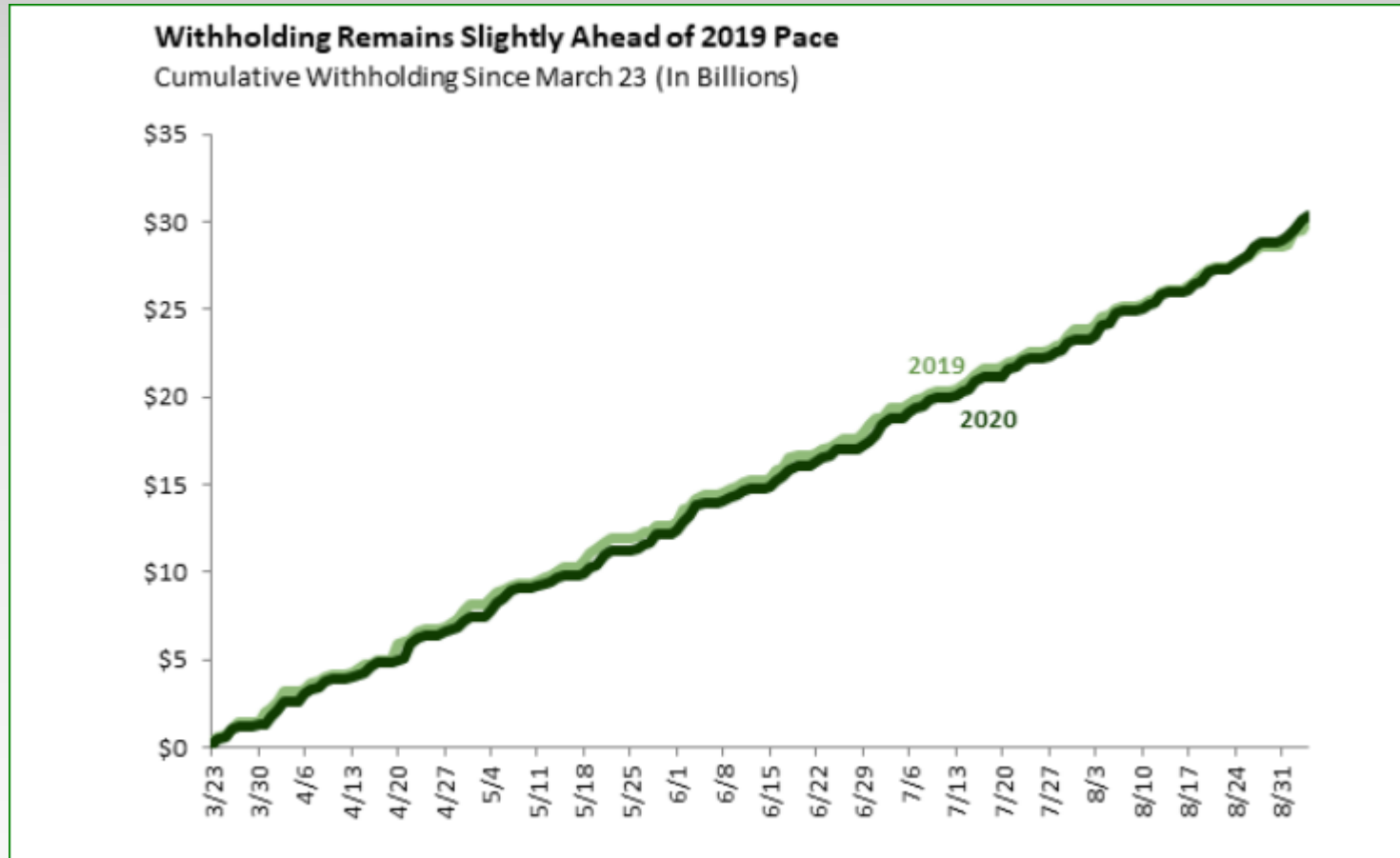
FY 20/21 GF drops:

- **Sales and Use Tax: -27.2 percent.**
- Personal Income Tax: -25.5 percent.
- Corporation Tax: -22.7 percent.

DoF: GF revenues decline \$41.2 billion:

- 2018-19: +\$0.7 billion
- 2019-20: -\$9.7 billion
- **2020-21: -\$32.2 billion**

TAX WITHHOLDING



“Bottom Line: California income tax withholding ran about even with 2019 this week after accounting for the timing of Labor Day. Total collections since late March remain slightly above the comparable period in 2019.”

CA LAO 9/4/2020

Year to Date Sales and Use Tax Receipts

Featured Programs

Sales and Use Tax Receipts

Total Since January 1st

\$38.9bn

Percent Change From Prior Year

-5.5%

Total Since April 1st

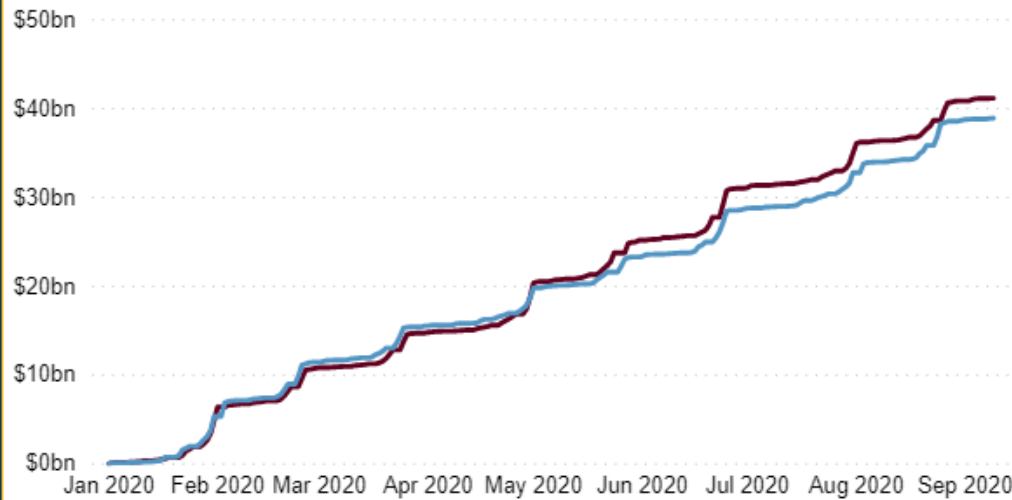
\$23.4bn

Percent Change From Prior Year

-11.5%

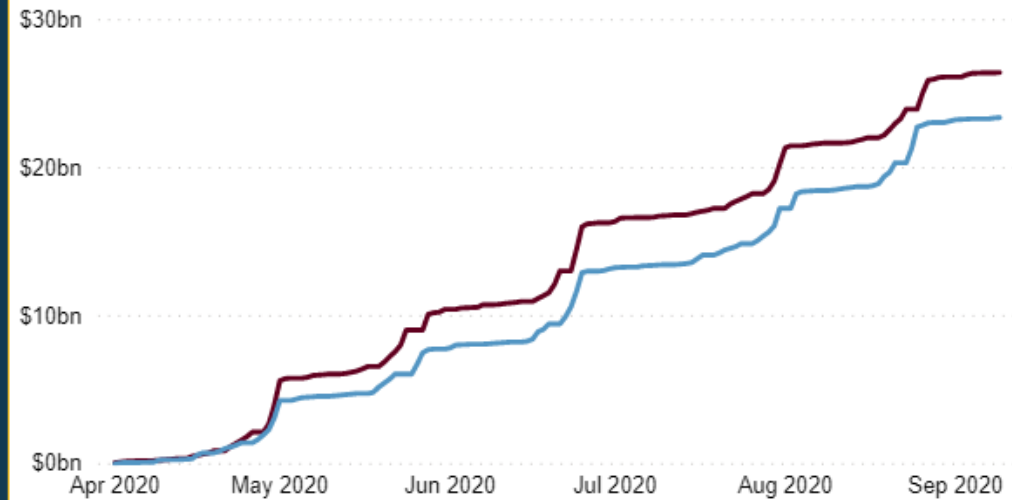
Calendar Year-to-Date Total Tax Receipts

Calendar Year ● 2019 ● 2020



April 1st Onward Total Tax Receipts

Calendar Year ● 2019 ● 2020

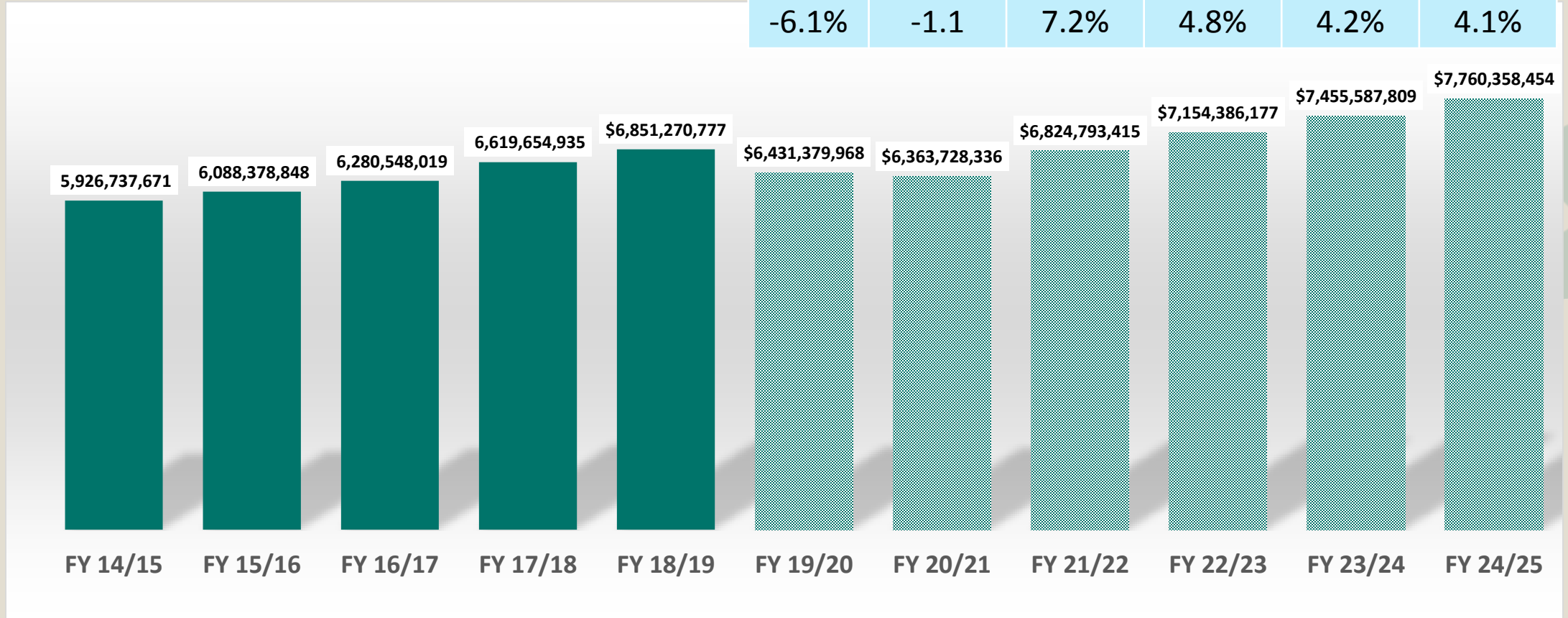


- 1. Represents cash receipts (not tax return data). Excludes DMV payments, FTB payments, and other adjustments.
- 2. Decline in April tax receipts is partly due to a Q1 filing extension of 3-months for small businesses, which could be recouped in the July 31st filing.

