



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: September 20, 2016

TO: Carolyn Lehr, City Manager

FROM: Maurice Kaufman, Public Works Director

SUBJECT: **Resolution Of The City Council Of The City Of Emeryville Declaring The City's Intention To Increase The Sewer User Fee And Establish Procedures For Accepting Protests Pursuant To Article XIID, Section 6(a) Of The California Constitution Regarding Property-Related Fees And Charges**

RECOMMENDATION

Staff recommends that the City Council declare the City's intention to revise the Sewer User Fee and establish procedures for accepting protests.

BACKGROUND

The City of Emeryville provides sanitary sewer collection services to a residential population of approximately 11,700. The collection system serves the entire City and includes about 15 miles of sewer mains. In addition, approximately 11 miles of sanitary sewer mains from 370 acres of primarily residential property in the City of Oakland drain into Emeryville's sanitary sewer collection system. The City's sewer collection system feeds into treatment facilities managed by East Bay Municipal Utility District (EBMUD).

The City, by design, has separate sanitary sewer and stormwater drainage systems. Infiltration and inflow (I/I) is stormwater or groundwater that enters the sanitary sewer system through cracks and other defects in the sewer infrastructure. I/I cause excessive sanitary flows during wet weather events that exceed both local conveyance and regional treatment capacity.

In the 1980s, EBMUD constructed three wet weather facilities (WWFs), with regulatory approval, to handle the increased sanitary flow during large storm events. However, in 2007, EBMUD's discharge permit for the WWFs was remanded by the State Water Resources Control Board (SWRCB) based on the Environmental Protection Agency (EPA) ruling that the discharges do not meet secondary treatment standards and therefore, are in violation of the Clean Water Act.

In 2009, the EPA filed a complaint against EBMUD for the continued use of the WWFs. The EBMUD lawsuit was followed by a separate suit by the EPA against each of the municipal entities that operate sewer collection systems discharging to the EBMUD

system. The City of Emeryville was named in the second lawsuit, along with the other dischargers including Alameda, Albany, Berkeley, Oakland, Piedmont, and Stege Sanitary District (collectively the "Satellites"). The EPA case against the Satellites was legally based on allegations of "unpermitted" discharges or sanitary sewer overflows (SSOs) from their systems. However, the primary objective was not related to SSO enforcement, but rather to ensure that an aggressive program to reduce wet weather flows would be carried out by the Satellites.

Negotiations ensued, and the EPA, Department of Justice, SWRCB and the Regional Water Quality Control Board (RWQCB) entered into a Stipulated Order with EBMUD and the Satellites separately requiring detailed maintenance and sewer rehabilitation work to address the influx of stormwater into the sewer collection systems during wet weather events. The Stipulated Orders remained binding until a final remediation program was codified in the Final Consent Decree for Case Nos. C09-00186-RS and 09-05684.

DISCUSSION

The City is required by State law and City policy to collect revenues sufficient to cover the costs of operating the sewer facilities. These revenues, which are placed in the Sewer Enterprise Fund, allow the City to safely and reliably convey wastewater generated by residents and businesses, and protect human health. Costs recovered through the rate revenue include salaries and benefits for sewer facilities staff, contractual services, materials, equipment, supplies, and infrastructure rehabilitation/Capital Improvements.

In accordance with the Final Consent Decree, the City is required to complete certain minimum improvements to its sewer facilities over the next 20 years. To comply with these requirements, the City must repair defects and rehabilitate sewer mains that have reached the end of their useful life; and implement collection system maintenance protocols, including ongoing inspection and cleaning of the sewer system. In addition, the City must implement its Sewer System Management Plan, approved by the City Council on February 21, 2012, which consists of an operation and maintenance program, design and performance standards, emergency response, Fats, Oils, and Grease (FOG) control program, capacity management, and program evaluation.

The City last conducted a detailed review of the Sewer Enterprise Fund in the early 1990's and has not increased the Sewer User Fee rates since January 1995. Given the new requirements of maintaining the collection system as required by the Consent Decree, the City contracted with Bartle Wells Associates (BWA) in December 2015 to analyze and update the City's sewer collection rates to reflect the City's up-to-date operating and capital costs. Based on the user classifications set forth in the City's Waste Water Collection System Ordinance Section 7-8.502 and the rates established by Resolution No. 94-164 the City currently charges all single family residential customers a flat \$8 per month rate and all multiple family and non-residential customers a volumetric rate of \$1.25 per hundred cubic feet of water consumed (ccf). The City contracts with EBMUD to collect the user rates as part of the bimonthly water bill.

