



## Legislation Text

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**File #:** 11-350, **Version:** 1

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Staff Report for Matter of Protest Ballots Regarding Change in Purpose of Previously Approved Wastewater Rate Increases and Consideration of Ordinance and Code Changes

### **RECOMMENDATIONS**

Staff recommends that the City Council hold a public hearing and take testimony on the proposed change in purpose and at the conclusion of the public hearing tally the protest votes received. Should the City receive protest ballots from less than 50% of the affected property owners, staff recommends that the City Council take action to implement the change in purpose of previously approved wastewater rate increases, providing a source for reimbursement of rate payers when they have to reconnect their private sewer lateral to a relocated City maintained sewerage main line:

- Pass to print an ordinance to amend the San Leandro Municipal Code Title 3, Chapter 14, Section 3-14-640, Private Sewer Laterals and Sewer Overflows;
- Adopt a resolution to amend San Leandro Administrative Code Title 8, Chapter 11, Financing of Sewer Lateral Connections to City Sewerage System.

### **BACKGROUND**

On June 20, 2011, the City Council determined that the City should pay for reconnecting private sewer laterals in the particular situation where the City determines that it is necessary to relocate a City maintained sewer main. To that end, the City Council directed staff to prepare and implement policies and procedures to legally create a program that would reimburse rate payers affected by this particular City sewerage system activity.

To determine the sewer rate impact from the proposed change in lateral connection policy, staff updated the wastewater rate model with data that included actual bid amounts and financing rates for the treatment plant rehabilitation project. The result showed a capacity for the Water Pollution Control Fund to absorb the potential costs for reimbursing property owners for constructing private sewer laterals to reconnect to a relocated main line.

In an abundance of caution, the City Council determined that before such a program is created the City should comply with the procedural requirements of Proposition 218.

### **DISCUSSION**

On September 19, 2011, the City Council authorized mailing a notice of the proposed change in purpose of previously approved wastewater rate increases, setting a 45-day protest period and public hearing in accordance with Proposition 218 requirements.

In accordance with the procedures of Proposition 218, the City Council properly noticed affected

property owners, opened the prescribed protest period, and declared that a public hearing to hear testimony and receive written protests to the change in purpose would be held at 7 p.m., November 21, 2011 at San Leandro City Hall. Upon conclusion of the public hearing, the City Clerk must count the number of valid protests received to determine whether a majority protest exists. Only one protest per parcel may be counted.

If a majority protest is presented, then the City Council cannot change the original purpose and use of the previously approved rate increases. However, if the City Clerk determines that a majority protest does not exist, the City has complied with Proposition 218, and may take action to change the purpose of the approved rate increases to cover the costs to reconnect private sewer laterals when the City relocates a City maintained sewer main.

### **Current Agency Policies**

Enact adequate sewer service fees to fully fund continued operation, maintenance and repair of the wastewater conveyance and treatment system.

### **Previous Actions**

- On April 19, 2010 by Resolution No. 2010-042, the City Council authorized the City Manager or his designee to mail the required notice of proposed sewer and wastewater treatment rate increases and notice of public hearing in accordance with the requirements of Proposition 218.
- On June 21, 2010 by Resolution No. 2010-069, the City Council adopted wastewater discharge rates as published in the Notice of Proposed Sewer and Wastewater Treatment Rates for fiscal years 2010-11 through 2014-15.
- On September 7, 2010 by Resolution No. 2010-112, the City Council awarded the construction of the 2009 Sewer Pipeline Replacement Project.
- On December 20, 2010 by Resolution No. 2010-156, the City Council approved Administrative Code Title 8, Chapter 11.
- On June 20, 2011 by Minute Order No. 2011-077, the City Council directed staff to pursue Option 2 to have Publicly Owned Treatment Works fund lateral relocations, and to move forward with the pipeline work, in the limited circumstance where sewer mains are rendered inoperable, with Option 1 being implemented in the interim, prior to the Proposition 218 procedure.
- On September 19, 2011 by Resolution No. 2011-172, the City Council authorized the City Manager or his designee to mail a notice of proposed change in purpose of previously approved sewer and wastewater treatment rate increases and notice of public hearing in accordance with the requirements of Proposition 218.

### **Committee Review and Actions**

- The proposed Administrative Code Title 8, Chapter 11 was presented at the Facilities and Transportation Committee meeting on November 9, 2010.
- The process for implementing the Administrative Code section was presented at the Facilities

and Transportation Committee meeting on February 8, 2011.

**Summary of Public Outreach Efforts**

Public Notice was mailed in accordance with the requirements of Proposition 218 to all parcel owners affected by the proposed change in purpose of a portion of the previously approved rate increases.

Information was posted on the City web site, including: Public Notice, FAQs and maps.

**Legal Analysis**

N/A

**Fiscal Impacts**

The cost analysis assumed that up to onehalf of the five hundred identified properties with possible structures on top of backyard mains would require private sewer lateral relocation within the next ten years, with a total cost of up to \$4,000,000.

**Budget Authority**

Any necessary expenditures would be appropriated from the Water Pollution Control Enterprise Fund.

**ATTACHMENTS**

Notice of Proposed Sewer and Wastewater Treatment Rate Repurpose and Public Hearing

**PREPARED BY:** Dean Wilson, WPC Manager, Public Works