HDL STATEWIDE TREND – ANNUAL OUTLOOK(FY)

June 2020 Forecast

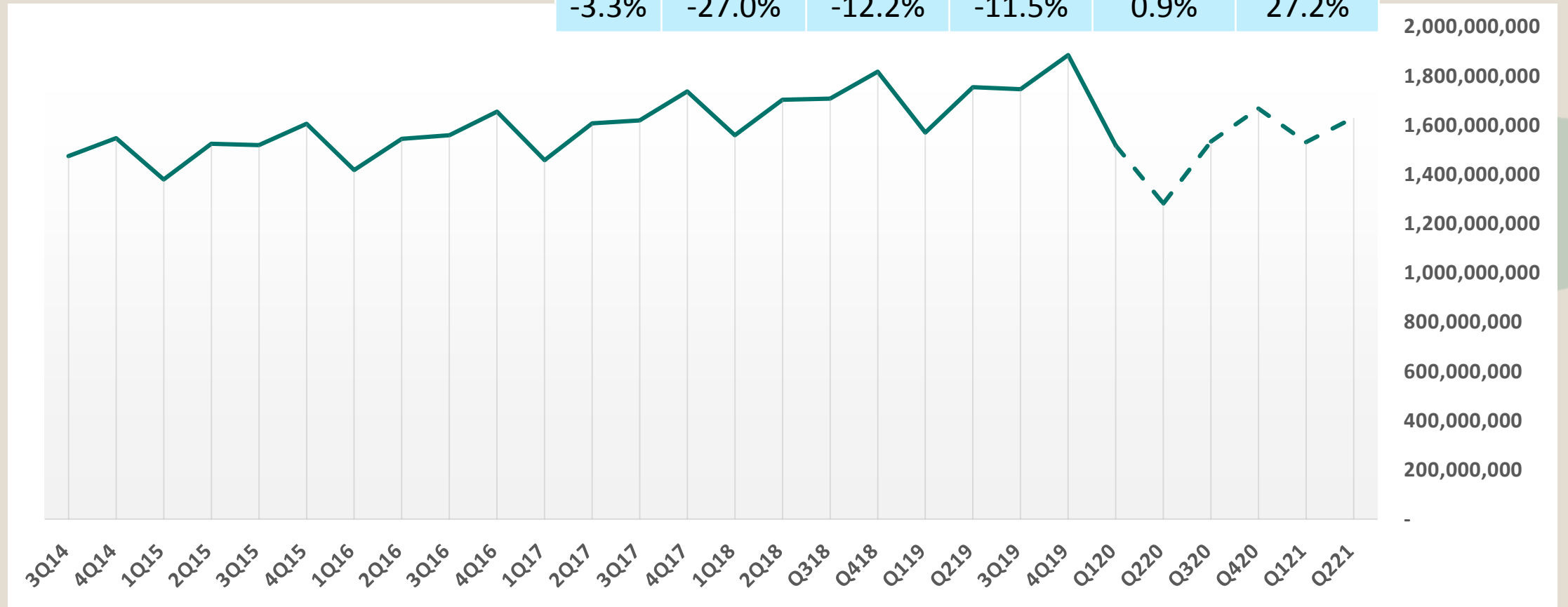
19/20	20/21	21/22	22/23	23/24	24/25
-6.1%	-1.1	7.2%	4.8%	4.2%	4.1%



HDL STATEWIDE TREND – QUARTERLY OUTLOOK

June 2020 Forecast

1Q20	2Q20	3Q20	4Q20	1Q21	2Q21
-3.3%	-27.0%	-12.2%	-11.5%	0.9%	27.2%



BART COUNTIES - ALL AGENCIES

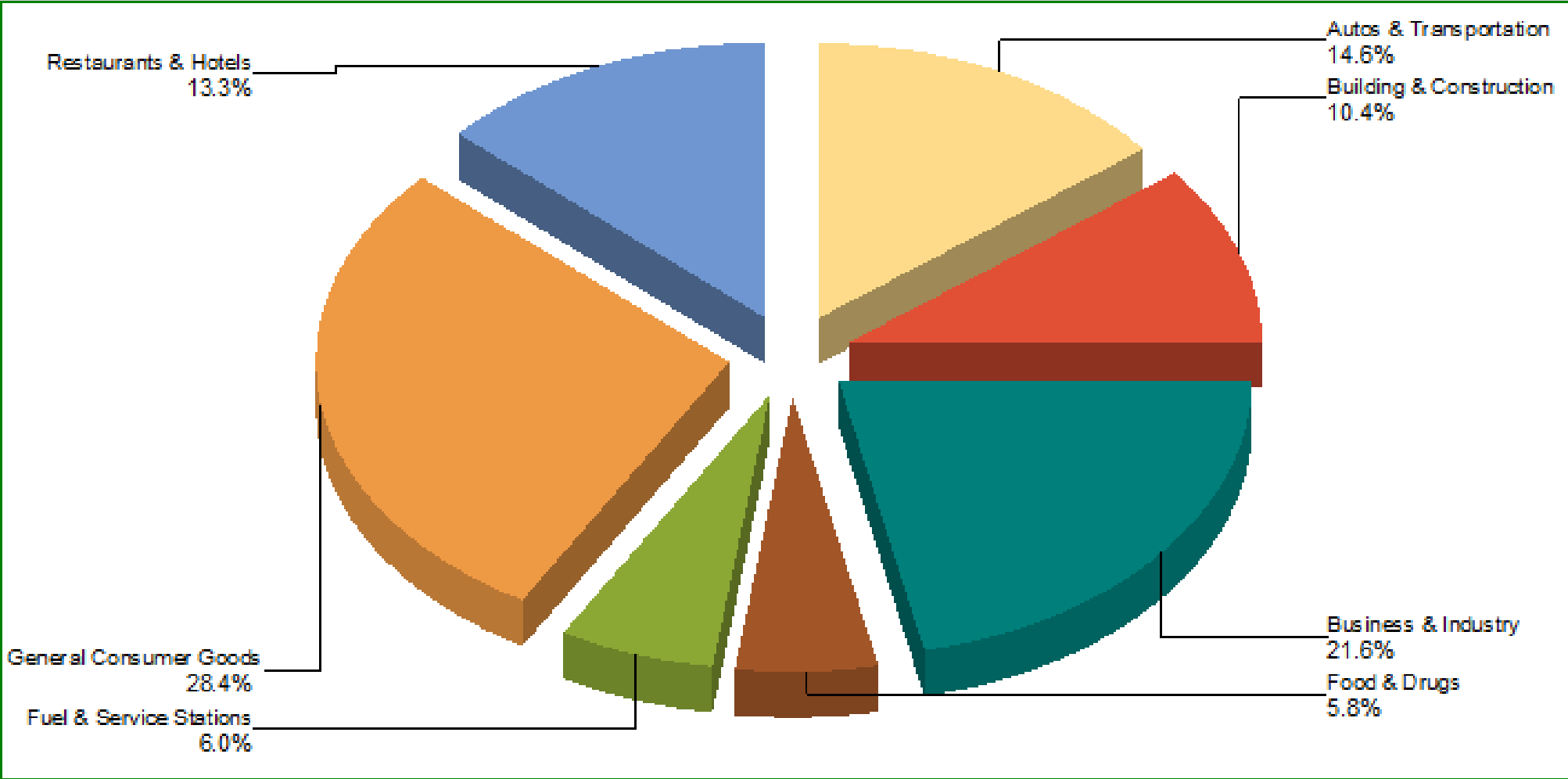
MAJOR INDUSTRY GROUPS - 1% SALES TAX RATE

ADJUSTED FOR
ECONOMIC DATA

Major Industry Group	<u>Alameda County</u>			<u>Contra Costa County</u>			<u>San Francisco County</u>			<u>Combined</u>
	<u>2Q20</u>	<u>2Q19</u>	<u>%Change</u>	<u>2Q20</u>	<u>2Q19</u>	<u>%Change</u>	<u>2Q20</u>	<u>2Q19</u>	<u>%Change</u>	<u>%Change</u>
State and County Pools	\$17,705,153	\$14,326,619	24%	\$10,470,294	\$7,673,340	36%	\$10,343,467	\$10,237,656	1%	19%
Business and Industry	\$13,336,950	\$16,570,303	-20%	\$4,549,098	\$4,599,720	-1%	\$3,665,864	\$6,927,721	-47%	-23%
Autos and Transportation	\$11,057,129	\$15,566,860	-29%	\$6,003,896	\$7,694,502	-22%	\$1,932,742	\$2,485,940	-22%	-26%
Building and Construction	\$7,373,735	\$8,703,905	-15%	\$3,899,555	\$4,189,303	-7%	\$2,378,572	\$3,166,378	-25%	-15%
General Consumer Goods	\$6,658,688	\$14,074,153	-53%	\$5,187,597	\$8,983,996	-42%	\$3,766,182	\$10,714,327	-65%	-54%
Restaurants and Hotels	\$5,259,819	\$10,238,983	-49%	\$3,215,807	\$5,444,556	-41%	\$5,145,716	\$14,527,526	-65%	-55%
Food and Drugs	\$4,395,761	\$4,207,595	4%	\$3,130,329	\$2,810,171	11%	\$2,851,773	\$3,141,360	-9%	2%
Fuel and Service Stations	\$2,813,722	\$5,901,969	-52%	\$2,652,414	\$4,690,730	-43%	\$624,989	\$2,445,216	-74%	-53%
Transfers & Unidentified	<u>\$128,987</u>	<u>\$182,536</u>	<u>-29%</u>	<u>\$57,773</u>	<u>\$74,703</u>	<u>-23%</u>	<u>\$82,803</u>	<u>\$144,347</u>	<u>-43%</u>	<u>-33%</u>
Totals	\$68,729,945	\$89,772,923	-23%	\$39,166,763	\$46,161,021	-15%	\$30,792,108	\$53,790,471	-43%	-27%

Combined Change in 3 County Region consistent with forecast decline for 2q20 of 27%

BART INDUSTRY GROUPS – FY 2019-20





(BART) BAY AREA RAPID TRANSIT DISTRICT

MAJOR INDUSTRY GROUPS

<u>Major Industry Group</u>	<u>Count</u>	<u>2Q20</u>	<u>2Q19</u>	<u>\$ Change</u>	<u>% Change</u>
General Consumer Goods	15,219	15,063,944	17,513,205	(2,449,261)	-14.0%
Business and Industry	25,340	12,042,456	15,128,935	(3,086,480)	-20.4%
Autos and Transportation	5,338	7,867,992	10,514,118	(2,646,126)	-25.2%
Building and Construction	3,979	6,096,862	7,168,832	(1,071,970)	-15.0%
Restaurants and Hotels	7,775	5,098,782	11,126,516	(6,027,734)	-54.2%
Food and Drugs	2,310	3,827,033	3,811,773	15,260	0.4%
Fuel and Service Stations	666	2,369,044	4,738,862	(2,369,817)	-50.0%
Transfers & Unidentified	5,704	728,770	519,841	208,929	40.2%
State and County Pools	-	0	0	0	-N/A-
Total	66,331	53,094,883	70,522,082	(17,427,199)	-24.7%

2q20 (April to June sales):

Nine County Bay Area (-22%); State of CA (-16%)

BART Counties

Alameda (-23%); Contra Costa (-15%); SF (-43%)

RESTAURANTS BY REGION

ADJUSTED DATA

	1Q 2020	% Change	2Q20	2Q %change
Bay Area Totals				
Restaurants And Hotels	45,654,536	-18.4%	28,469,319	-53.2%
Central Coast Totals				
Restaurants And Hotels	7,764,884	-14.4%	5,563,393	-49.4%
Far North Totals				
Restaurants And Hotels	3,156,114	-12.7%	2,619,544	-33.7%
Sacramento Region Totals				
Restaurants And Hotels	10,640,976	-15.3%	8,200,355	-36.0%
San Joaquin Valley Totals*				
Restaurants And Hotels	10,816,972	-10.2%	12,183,801	-23.9%
Sierras Totals				
Restaurants And Hotels	859,761	-13.0%	461,704	-60.2%
Southern California Totals				
Restaurants And Hotels	113,002,660	-15.4%	77,423,677	-44.9%
HdL State Totals				
Restaurants And Hotels	191,895,904	-15.8%	134,921,793	-45.2%
	2019		246,242,086	