In addition to the Sewer User Fee, the City's Waste Water Collection System Ordinance establishes a sewer connection fee for new connections to the sanitary sewer collection system. The Connection Fee which is currently set at \$1,321 per single family dwelling unit and at \$264 per plumbing trap for commercial or industrial properties is adjusted annually by the City Council based on the Engineering News Record (ENR) Construction Cost Index as part of the Master Fee Schedule update. The rate for this fee established by the City is on par with the rates charged by the neighboring Cities. These funds cannot be used for collection system operation and are only to be used for capital improvements to the system. Given the large amount of redevelopment within the City of Emeryville over the past 21 years since the Sewer User Fee was last raised, the City has been able to perform its sanitary sewer system capital improvement program using the Connection Fees collected from developers without the need to raise its Sewer User Fee rates. As a result, the City of Emeryville's Sewer User Fees are the lowest in the Region by a significant amount.

In the Sewer Rate Study attached to this report as Exhibit A, BWA has evaluated sewer funding needs and revenue sources and recommends an annual nine percent annual increase in the Sewer User Fee for the next five years. This rate increase would raise the current rate of \$8 per month per single family resident by nine percent each year until it reaches a maximum of \$12.31 per month in the year 2021. Similarly, the volumetric rate would increase from \$1.25 per unit to a maximum of \$1.92 per unit. Their analysis was predicated on rates being adequate to:

- Fund sewer pipeline replacements and other capital improvements
- Maintain reasonable and adequate reserves for operations, capital project delivery, catastrophic emergency, and major projects.
- Mitigate impacts on the ratepayers

The operating fund will maintain a reserve equal to 50% of that years' operating expenses. This is consistent with City policy, which recommends a 50% operating cost reserve for City funds. In its capital funds, it is recommended that the City maintain a \$100,000 reserve for project deliveries to be used for unanticipated change orders and project contingencies. It is recommended that the City maintain a \$2.5 million reserve for catastrophic emergencies, such as an earthquake.

In addition to the catastrophic emergency reserve, there is also a need to set aside \$2.5 million in funds for the rehabilitation of the Powell Street sewer main west of Interstate 80. This project is anticipated to be necessary in the next seven to ten years due to soil conditions. It is anticipated that the City will accumulate the Powell Street rehabilitation reserve over time at a rate of \$357,000 annually. The total recommended reserve in FY2021 (the last year of the proposed rate increase) is about \$5.3 million. BWA projects that the City will meet the reserve target of \$5.3 million in FY2022 (year six of the planning horizon) and will have adequate revenues to fund the Powell Street sewer main project.

Proposition 218 and Protest Procedures: Proposition 218, the "Right to Vote on Taxes Act", was approved by California voters in November 1996 and is codified as Articles XIIC and XIID of the California Constitution. Proposition 218 establishes

requirements for imposing or increasing property related taxes, assessments, fees and charges. Under Proposition 218, property owners and/or tenant directly responsible for the payment of the fee subject to the proposed rate increase may submit a written protest against the proposed rate increase. The protest must be in writing, received by the City Clerk at or before the public hearing, identify that the proposed sewer rate increase is being protested, and contain the service address. The party signing the protest must be listed on the account as the person responsible for payment and/or the property owner. In the event that a protest is submitted by both the owner and a tenant responsible for payment, only one valid protest is counted for that parcel. If written protests are filed by a majority (50% + 1), the applicable proposed rate may not be imposed. Staff has determined that "no" votes from 2,582 parcels/accounts, would need to be received in order for the City Council to not be able to raise the rates.

Pending the City Council's adoption of the "Resolution Of The City Council Of The City of Emeryville Declaring The City's Intention To Increase The Sewer User Fee And Establish Procedures For Accepting Protests Pursuant To Article XIID, Section 6(a) Of The California Constitution Regarding Property-Related Fees And Charges", the City will send property owners a written notice announcing the proposed sewer user fee increase and the date of the scheduled public hearing. The notice will outline protest procedures and direct readers to a website for more information about the proposed sewer user fee increase, including the Sewer Rate Study and the "Guidelines for the Submission and Tabulation of Protests". The mailed notice will be printed in English, and the notice will be posted on the City website so that the content will be available in Spanish, Chinese, Vietnamese, and Tagalog.

FISCAL IMPACT

An annual increase of nine percent to the Sewer User Fee each year for the next five years will ensure sufficient funding for operating costs, capital improvement costs, and the accumulation of sufficient reserves. Absent a sewer user fee increase, the City may not be able to fund sewer improvement projects, at the risk of EPA penalties for non-compliance with the Consent Decree, and would not have adequate funding to address repairs following a catastrophic event such as an earthquake.

PREPARED BY: Keely Nelson, Associate Civil Engineer – Public Works

APPROVED AND FORWARDED TO THE CITY COUNCIL OF THE CITY OF EMERYVILLE:



Carolyn Lehr, City Manager

Attachments:

1. Resolution
2. Exhibit A - Sewer Rate Study
3. Exhibit B - Guidelines for the Submission and Tabulation of Protests