

## Legislation Text

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**File #:** ROGC 19-177, **Version:** 1

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**Union Pacific Property. (Mayor, Jimenez, Peralez, Davis, Esparza)**

A. Direct the City Attorney to explore the following legal avenues for action against Union Pacific Railroad (UPRR), and report back to Council in closed session. The Council should be presented with options relating to potential lawsuits or claims-filed in a court of appropriate jurisdiction, or before the federal Surface Transportation Board-alleging:

1. Nuisance, or other state-law claims relating to laws of general applicability, against UPRR, for:
    - a. Its failure to prevent trespass on the UPRR property, which would obviate the need to use train horns when utilizing the tracks at nighttime; and
    - b. Its failure to properly maintain the UP property free from blight, trash, and graffiti.
  2. Violations of NEPA or other federal environmental laws relating to night-time operations or lack of basic maintenance, or failure to maintain the UPRR property free from blight, trash, and graffiti;
  3. Unfair business practices, nuisance, and other state law claims against every customer of UPRR that benefits from operations along the corridor (cf *Hi-Tech Transportation v. NJ*, 382 F.3d 295 (3rd Cir. 1994); *SEA3, Inc. Petition for Declaratory Order*, FD 35853 STB, served March 17, 2015 (both finding that federal preemption does not apply to lawsuits against customers of a federally regulated rail company));
  4. Determination of whether UPRR has a franchise or easement to use every public street that intersects with its line for crossing, utilizing searches of historic title records. In particular, there may be historic basis for the belief that some City streets located near Diridon station do not have any recorded easement or franchise for UPRR's use;
  5. UPRR's failure to abide by federal Constitutional and state law requiring prior notification of homeless residents & offers of relocation to housing prior to encampment abatement on Bassett Street on May 9, 2019, among other occasions; and
  6. Any other viable legal theories or actions that the City Attorney's Office might unearth in its legal research.
- B. Direct the City Manager to bring to Council for the next available hearing of General Plan amendments a proposal to change the land use designation of the UPRR corridor to public open space for purposes of future rail-to-trail conversion. Such a change could facilitate a recreational trail connecting the Guadalupe River Park with Downtown neighborhoods.