Business Types

Sales Tax by Business Types

General Merchandise

Count: 132

New Motor Vehicle Dealers

Count: 994

Building Materials

Count: 568

Discount Dept Stores

Count: 7

Contractors

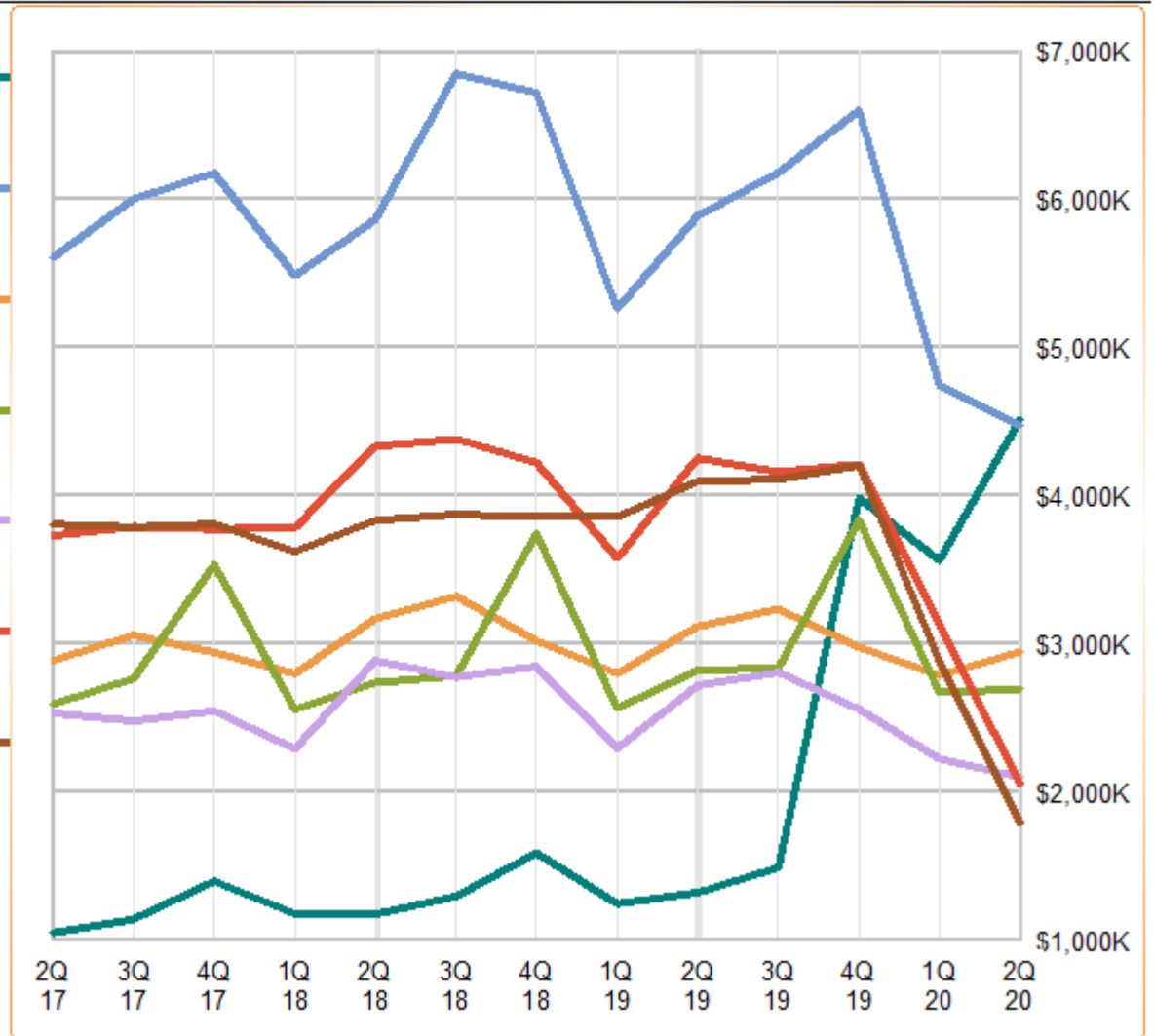
Count: 2,899

Service Stations

Count: 477

Casual Dining

Count: 2,675



General Merchandise:
captured new Wayfair taxes effective 2q19

During SIP; 4 of 7 top tax sectors remained open

Business Types

Sales Tax by Business Types

Casual Dining

Count: 2,675

Fine Dining

Count: 1,459

Hotels-Liquor

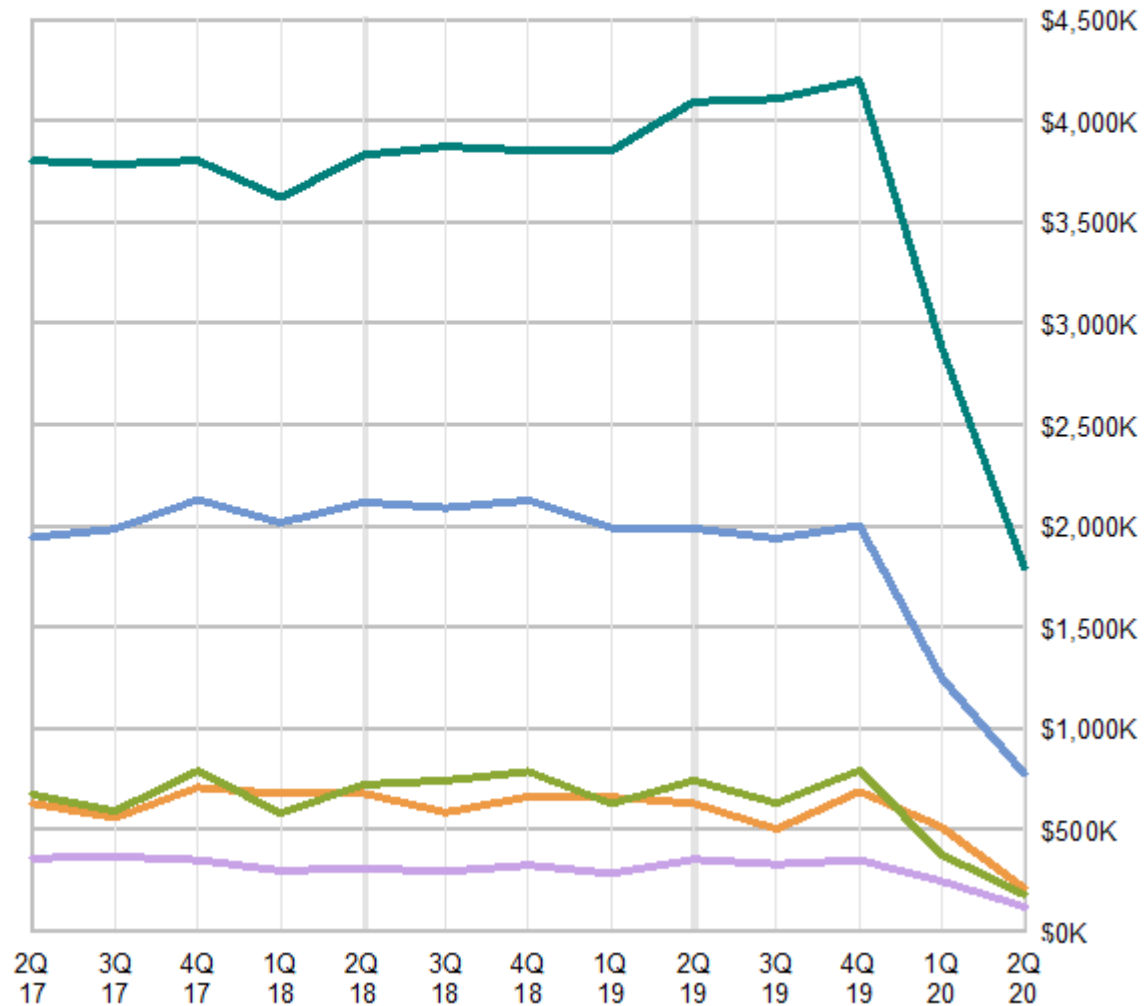
Count: 129

Leisure/Entertainment

Count: 346

Art/Gift/Novelty Stores

Count: 606



DEFERRAL PROGRAMS

BART 1q20:

*Estimated Sales Tax
90-day Deferrals:
\$27,900,000*

*Missing/Deferred
Payments:
\$12,100,000*

*Amount Received
in August 2020:
\$8,906,000*

BART 2q20:

*Estimated Sales Tax
90-day Deferrals:
\$23,500,000*

*Missing/Deferred
Payments:
\$4,600,000*

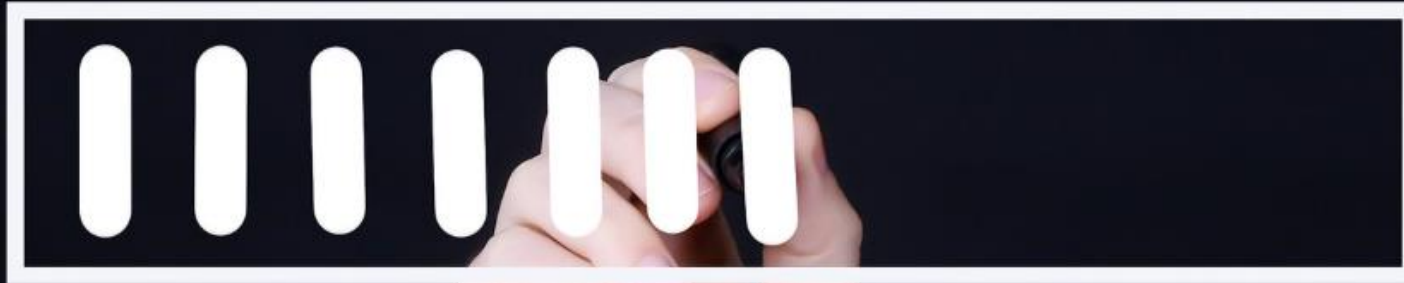
Cumulative Impacts:

- Far fewer eligible taxpayers took advantage of deferral opportunities*
- \$7.8m forthcoming in November and subsequent months*

FISCAL YEAR RESULTS

BART		
FISCAL YEAR SUMMARY		
	<u>FY 2019-2020</u>	<u>FY 2020-2021</u>
Year End Results	\$ 266,895,487	
BART Approved Budget	\$ 277,000,000	\$ 239,026,007
\$ variance	\$ (10,104,513)	
% variance	-3.6%	
HdL Forecast *	\$ 260,600,000	\$ 241,300,000
\$ variance	\$ 6,295,487	
% variance	2.4%	
* June 2020 forecast using BART fiscal year		

RECOVERY



LOADING...

UNCERTAINTIES AND WHAT'S NEXT

California's reopening risk tiers



Statewide Metrics

9.1

New COVID-19 Positive cases per day per 100K

5.3%

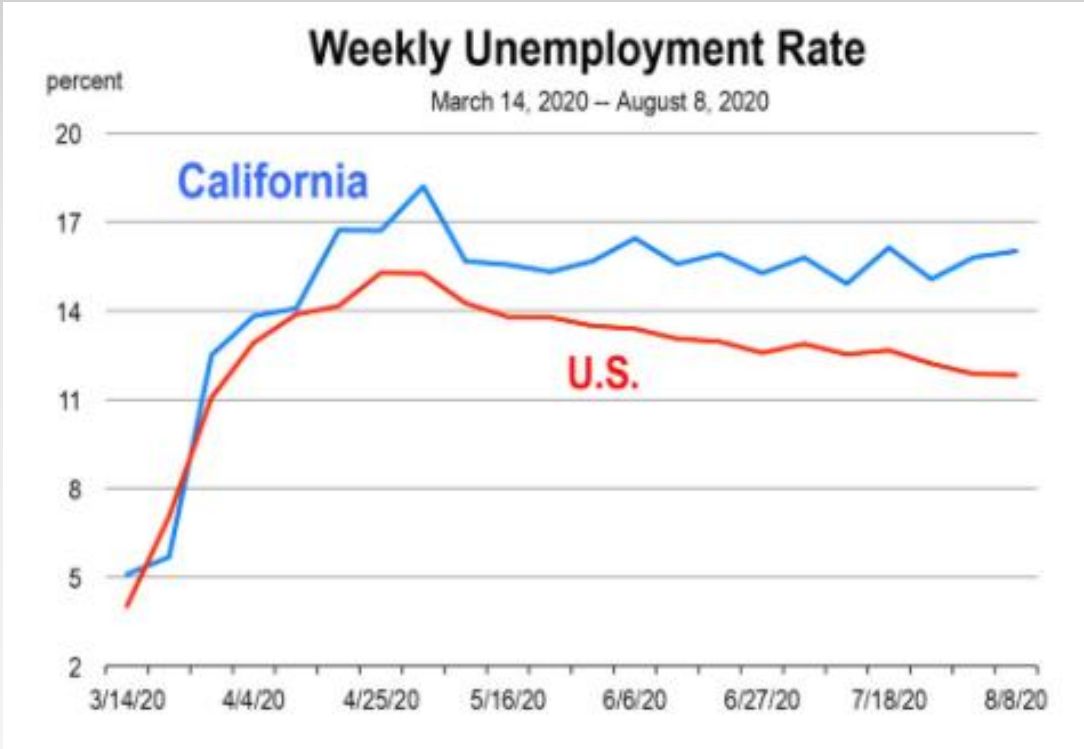
Positivity Rate



Data shown for week ending 8/29/20

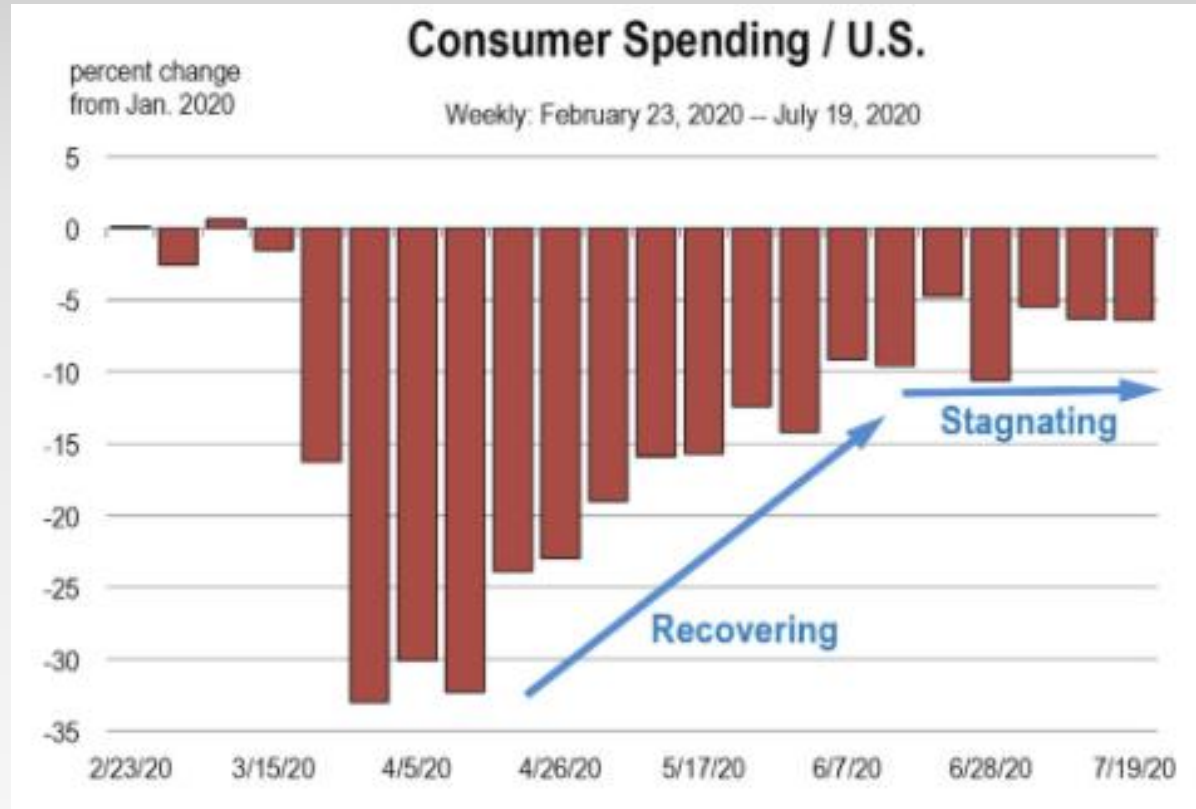
As of Sept 8, 2020

CA EMPLOYMENT



Jobs Lost and Re-Gained in Major California Regions	Feb 2020 - Apr 2020 (%)	Apr 2020 - July 2020 (%)
Sonoma County	-16.5	7.6
Santa Barbara County	-15.4	6.1
Los Angeles County	-15.7	5.1
El Dorado, Placer, Sacramento, Yolo Counties	-14.3	4.4
San Francisco & San Mateo Counties	-16.2	4.3
San Diego County	-15.1	4.2
Orange County	-16.5	4.2
Santa Clara & San Benito Counties	-13.0	4.0
Riverside & San Bernardino Counties	-13.2	3.7
Kern County	-14.7	3.3

CONSUMER SPENDING



RESTAURANT PERMANENT CLOSURES ????

Yelp estimates as of July 10th, CA has 11,118 (approx. 14% of total) permanently closed restaurants restaurants.



Business

One-Third of U.S. Restaurants Face Permanent Closure This Year

By [Anita Sharpe](#) and [Nic Querolo](#)

July 31, 2020, 7:56 AM PDT

- ▶ Covid-19 cases broke records in states first to allow dine in
- ▶ Recovery to pre-pandemic levels will take several years

<https://www.bloomberg.com/news/articles/2020-07-31/one-third-of-u-s-restaurants-face-permanent-closure-this-year>

HOTEL PERMANENT CLOSURES ????

More than 40% of S.F. hotels closed indefinitely with 10,000 workers laid off as shutdown stretches on

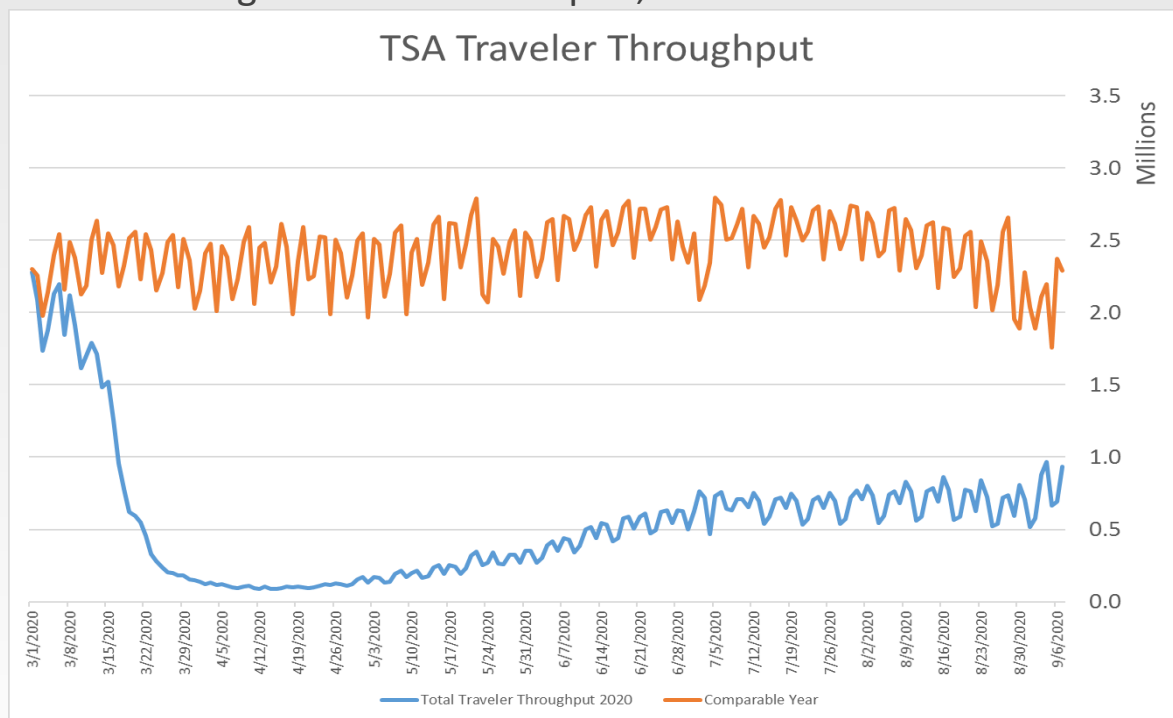
By [Alex Barreira – Staff Reporter, San Francisco Business Times](#)
Aug 3, 2020, 2:52pm PDT **Updated** Aug 3, 2020,

Almost two-thirds (65 percent) of hotels remain at or below 50 percent occupancy, which is below the threshold at which most hotels can break even and pay debt.

TRAVEL

Nearly three-quarters of Americans (72 percent) did not take a summer vacation this year. Of those who did travel this summer, 71 percent opted for a road trip rather than flying. This is according to a recent survey by **Value Penguin by LendingTree**.

- Travelagentcentral.com Sept 3, 2020



United Airlines expecting to schedule 40% of flights in September, up from 35% in August.

Business travel = 12% passengers, but about 75% of profits (last minute & business class=costly flights)

RECENT ECONOMIC INDICATORS

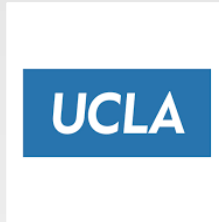
- 1ST COVID surge – huge drop in biz and consumer spending
 - Businesses and consumers adapted and spending recovered
- 2nd COVID surge – almost no impact on spending
- Home sales very strong-inventory and new permit activity a concern
- Consumer finance delinquencies are down in all categories
- Brick-and-mortar sales down
 - pandemic advanced a trend that was already established
- Hotels-airport, convention, theme park locations are down
- Retail, restaurants and tourism to lag rest of recovery.
- Recovery timelines vary among experts.....

WHAT IS BEING SAID...



Beacon Economics

- Strong recovery
- Full recovery by 2021 (more V Shaped)
- U.S. Unemployment below 7% by 2020



UCLA Anderson

- Full Recovery by 2023
- Nike Swoosh recovery (Slanted)
- Unemployment above 10% through 2020



Federal Reserve Bank (SF)

- GDP to take several years to reach pre-pandemic trend
- Unemployment between 8-10% throughout 2020

OTHER CONSIDERATIONS:

Consumer Confidence

Further Congressional assistance

Counties Health decisions:

- Moving into higher Phases? Backsliding?

Employees ever going back to offices?

- Transportation hubs
- Retail/food adjacencies

Household savings up

- Pent up demand to spend?

Other crisis – e.g. fires

BAY AREA SALES TAX OUTLOOK

Pain – yes in FY 20/21; overall decline

- Sales tax recovery underway FY 21/22
- 3 years to get back to pre-pandemic levels

FY 2020-21 Sales Tax Forecast		
Smooth Sailing	Facing Headwinds	Navigating Choppy Waters
Building/Construction *	Autos/Transportation	General Retail (specialty, apparel, home goods)
Food/Drugs*	Fuel/Service Stations *	Restaurants (casual and fine dining)
Discount Department Stores *	Restaurants (quick service/fast casual)	Hotels
Online Sales	Business/Industry	Leisure/Entertainment
* assumes most merchants in category remain open as essential businesses		

KEN NORDHOFF

Principal, HdL Companies

714-879-5000

knordhoff@hdlcompanies.com



September 18, 2020



Audit Committee Charter



Introduction



Purpose of Charter – Specify functions of the Audit Committee:

- Governance and Authority
- Selection of Audit Committee Members
- Roles and Responsibilities

Today's version:

- Reflects Committee feedback
- Includes minor edits to organize and clarify language
- Jointly resolves three outstanding items
- Raises one new item

Resolved Items



Section	BART Management Language	OIG Language
4.1.4	Review and monitor implementation of corrective actions identified by audited entities to address findings in audit and investigation reports. Discuss reasons for not implementing corrective action(s) in a timely manner, if necessary.	Review and monitor implementation of corrective actions to address audit and investigation findings to ensure they appropriately addressed the underlying findings. Discuss reasons for not implementing appropriate corrective actions or action in a timely manner, if necessary.
Resolution (now 4.1.5)	If an audit or investigation included recommendations, review and monitor implementation of corrective actions taken by management to address findings in audit and investigation reports to ensure they appropriately addressed the underlying findings. Discuss reasons for not implementing appropriate corrective actions(s) or implementation in a timely manner, if necessary.	

Resolved Items



Section	BART Management Language	OIG Language
4.3.3	Redundant - suggest delating. Audit Committee review of internal control audits and reports covered in sections 4.1.1 and 4.1.2.	Retain as follows: Discuss weaknesses in internal control systems and safeguards for District assets, discuss with management their action plans for, correcting those deficiencies, and monitor their corrective action taken to improve the internal control system and safeguard District assets.
Resolution	Discuss internal control systems and safeguards for District assets, discuss with GM/BAOs deficiencies, if any, and associated action plans for correcting such deficiencies.	

Resolved Items



Section	BART Management Language	OIG Language
Terminology	<p>There is an inherent conflict between transit and audit terminology where some of the same words have different definitions. Audit terminology might be misinterpreted and cause concern among those not familiar with the terms.</p> <p>BART recommends adding a glossary and this footnote: <i>The terminology used in this charter is based upon standard audit language and not meant to be specific to transit agency operations.</i></p>	<p>Agree that the footnote will be helpful and should be enough by itself to avoid any misconceptions so that a glossary isn't needed.</p>
Resolution	Brief Terminology section added at end of Charter	

Item for Discussion



Section	BART Management Language	OIG Language
4.1.3	Ensure that audits and investigation reports fully include findings, recommendations, and responses from the auditor and audited entity.	Prefer to delete this sentence. Management is welcome to present other information to the Audit Committee, separate from the OIG's reports, if they wish the Board of Directors to have additional information. However, mandating what the OIG puts in its reports would be in direct conflict with the independence standards in both the <i>Government Auditing Standards</i> and the <i>Principles and Standards for Offices of Inspector General</i> , which the OIG follows, and the state mandate that requires the OIG to be independent.

Resolution

DRAFT AUDIT COMMITTEE CHARTER¹

1. Purpose

The purpose of this charter is to specify the functions of the BART Audit Committee.

2. Governance and Authority of the Audit Committee

- 2.1 Audit Committee assists the Board of Directors (“Board”) in discharging its oversight responsibilities for financial management, operational effectiveness, ethics, and regulatory compliance of the San Francisco Bay Area Rapid Transit District (“District”), specifically in the areas under the direction of the Office of the Inspector General (OIG), the Controller-Treasurer, and Performance and Budget.
- 2.2 The role of the Audit Committee is to provide independent oversight and advice to the Board of Directors regarding the effectiveness and efficiency of operations, reliability of reporting for internal and external use, and compliance with applicable laws and regulations. It achieves this by providing a forum to discuss and pursue opportunities for improvements in business and performance operations, financial and nonfinancial reporting, and internal controls, as identified through audit and investigation reports of the District, whether conducted internally or by an external entity.
- 2.3 The Audit Committee shall be comprised of five voting members, including three Board Directors and two public members with governmental financial expertise. ~~The public members shall be residents within the District’s boundaries and be appointed by the Board of Directors based on the selection process described in this charter.~~
- 2.4 The Audit Committee shall review the scope of its roles and responsibilities, its structure, and its processes at least biennially and make recommendations to the Board for modifications as necessary to ensure the Audit Committee’s effectiveness.
- 2.5 The Audit Committee may hear items pertaining to financial and performance audits; audits by federal, state, and local government agencies; internal controls; general financial issues; and investigations of fraud, waste, or abuse. The Committee may provide recommendations to the full Board of Directors for action on matters within the Audit Committee’s purview.
- 2.6 The Audit Committee is a legislative body for the purposes of the Brown Act. Accordingly, all committee meetings are open public meetings subject to the noticing and meeting requirements under this law.

¹ The terminology used in this charter is based upon standard audit and internal control language and not meant to be specific to transit agency operations. ~~8/14/20: Note that the charter will be updated with language clarifying and defining the terminology currently contained in this draft charter.~~

2.7 The Audit Committee shall meet at least four times per year, with authority to convene additional meetings as needed. A quorum of at least three committee members is required to conduct official committee business. The committee will invite the General Manager (GM), GM-designated members of staff (GM Staff), Board Appointed Officers (BAOs)~~members of management~~, auditors, or others to attend meetings and provide pertinent information as necessary.

2.8 The Chair of the Audit Committee shall report during the Board Matters segment of Board meetings on the results of Audit Committee meetings. This report may be written or oral, depending on the significance of what is to be reported, such as the status of outstanding recommendations and breaches of internal controls that resulted in fraud, waste, or abuse.

3. Selection of Audit Committee Members

3.1 Board members serving on the Audit Committee shall be nominated by the Board President and appointed by the Board.

3.1.1. The President of the Board shall annually appoint one of the selected Board members to serve as chair of the Audit Committee.

3.2 Public members serving on the Audit Committee shall be appointed by the full Board of Directors through an application process following current Board rules.

3.2.1 Public members shall possess the independence, experience, and collective technical expertise necessary to carry out the duties of the Audit Committee as demonstrated by the following criteria. They shall:

3.2.1.a. Have ~~a minimum of ten years of~~ expertise in governmental accounting, financial management, or performance auditing, or conducting investigations of fraud, waste, or abuse.

3.2.1.b. Have technical knowledge of accounting, financial or performance auditing, financial reporting, and internal controls, including an understanding of and ability to apply the Government Auditing Standards, accounting standards issued by the Government Accounting Standards Board, and a recognized internal control framework.

3.2.1.c. Possess a relevant professional certification, such as Certified Public Accountant, Certified Internal Auditor, Certified Fraud Examiner, Certified Inspector General, ~~or~~ Certified Internal Controls Auditor, Certified Information Systems Auditor, or a similar certification.

3.2.1.d. Within the past 10 years and other than their role as a committee member, have no affiliation with the District or with a firm that has done business with the District.

3.2.2 Public members shall serve two-year terms and are eligible to serve up to six years total. To the extent possible, appointments shall be made so no more than one term of office expires in any one year.

~~3.2.23~~.2.3 Public members shall be residents within the District's boundaries.

~~3.2.33~~.2.4 Public members are subject to conflict of interest laws and must file an annual Statement of Economic Interests, Form 700 with the District Secretary.

4. Audit Committee Roles and Responsibilities

4.1. General

4.1.1. Hear presentations of, or review, audit and investigation reports produced by the external financial auditors; federal, state, and local government agencies; Internal Audit; and the OIG to provide full accountability to the public regarding the results of audits and investigations of District operations.

4.1.2. Review and discuss with audited entities management and the auditors or OIG the results of audits, reviews, and investigations; responses to findings and recommendations; as well as management's response and any action plans to address the underlying findings, ~~if any~~.

~~4.1.2.4.1.3.~~ Ensure that audits and investigation reports fully include findings, recommendations, and responses from the auditor and audited entity.

~~4.1.3.4.1.4.~~ Discuss items of disagreement, if any, between auditors and ~~management GM/BAO~~ or the OIG and ~~managements GM/BAOs~~ regarding audit and investigation findings and recommendations in order to ensure that the respective positions of each are fully aired and considered by each party.

~~4.1.4.4.1.5.~~ 8/14/20: This section is intended to address corrective actions taken by management and will be updated prior to and/or discussed at the 8/20/20 Audit Committee meeting. If an audit or investigation included recommendations, review and monitor implementation of corrective actions taken by management to address findings in audit and investigation reports to ensure they appropriately addressed the underlying findings. Discuss reasons for not implementing appropriate corrective actions(s) or implementation in a timely manner, if necessary.

~~4.1.5~~4.1.6. Clarify the roles of Internal Audit and the OIG to prevent overlap of concurrent responsibilities while ensuring the OIG can meet its state-mandated responsibilities.

~~4.1.6~~4.1.7. Make inquiries to ~~management~~GM/BAOs, internal and external auditors, and the Inspector General about significant risks or exposures facing the District and efforts to address identified risks.

4.2. Financial and Other Reporting

4.2.1. Controller-Treasurer – Provide oversight of financial activities related to the Controller-Treasurer:

4.2.1.a. ~~Jointly review with~~After staff ~~have reviewed~~the external audit firms' responses to Request for Proposals to verify that minimum requirements have been met, review the responses, participate in conducting interviews, and recommend to the Board of Directors the firm to conduct the annual financial statement audit.

4.2.1.b. Upon selection, and annually thereafter:

i. Confirm the external audit firm's independence by reviewing their engagement letter and peer review report that attest to their independence and pass rating.

ii. When appropriate, recommend to the Board removal of the external audit firm.

4.2.1.c. Meet with external financial auditors as needed to review and discuss their audit scope of work and the annual audited financial statements, including any significant financial reporting issues.

4.2.1.d. Review interim and annual financial statements, including management's discussion and analysis, management's representation letters, and reports of internal control over financial reporting, for appropriateness, reliability, and timeliness.

4.2.1.e. Understand new accounting and reporting requirements and assess how changes may affect the District.

4.2.1.f. Review the District's Board-adopted financial policies and make recommendations to ensure the policies remain current and relevant.

4.2.2. Internal Audit – Review activities of Internal Audit:

4.2.2.a. Review the letter of authority that describes Internal Audit's authority, roles, and responsibilities.

- 4.2.2.b. Review Internal Audit's risk assessment and annual (or periodic) audit plan.
- 4.2.2.c. Review Internal Audit's quality assessment and improvement program, as required by professional auditing standards. Hear the results of such reviews and monitor implementation of recommendations for improvement.
- 4.2.3. Office of the Inspector General (OIG) – Provide oversight of activities of the OIG pursuant to [California Public Utilities Code Sections 28840 - 28845](#)
 - 4.2.3.a. Review and recommend the Board approve the charter that describes the OIG's authority, roles, and responsibilities and clarifies the broad roles and responsibilities listed in the state legislation.
 - 4.2.3.b. Review the OIG's risk assessment and resulting audit plan, including the scope of audits to be conducted.
 - 4.2.3.c. Discuss the OIG's access to information, records, and personnel and advise the Board on recommended solutions.
 - 4.2.3.d. Review the OIG's quality assessment and improvement program, including hearing the results of its external peer reviews as required by professional auditing and investigation standards and monitoring implementation of recommendations for improvement.
 - 4.2.3.e. Hear the OIG's quarterly reports of activities.
- 4.3. Internal Control – To provide reasonable assurance to the Board regarding the adequacy of the District's internal control systems, the Audit Committee should:
 - 4.3.1. Understand the District's internal control structure, including key operational, reporting, and compliance risks, and the controls implemented to mitigate those risks.
 - 4.3.2. Ensure compliance with the Federal Transit Administration's internal control requirements. Review the District's efforts to follow another standard internal control framework, e.g., *Standards for Internal Control in the Federal Government*, published by the U.S. Government Accountability Office, or *Internal Control – Integrated Framework*, published by the Committee for Sponsoring Organizations of the Treadway Commission (COSO).
 - 4.3.3. ~~8/14/20: This section is intended to address actions related to internal control and will be updated prior to and/or discussed at the 8/20/20 Audit Committee meeting.~~ Discuss internal control systems and safeguards for District assets,

discuss with GM/BAOs deficiencies, if any, and associated action plans for correcting such deficiencies.

4.4. Compliance with Laws, Regulations, and Procedures – To provide reasonable assurance to the Board that its policies are being carried out, the Audit Committee shall:

~~4.4.1. Periodically review the roles and responsibilities of the District Ethics Officer, whose responsibilities may be in addition to their other day to day responsibilities.~~

~~4.4.2.~~4.4.1. At least biennially, review and, as needed, recommend changes to the District's Code of Conduct policies.

~~4.4.3.~~4.4.2. Review and recommend changes, as needed, to the District's Whistleblower Policy.

~~4.4.4.~~4.4.3. Review Procurement procedures to ensure that all agreements with outside contractors include a right-to-audit clause that provides the District's audit functions access to financial and performance-related records, property, and equipment purchased in whole or in part with District funds when conducting an audit or investigation related to the prime contract or subcontracts.

~~4.4.5.~~4.4.4. Review the District's procedures for reporting noncompliance with laws, regulations, and policies, including whistleblower hotline and other communication methods, and ensure that employees, contractors, and residents know how to report violations.

Terminology

This section is intended to clarify standard audit terminology in the context of a public transit agency since audit and public transit terms can be similar and sometimes overlap.

Internal Control: A process effected by an entity's oversight body, management, and other personnel that provides reasonable assurance that the objectives of an entity will be achieved. It is a dynamic, iterative, and integrated process in which the five components (control environment, risk assessment, control activities, information and communication, and monitoring) impact the design, implementation, and operating effectiveness of each other. Internal control objectives and related risks can be broadly classified into one or more of the following three categories:

- Operations – Effectiveness and efficiency of operations
- Reporting – Reliability of reporting for internal and external use
- Compliance – Compliance with applicable laws and regulations

Internal Control System: A continuous built-in component of operations, effected by people, that provides reasonable assurance – not absolute assurance – that an entity's objectives will be achieved.

Operational Processes: Processes that define the primary activities an organization needs to perform in order to successfully execute its business. Operational processes represent essential business activities that accomplish business objectives.

Performance Audit: Independent assessment that provides objective analysis, findings, and conclusions to assist management and those charged with governance and oversight with, among other things, improving program performance and operations, reducing costs, facilitating decision making by parties responsible for overseeing or initiating corrective action, and contributing to public accountability.

Safeguarding of Assets: The effective stewardship of public resources against unauthorized acquisition, use, modification, or disposition. Public resources include, but are not limited to cash, securities, inventories, equipment, information systems, and data.

DRAFT AUDIT COMMITTEE CHARTER¹

1. Purpose

The purpose of this charter is to specify the functions of the BART Audit Committee.

2. Governance and Authority of the Audit Committee

- 2.1 Audit Committee assists the Board of Directors (“Board”) in discharging its oversight responsibilities for financial management, operational effectiveness, ethics, and regulatory compliance of the San Francisco Bay Area Rapid Transit District (“District”), specifically in the areas under the direction of the Office of the Inspector General (OIG), the Controller-Treasurer, and Performance and Budget.
- 2.2 The role of the Audit Committee is to provide independent oversight and advice to the Board of Directors regarding the effectiveness and efficiency of operations, reliability of reporting for internal and external use, and compliance with applicable laws and regulations. It achieves this by providing a forum to discuss and pursue opportunities for improvements in business and performance operations, financial and nonfinancial reporting, and internal controls, as identified through audit and investigation reports of the District, whether conducted internally or by an external entity.
- 2.3 The Audit Committee shall be comprised of five voting members, including three Board Directors and two public members with governmental financial expertise.
- 2.4 The Audit Committee shall review the scope of its roles and responsibilities, its structure, and its processes at least biennially and make recommendations to the Board for modifications as necessary to ensure the Audit Committee’s effectiveness.
- 2.5 The Audit Committee may hear items pertaining to financial and performance audits; audits by federal, state, and local government agencies; internal controls; general financial issues; and investigations of fraud, waste, or abuse. The Committee may provide recommendations to the full Board of Directors for action on matters within the Audit Committee’s purview.
- 2.6 The Audit Committee is a legislative body for the purposes of the Brown Act. Accordingly, all committee meetings are open public meetings subject to the noticing and meeting requirements under this law.
- 2.7 The Audit Committee shall meet at least four times per year, with authority to convene additional meetings as needed. A quorum of at least three committee members is required to conduct official committee business. The committee will invite the General Manager (GM), GM-designated members of staff (GM Staff), Board

¹ The terminology used in this charter is based upon standard audit and internal control language and not meant to be specific to transit agency operations.

Appointed Officers (BAOs, auditors, or others to attend meetings and provide pertinent information as necessary.

- 2.8 The Chair of the Audit Committee shall report during the Board Matters segment of Board meetings on the results of Audit Committee meetings. This report may be written or oral, depending on the significance of what is to be reported, such as the status of outstanding recommendations and breaches of internal controls that resulted in fraud, waste, or abuse.

3. Selection of Audit Committee Members

- 3.1 Board members serving on the Audit Committee shall be nominated by the Board President and appointed by the Board.

- 3.1.1. The President of the Board shall annually appoint one of the selected Board members to serve as chair of the Audit Committee.

- 3.2 Public members serving on the Audit Committee shall be appointed by the full Board of Directors through an application process following current Board rules.

- 3.2.1 Public members shall possess the independence, experience, and collective technical expertise necessary to carry out the duties of the Audit Committee as demonstrated by the following criteria. They shall:

- 3.2.1.a. Have expertise in governmental accounting, financial management, or performance auditing, or conducting investigations of fraud, waste, or abuse.

- 3.2.1.b. Have technical knowledge of accounting, financial or performance auditing, financial reporting, and internal controls, including an understanding of and ability to apply the Government Auditing Standards, accounting standards issued by the Government Accounting Standards Board, and a recognized internal control framework.

- 3.2.1.c. Possess a relevant professional certification, such as Certified Public Accountant, Certified Internal Auditor, Certified Fraud Examiner, Certified Inspector General, Certified Internal Controls Auditor, Certified Information Systems Auditor, or a similar certification.

- 3.2.1.d. Within the past 10 years and other than their role as a committee member, have no affiliation with the District or with a firm that has done business with the District.

- 3.2.2 Public members shall serve two-year terms and are eligible to serve up to six years total. To the extent possible, appointments shall be made so no more than one term of office expires in any one year.
- 3.2.3 Public members shall be residents within the District's boundaries.
- 3.2.4 Public members are subject to conflict of interest laws and must file an annual Statement of Economic Interests, Form 700 with the District Secretary.

4. Audit Committee Roles and Responsibilities

4.1. General

- 4.1.1. Hear presentations of, or review, audit and investigation reports produced by the external financial auditors; federal, state, and local government agencies; Internal Audit; and the OIG to provide full accountability to the public regarding the results of audits and investigations of District operations.
- 4.1.2. Review and discuss with audited entities and the auditors or OIG the results of audits, reviews, and investigations; responses to findings and recommendations; and any action plans to address the underlying findings.
- 4.1.3. Ensure that audits and investigation reports fully include findings, recommendations, and responses from the auditor and audited entity.
- 4.1.4. Discuss items of disagreement, if any, between auditors and GM/BAO or the OIG and GM/BAOs regarding audit and investigation findings and recommendations in order to ensure that the respective positions of each are fully aired and considered by each party.
- 4.1.5. If an audit or investigation included recommendations, review and monitor implementation of corrective actions taken by management to address findings in audit and investigation reports to ensure they appropriately addressed the underlying findings. Discuss reasons for not implementing appropriate corrective actions(s) or implementation in a timely manner, if necessary.
- 4.1.6. Clarify the roles of Internal Audit and the OIG to prevent overlap of concurrent responsibilities while ensuring the OIG can meet its state-mandated responsibilities.
- 4.1.7. Make inquiries to GM/BAOs, internal and external auditors, and the Inspector General about significant risks or exposures facing the District and efforts to address identified risks.

4.2. Financial and Other Reporting

4.2.1. Controller-Treasurer – Provide oversight of financial activities related to the Controller-Treasurer:

4.2.1.a. After staff have reviewed external audit firms' responses to Request for Proposals to verify that minimum requirements have been met, review the responses, conduct interviews, and recommend to the Board of Directors the firm to conduct the annual financial statement audit.

4.2.1.b. Upon selection, and annually thereafter:

- i. Confirm the external audit firm's independence by reviewing their engagement letter and peer review report that attest to their independence and pass rating.
- ii. When appropriate, recommend to the Board removal of the external audit firm.

4.2.1.c. Meet with external financial auditors as needed to review and discuss their audit scope of work and the annual audited financial statements, including any significant financial reporting issues.

4.2.1.d. Review interim and annual financial statements, including management's discussion and analysis, management's representation letters, and reports of internal control over financial reporting, for appropriateness, reliability, and timeliness.

4.2.1.e. Understand new accounting and reporting requirements and assess how changes may affect the District.

4.2.1.f. Review the District's Board-adopted financial policies and make recommendations to ensure the policies remain current and relevant.

4.2.2. Internal Audit – Review activities of Internal Audit:

4.2.2.a. Review the letter of authority that describes Internal Audit's authority, roles, and responsibilities.

4.2.2.b. Review Internal Audit's risk assessment and annual (or periodic) audit plan.

4.2.2.c. Review Internal Audit's quality assessment and improvement program, as required by professional auditing standards. Hear the results of such reviews and monitor implementation of recommendations for improvement.

- 4.2.3. Office of the Inspector General (OIG) – Provide oversight of activities of the OIG pursuant to [California Public Utilities Code Sections 28840 - 28845](#)
 - 4.2.3.a. Review and recommend the Board approve the charter that describes the OIG’s authority, roles, and responsibilities and clarifies the broad roles and responsibilities listed in the state legislation.
 - 4.2.3.b. Review the OIG’s risk assessment and resulting audit plan, including the scope of audits to be conducted.
 - 4.2.3.c. Discuss the OIG’s access to information, records, and personnel and advise the Board on recommended solutions.
 - 4.2.3.d. Review the OIG’s quality assessment and improvement program, including hearing the results of its external peer reviews as required by professional auditing and investigation standards and monitoring implementation of recommendations for improvement.
 - 4.2.3.e. Hear the OIG’s quarterly reports of activities.
- 4.3. Internal Control – To provide reasonable assurance to the Board regarding the adequacy of the District’s internal control systems, the Audit Committee should:
 - 4.3.1. Understand the District’s internal control structure, including key operational, reporting, and compliance risks, and the controls implemented to mitigate those risks.
 - 4.3.2. Ensure compliance with the Federal Transit Administration’s internal control requirements. Review the District’s efforts to follow another standard internal control framework, e.g., *Standards for Internal Control in the Federal Government*, published by the U.S. Government Accountability Office, or *Internal Control – Integrated Framework*, published by the Committee for Sponsoring Organizations of the Treadway Commission (COSO).
 - 4.3.3. Discuss internal control systems and safeguards for District assets, discuss with GM/BAOs deficiencies, if any, and associated action plans for correcting such deficiencies.
- 4.4. Compliance with Laws, Regulations, and Procedures – To provide reasonable assurance to the Board that its policies are being carried out, the Audit Committee shall:
 - 4.4.1. At least biennially, review and, as needed, recommend changes to the District’s Code of Conduct policies.

- 4.4.2. Review and recommend changes, as needed, to the District's Whistleblower Policy.
- 4.4.3. Review Procurement procedures to ensure that all agreements with outside contractors include a right-to-audit clause that provides the District's audit functions access to financial and performance-related records, property, and equipment purchased in whole or in part with District funds when conducting an audit or investigation related to the prime contract or subcontracts.
- 4.4.4. Review the District's procedures for reporting noncompliance with laws, regulations, and policies, including whistleblower hotline and other communication methods, and ensure that employees, contractors, and residents know how to report violations.

DRAFT

Terminology

This section is intended to clarify standard audit terminology in the context of a public transit agency since audit and public transit terms can be similar and sometimes overlap.

Internal Control: A process effected by an entity's oversight body, management, and other personnel that provides reasonable assurance that the objectives of an entity will be achieved. It is a dynamic, iterative, and integrated process in which the five components (control environment, risk assessment, control activities, information and communication, and monitoring) impact the design, implementation, and operating effectiveness of each other. Internal control objectives and related risks can be broadly classified into one or more of the following three categories:

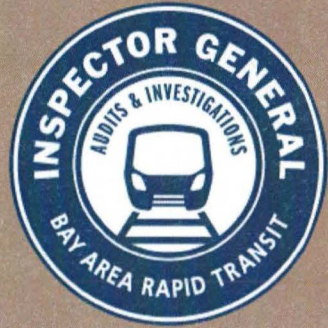
- Operations – Effectiveness and efficiency of operations
- Reporting – Reliability of reporting for internal and external use
- Compliance – Compliance with applicable laws and regulations

Internal Control System: A continuous built-in component of operations, effected by people, that provides reasonable assurance – not absolute assurance – that an entity's objectives will be achieved.

Operational Processes: Processes that define the primary activities an organization needs to perform in order to successfully execute its business. Operational processes represent essential business activities that accomplish business objectives.

Performance Audit: Independent assessment that provides objective analysis, findings, and conclusions to assist management and those charged with governance and oversight with, among other things, improving program performance and operations, reducing costs, facilitating decision making by parties responsible for overseeing or initiating corrective action, and contributing to public accountability.

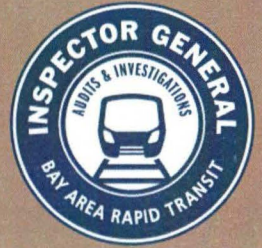
Safeguarding of Assets: The effective stewardship of public resources against unauthorized acquisition, use, modification, or disposition. Public resources include, but are not limited to cash, securities, inventories, equipment, information systems, and data.



Charter for the Office of the Inspector General



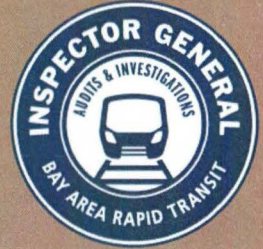
Purpose of OIG Charter



Purpose of Charter – Discuss OIG's:

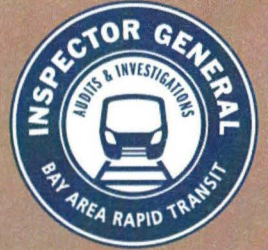
- Responsibilities for achieving compliance with duties identified in PUC §28841, §28843, and §28844
- Authority to access information, records, property, and personnel as needed to fulfill mandated responsibilities
- Practices for reporting and monitoring the results of audits and investigations
- Quality assurance requirements
- Confidentiality requirements for investigations

OIG Requirements Under PUC §28841



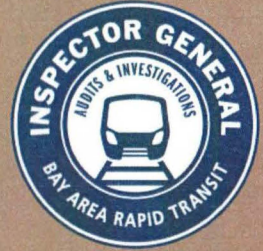
- a. Examine District operating practices to identify fraud, waste, and opportunities for efficiencies in the administration of programs and operations
- b. Ensure BART administration, Board of Directors, and the public are fully informed of OIG findings and recommendations
- c. Identify opportunities to improve data used to determine project resource allocations
- d. Conduct, supervise, and coordinate audits and investigations relating to the District's programs and operations, including, but not limited to, toll-funded programs
- e. Identify best practices in the delivery of capital projects and recommend policies to enable the District to adopt these practices when practicable
- f. Recommend policies promoting efficiency in the administration of programs and operations
- g. Review and recommend best practices that the District should follow to maintain positive and productive relations with its employees and their collective bargaining units

Responsibilities for Achieving Compliance With PUC §28841



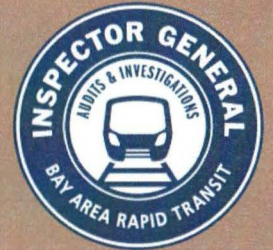
- Audits:
 - Conduct risk assessments to develop list of potential performance audits
 - Conduct performance audits and make recommendations to correct deficiencies or promote effectiveness, economy, and efficiency
 - Comply with *Government Auditing Standards*

Responsibilities for Achieving Compliance With PUC §28841



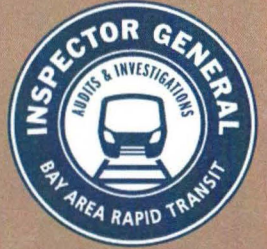
- Investigations:
 - Establish a hotline to receive allegations of fraud, waste, or abuse
 - Investigate complaints and make recommendations for corrective actions, as necessary
 - Comply with *Principles and Standards for Offices of Inspector General*
 - If complaint involves a criminal violation of law, report to the District's Chief of Police, District's Counsel, and appropriate prosecutorial authority
 - Participate in joint investigations with other agencies as necessary
- Other:
 - Engage in fraud prevention activities
 - Select and hire employees

Access Authority



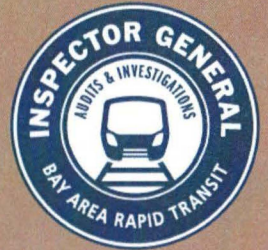
- Unless prohibited by law/subject to attorney-client work product privilege, OIG shall have unlimited access/authority to examine and copy information/records and have access to property/personnel necessary to conduct risk assessments, audits, and investigations
- Employees/agents of the District shall fully cooperate with the OIG's requests and expeditiously provide access to such information without seeking permission to do so
- Employees have a duty to make full disclosure of all pertinent information
- Contracts with outside contractors/vendors/agencies shall include a clause that provides access to the OIG as necessary
- If necessary, OIG may obtain subpoenas through court proceedings

Reporting and Monitoring Audit and Investigation Results



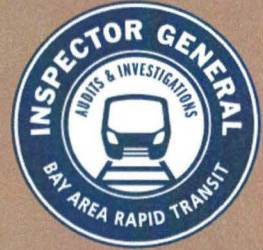
- The OIG provides draft reports to the GM/responsible AGM for comment regarding the report's factual accuracy and opportunity to provide factual evidence to support any disagreement
- The GM will provide written responses for each recommendation that include a corrective action plan, the department responsible for the action, and a timeline for corrective action
- The IG reviews responses, determines if additional discussion is needed, and makes final determination regarding report's accuracy and whether management's planned corrective actions will adequately address identified issues

Reporting and Monitoring Audit and Investigation Results



- The OIG publishes final reports on its website and provide copies to the Board of Directors, the Metropolitan Transportation Commission, and California State Legislature
- The IG presents audit/investigation results to the Audit Committee
- The OIG follows up on the status of recommendations until satisfied that the corrective action taken adequately addresses issues raised in the report or recommendation is no longer relevant

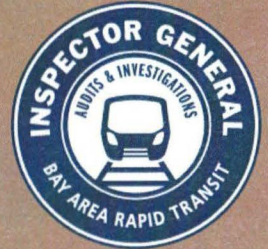
Quality Assurance Requirements



Requirements specified in the Government Auditing Standards and the Principles and Standards for Offices of Inspector General:

- Written policies and procedures to guide our work
- Internal monitoring procedures to assess compliance with professional standards
- External peer reviews

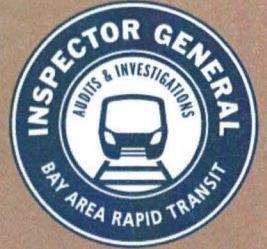
Confidentiality Requirements for Investigations



PUC §28844 designates OIG investigation files as “an investigatory file compiled by a local law enforcement agency subject to disclosure pursuant to subdivision (f) of Section 6254 of the Government Code”

- Investigation files are generally exempted from disclosure
- Disclosure of certain records or names of victims or witnesses of an incident may be disclosed under certain circumstances
- OIG’s practice is not to disclose
 - investigative records unless required by law
 - complainant’s name unless the complainant consents to disclosure or disclosure is unavoidable or otherwise required by law

Contact



Harriet Richardson, Inspector General
300 Lakeside Drive, 18th Floor, Oakland, CA 94612

T: 510-464-6132

E: inspectorgeneral@bart.gov

www.bart.gov/about/inspector-general

The Office of the Inspector General holds in high regard its duty to protect the public's interests.

Integrity • Accountability • Transparency • Honesty

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT CHARTER FOR THE OFFICE OF THE INSPECTOR GENERAL¹

A. Introduction

The Office of the Inspector General (OIG) for the San Francisco Bay Area Rapid Transit District (“District” or “BART”) was authorized in Regional Measure 3 (RM 3), which voters approved on June 5, 2018. The measure requires the OIG to conduct audits and investigations of BART’s operating practices to identify fraud and waste and identify opportunities for efficiencies in the administration of the District’s programs, operations, and delivery of capital projects, including, but not limited to, toll-funded projects.

The Governor of California appoints the Inspector General in accordance with California Public Utilities Code Section 28840.

B. Responsibilities and Authority of the Inspector General

California Public Utilities Code Section 28841 sets forth the general duties and responsibilities of the OIG. The Inspector General shall have the following responsibilities to achieve compliance with those duties and responsibilities:

B.1. Performance Audits:

- B.1.a. Conduct risk assessments of District programs, activities, and functions, and use the results to develop prioritized lists of potential performance audits that will identify opportunities for improving performance and operations, reducing costs, implementing best practices, and facilitating decision making by management, the Board of Directors, and oversight bodies.
- B.1.b. Conduct performance audits that can provide the Board of Directors, District management, oversight bodies, other stakeholders, and the public with independent and objective analysis, findings, and conclusions regarding the effectiveness of the District’s programs and operations, accuracy of its information systems, the economic and efficient use of its resources, use of best practices, the adequacy of its internal controls, and accuracy of data used for measuring performance and decision-making purposes.
- B.1.c. Comply with the standards set forth in the *Government Auditing Standards*, promulgated by the Comptroller General of the United States, when conducting performance audits.

Commented [A1]: This section contains standard general IG and Internal Audit responsibilities, which do not directly align with the “general duties and responsibilities” of the IG legislation. Although stated otherwise, this is an interpretation of the unspecific duties and responsibilities set forth in the legislation, and especially does not align with capital projects in general and toll-funded projects specifically.

Commented [A2R1]: The full Board should provide directions to the OIG to clarify roles and responsibilities so that other BAO’s understand the scope of the role.

Commented [A3]: Only mention of “best practices” in legislation pertains to delivery of capital projects and relations with collective bargaining units.

¹ This Charter is largely modeled after Administrative Code Chapter 2-20, Inspector General, for the Los Angeles Metropolitan Transportation Authority and standards and guidance in the *Principles and Standards for Offices of Inspector General*, issued by the Association of Inspectors General.

B.1.d. Recommend policies or remedial actions to correct deficiencies or promote effectiveness, economy, and efficiency in the District's programs and operations and improve the accuracy of data provided through its information systems.

B.2. Investigations:

B.2.a. Establish a hotline for the purpose of receiving allegations of fraud, waste, or abuse of District resources or noncompliance with laws, regulations, or District policies and procedures.

B.2.b. Receive complaints from any source and proactively conduct ~~civil and administrative~~ investigations concerning alleged fraud, waste, or abuse of District resources or noncompliance with laws, regulations, or District policies and procedures.

B.2.c. Recommend corrective actions, as necessary, based on results of investigations.

B.2.d. Comply with the *Principles and Standards for Offices of Inspector General*, promulgated by the Association of Inspectors General, when conducting investigations.

B.2.e. Report expeditiously to the District Chief of Police, District Counsel, the appropriate county District Attorney, California Attorney General, United States Attorney, or other appropriate prosecutorial and investigative agencies whenever the Inspector General has reasonable grounds to believe there has been a criminal violation of law.

B.2.f. Participate in joint investigations with law enforcement agencies or other agencies conducting investigations of District operations as necessary.

B.3. Other:

B.3.a. Engage in fraud prevention activities, including review of policies, procedures, and transactions, and providing training and education to BART staff.

B.3.b. Select employees, within the budget approved for the OIG, to carry out the functions, duties, and responsibilities of the OIG.

Commented [A4]: Staff opinion is that OIG is not responsible for training BART staff.

C. Access to Information, Records, Property, and Personnel

C.1. Unless prohibited by law or subject to attorney-client work product privilege, the Inspector General shall have unlimited access to and authority to examine and copy any and all documents, including but not limited to, books, accounts, internal memoranda, writings and tapes, reports, vouchers, correspondence files, personnel files, computer files, email, and other records, bank accounts, money, and other property of any District office, including automated data and contractors' records, that are relevant to a risk assessment, audit, or investigation.

- C.2. The Inspector General shall have unlimited access to and authority to meet with any District or contractor staff that are relevant to a risk assessment, audit, or investigation, and the ability to attend any meetings held by BART staff and between BART staff and BART's contractors.
- C.3. Any employee or agent of the District having control of such records shall fully cooperate with the OIG's requests and expeditiously provide access to, and examination thereof, upon the request of the Inspector General or their authorized representative. Any such employee or agent shall not be required to seek permission ~~to~~ fulfill the Inspector General's requests.
- C.4. It is the duty of any such employee or agent to make full disclosure of all pertinent information. Any employee or agent of the District who is aware of or becomes aware of information relevant to an investigation, audit, or risk assessment being conducted by the Office of the Inspector General should voluntarily provide it to the OIG even if it has not been requested.
- C.5. Employees or agents of the District shall not intentionally withhold, hide, alter, or destroy any information, records, data, property, or equipment that may be potential evidence in an ongoing investigation or audit.
- C.6. District contracts with outside contractors, vendors, and agencies shall include an audit clause that provides the OIG access to their personnel and all records, including those of their subcontractors, needed to verify compliance with the contract terms.
- C.7. Although the OIG does not have direct subpoena powers, the OIG may find it necessary to obtain subpoenas through a court proceeding to compel subjects or witnesses in an investigation to produce documents or appear for an interview.

D. Reporting and Monitoring

California Public Utilities Code Section 28843 requires the OIG to report, at least annually, to the Board of Directors and the California Legislature a summary of the OIG's findings, investigations, and audits, including significant problems identified and whether BART has implemented the resulting recommendations.

In addition, the Inspector General shall prepare written reports of the results of each audit and investigation conducted and retain a copy as a permanent record. Prior to publishing a report:

- D.1. The Inspector General shall provide a draft report to the General Manager and the Assistant General Manager responsible for the area under audit or investigation. The draft report shall include the Inspector General's findings, conclusions, and recommendations.
- D.2. The Inspector General will provide an opportunity for the General Manager and Assistant General Manager responsible for the area under audit or investigation to provide comments regarding the factual accuracy of the draft report. If they disagree with the Inspector General's findings, conclusions, and recommendations, they must provide

Commented [A5]: OIG should have authority to meet with any staff member if conducting investigations. If OIG is conducting audits, assessments, etc., OIG should coordinate with relevant AGM so that employees existing work is prioritized to allow for cooperation.

Statement regarding ability to attend any meeting held by BART staff is much too broad and should be limited to matters in which she has a specific reason to attend.

Commented [A6]: Need to be aware of CBAs. If line staff works overtime, then we may incur overtime costs.

Commented [A7]: By definition "recommendations" do not need to be followed or implemented. Until now there is nothing stating BART MUST implement recommendations.

Commented [A8R7]: There should be language stating that the report must include response from staff.

Commented [A9]: For alignment, suggest that Section 4.1 of the audit committee charter reference this section.

Commented [A10]: OMB Circular A-50 (Audit Follow-up) language does not mention "factual evidence": *Comments indicating agreement on final reports shall include planned corrective actions and, where appropriate, dates for achieving actions. Comments indicating disagreement shall explain fully the reasons for disagreement. Where disagreement is based on interpretation of law, regulation, or the authority of officials to take or not to take action, the response must include the legal basis.* The GM only needs to explain fully the reasons for disagreement.

factual evidence to support their disagreement. Based on the information provided, the Inspector General may make changes to the report before providing a final draft for an official response.

- D.3. Within two weeks after the Inspector General provides a final draft report, the General Manager, or designee, shall provide a written response to the Inspector General that addresses concurrence, nonconcurrence, or partial concurrence with each finding and a corrective action plan, including a timeline for implementation, for each recommendation. The General Manager must provide specific reasons, along with supporting evidence, for nonconcurrence or partial concurrence with a finding or recommendation. The Inspector General will provide a response template with each audit or investigation.
- D.4. The Inspector General will review the General Manager's response to determine if additional discussion is needed; however, the Inspector General makes the final determinations regarding both the accuracy of an audit or investigation finding and whether management's planned corrective actions will adequately address the issues identified in the audit or investigation.
- D.5. The Inspector General will publish finalized audit and investigation reports on the OIG's website and provide copies to each member of the Board of Directors, the Metropolitan Transportation Commission, and the California State Legislature.
- D.6. The Inspector General will present the results of each audit and investigation to the Audit Committee of the BART Board of Directors.
- D.7. The Inspector General will follow up on audit and investigation recommendations until satisfied that management has implemented the recommendations, otherwise adequately addressed the concerns brought forward by the OIG, or the OIG determines that a recommendation is no longer relevant.

E. Quality Assurance and Improvement Program

The OIG shall comply with the requirements of the *Government Auditing Standards and Standards and Principles for Offices of Inspector General* for establishing a system of quality control, including developing written policies and procedures and undergoing external peer reviews as required by those standards.

F. Confidentiality of Investigations

The OIG is the official body of BART to investigate allegations of possible fraud, waste, and abuse identified by BART staff or other stakeholders and shall maintain appropriate confidentiality of records and complainants as set forth in Public Utilities Code section 28844. In addition, the Inspector General shall not disclose the identity of a complainant from whom a complaint or information has been received, unless the complainant has consented to such disclosure, such disclosure is unavoidable during the course of the investigation, or as otherwise required by law.

Commented [A11]: OIG should document management's disagreement and include in report, even if OIG does not change report.

Commented [A12]: Too short of a timeframe. Suggest using FTA 30-day response standard (FYI, FAA allows 45 days).

This does not read as a charter item of what the IG does in terms of reporting and monitoring. It reads as audit instructions to the GM. Should be re-worded to specify the IG's role.

Commented [A13]: "Corrective Action" does not typically follow a "recommendation".

Commented [A14R13]: The corrective action should be proposed by the audited entity and discussed with the auditor.

Commented [A15]: The board should be the final arbitrator of disagreements. The OIG should document opinions of both the GM and the OIG.

Commented [A16]: Management need only to provide a corrective action plan for those recommendations that it concurs, or partially, concurs with.

Commented [A17]: The IG should also have an expected timeframe to respond.

Commented [A18]: There should be a termination process or recommendations could remain open for an extended period. Board should make final determination of satisfaction with implementation of corrective actions, even if OIG does not agree. OIG can document in report to state at its discretion.

Commented [A19]: A recommendation is not a requirement. If there is no requirement there is no justification to follow-up until satisfied that management has adequately implemented recommendations. There must be a process where staff and the OIG agree to disagree so that continuous follow-up does not occupy staff resources.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT CHARTER FOR THE OFFICE OF THE INSPECTOR GENERAL¹

A. Introduction

The Office of the Inspector General (OIG) for the San Francisco Bay Area Rapid Transit District (“District” or “BART”) was authorized in Regional Measure 3 (RM 3), which voters approved on June 5, 2018. The measure requires the OIG to conduct audits and investigations of BART’s operating practices to identify fraud and waste and identify opportunities for efficiencies in the administration of the District’s programs, operations, and delivery of capital projects, including, but not limited to, toll-funded projects.

The Governor of California appoints the Inspector General in accordance with California Public Utilities Code Section 28840.

B. Responsibilities and Authority of the Inspector General

California Public Utilities Code Section 28841 sets forth the general duties and responsibilities of the OIG. The Inspector General shall have the following responsibilities to achieve compliance with those duties and responsibilities:

B.1. Performance Audits:

- B.1.a. Conduct risk assessments of District programs, activities, and functions, and use the results to develop prioritized lists of potential performance audits that will identify opportunities for improving performance and operations, reducing costs, implementing best practices, and facilitating decision making by management, the Board of Directors, and oversight bodies.
- B.1.b. Conduct performance audits that can provide the Board of Directors, District management, oversight bodies, other stakeholders, and the public with independent and objective analysis, findings, and conclusions regarding the effectiveness of the District’s programs and operations, accuracy of its information systems, the economic and efficient use of its resources, use of best practices, the adequacy of its internal controls, and accuracy of data used for measuring performance and decision-making purposes.
- B.1.c. Comply with the standards set forth in the *Government Auditing Standards*, promulgated by the Comptroller General of the United States, when conducting performance audits.

¹ This Charter is largely modeled after Administrative Code Chapter 2-20, Inspector General, for the Los Angeles Metropolitan Transportation Authority and standards and guidance in the *Principles and Standards for Offices of Inspector General*, issued by the Association of Inspectors General, and the *Government Auditing Standards*, issued by the U.S. Government Accountability Office.

B.1.d. Recommend policies or remedial actions to correct deficiencies or promote effectiveness, economy, and efficiency in the District's programs and operations and improve the accuracy of data provided through its information systems.

B.2. Investigations:

B.2.a. Establish a hotline for the purpose of receiving allegations of fraud, waste, or abuse of District resources or noncompliance with laws, regulations, or District policies and procedures.

B.2.b. Receive complaints from any source and proactively conduct civil and administrative investigations concerning alleged fraud, waste, or abuse of District resources or noncompliance with laws, regulations, or District policies and procedures.

B.2.c. Recommend corrective actions, as necessary, based on results of investigations.

B.2.d. Comply with the *Principles and Standards for Offices of Inspector General*, promulgated by the Association of Inspectors General, when conducting investigations.

B.2.e. Report expeditiously to BART's Chief of Police and General Counsel, the appropriate county District Attorney, California Attorney General, United States Attorney, or other appropriate prosecutorial and investigative agencies whenever the Inspector General has reasonable grounds to believe there has been a criminal violation of law.

B.2.f. Participate in joint investigations with law enforcement agencies or other agencies conducting investigations of District operations as necessary.

B.3. Other:

B.3.a. Engage in fraud prevention activities, including review of policies, procedures, and transactions, and providing training and education to BART staff.

B.3.b. Select employees, within the budget approved for the OIG, to carry out the functions, duties, and responsibilities of the OIG.

C. Access to Information, Records, Property, and Personnel

C.1. Unless prohibited by law or subject to attorney-client work product privilege, the Inspector General shall have unlimited access to and authority to examine and copy any and all documents, including but not limited to, books, accounts, internal memoranda, writings and tapes, reports, vouchers, correspondence files, personnel files, computer files, email, and other records, bank accounts, money, and other property of any District office, including automated data and contractors' records, that are relevant to a risk assessment, audit, or investigation.

- C.2. The Inspector General shall have unlimited access to and authority to meet with any District or contractor staff and the ability to attend any meetings held by BART staff and between BART staff and BART's contractors that are relevant to a risk assessment, audit, or investigation.
- C.3. Any employee or agent of the District having control of such records shall fully cooperate with the OIG's requests and expeditiously provide access to, and examination thereof, upon the request of the Inspector General or their authorized representative. Any such employee or agent shall not be required to seek permission to fulfill the Inspector General's requests.
- C.4. It is the duty of any such employee or agent to make full disclosure of all pertinent information. Any employee or agent of the District who is aware of or becomes aware of information relevant to an investigation, audit, or risk assessment being conducted by the Office of the Inspector General should voluntarily provide it to the OIG even if it has not been requested.
- C.5. Employees or agents of the District shall not intentionally withhold, hide, alter, or destroy any information, records, data, property, or equipment that may be potential evidence in an ongoing investigation or audit.
- C.6. District contracts with outside contractors, vendors, and agencies shall include an audit clause that provides the OIG access to their personnel and all records, including those of their subcontractors, needed to verify compliance with the contract terms.
- C.7. Although the OIG does not have direct subpoena powers, the OIG may find it necessary to obtain subpoenas through a court proceeding to compel subjects or witnesses in an investigation to produce documents or appear for an interview.

D. Reporting and Monitoring

California Public Utilities Code Section 28843 requires the OIG to report, at least annually, to the Board of Directors and the California Legislature a summary of the OIG's findings, investigations, and audits, including significant problems identified and whether BART has implemented the resulting recommendations.

In addition, the Inspector General shall prepare written reports of the results of each audit and investigation conducted and retain a copy as a permanent record. Prior to publishing a report:

- D.1. The Inspector General shall provide a draft report to the General Manager and the Assistant General Manager responsible for the area under audit or investigation. The draft report shall include the Inspector General's findings, conclusions, and recommendations.
- D.2. The Inspector General will provide an opportunity for the General Manager and Assistant General Manager responsible for the area under audit or investigation to provide comments regarding the factual accuracy of the draft report. If they disagree with the Inspector General's findings, conclusions, and recommendations, they must provide

factual evidence to support their disagreement. Based on the information provided, the Inspector General may make changes to the report before providing a final draft for an official response.

- D.3. Within two weeks after the Inspector General provides a final draft report, the General Manager, or designee, shall provide a written response to the Inspector General that addresses concurrence, nonconcurrence, or partial concurrence with each finding and a corrective action plan, including a timeline for implementation, for each recommendation. The General Manager must provide specific reasons, along with supporting evidence, for nonconcurrence or partial concurrence with a finding or recommendation. The Inspector General will provide a response template with each audit or investigation.
- D.4. The Inspector General will review the General Manager's response to determine if additional discussion is needed; however, the Inspector General makes the final determinations regarding both the accuracy of an audit or investigation finding and whether management's planned corrective actions will adequately address the issues identified in the audit or investigation.
- D.5. The Inspector General will publish finalized audit and investigation reports on the OIG's website and provide copies to each member of the Board of Directors, the Metropolitan Transportation Commission, and the California State Legislature.
- D.6. The Inspector General will present the results of each audit and investigation to the Audit Committee.
- D.7. The Inspector General will follow up on audit and investigation recommendations until satisfied that management has implemented the recommendations, otherwise adequately addressed the concerns brought forward by the OIG, or the OIG determines that a recommendation is no longer relevant.

E. Quality Assurance and Improvement Program

The OIG shall comply with requirements of the *Government Auditing Standards and Principles and Standards for Offices of Inspector General* for establishing a system of quality control, including developing written policies and procedures and undergoing external peer reviews as required by those standards.

F. Confidentiality of Investigations

The OIG is the official body of BART to investigate allegations of possible fraud, waste, and abuse identified by BART staff or other stakeholders and shall maintain appropriate confidentiality of records and complainants as set forth in Public Utilities Code Section 28844. In addition, the Inspector General shall not disclose the identity of a complainant from whom a complaint or information has been received, unless the complainant has consented to such disclosure, such disclosure is unavoidable during the course of the investigation, or as otherwise required by law.