

Attachment No. 35

**EPASD Letter to LAFCo
(Comments to EPA
Supplemental Responses re:
Proposal)**

Ronald J. Scholar
rscholar@colehuber.com

REPLY TO:
 ROSEVILLE ONTARIO

January 20, 2023

VIA E-MAIL AND U.S. MAIL
RBARTOLI@SMCGOV.ORG

Rob Bartoli, Executive Director
San Mateo Local Agency Formation Commission
455 County Center, 2nd Floor
Redwood City, California 94063-1663

Re: LAFCo File No. 22-09: East Palo Alto Sanitary District's *Supplemental* Response and Opposition to the Proposal to Establish the East Palo Alto Sanitary District as a Subsidiary of the City of East Palo Alto

Dear Mr. Bartoli:

As you know, my office represents the East Palo Alto Sanitary District ("EPASD" or "District") with respect to the pending proposal before the San Mateo Local Agency Formation Commission ("LAFCo") by the City of East Palo Alto ("City") to establish the EPASD as a subsidiary of the City.

On December 22, 2022, I submitted, on behalf of EPASD, the District's response and objection to the City's proposal. On that same date, the City responded to LAFCo's December 13, 2022 notification to the City that its application was incomplete. The following are EPASD's comments in response and opposition to the City's supplemental submission to its proposal.

It is important to note at the outset that the heart of this matter is a developer driver desire to replace what they view as a non-complaint elected EPASD Board with a compliant governing body in the form of the City. Nowhere is that more evident than with respect to the cost of the Capacity Charge or connection fee. Based upon the analysis by Hildebrand Financial Services, LLC, ("Hildebrand") which considered, among other relevant factors, the 2021 Amendment to the 2015 Sewer Master Plan, Hildebrand determined the new Capacity Charge in order to serve all of the new development projects needed to be \$14,464 per EDU.¹ The private, for-profit, mostly commercial development community has resisted paying this amount. With an estimated 4500 connections driven by new development,² the District's Capacity Charge will generate approximately \$65,088,000 in revenue. The City proposes charging less than half of that at

¹ Attachment 1 (Hildebrand, *Capacity Charge Study*, September 7, 2022, pp. 1, 2, 4-6)

² One EDU is equal to 240 gallons per day. F&L estimates additional sanitary sewer flows to be 1,080,000 gallons per day (1,080,000 / 240 = 4,500) Attachment 6 (F&L, *Addendum to the March 2015 East Palo Alto Sanitary District Master Plan Update*, April 28, 2021, pp. 3, fn 2, and 47 [Table 10])

\$6,060³ which will only generate \$27,270,000 resulting in a \$37,818,000 shortfall. With the District facing at least \$64.7 million in project costs for both structural and capacity upgrades,⁴ it is clear that the differential in funding will have a substantial negative impact on the ability to maintain, repair and upgrade the system.

This substantial shortfall will have no other place to land other than on the backs of the current ratepayers who have already paid into the system. For this reason alone, the City's proposal represents bad government working against the interests of its constituency and should be rejected.

I now turn to the specific issues raised by the City's supplemental submission.

Comment 3b

The City incorrectly states that EPASD's contract with its General Manager expires on October 23, 2022. The contract expires June 30, 2025.

Comment 3c

Under the current structure, the District is directly accountable to its voters, including those who reside in the City of Menlo Park. Under the City's proposal, those District customers in Menlo Park will be completely disenfranchised. The Menlo Park customers will be stripped of their vote as they have no say in the election of the City Council. As such, those City Council members will have no electoral accountability to those customers of the District who live or own property in Menlo Park. That the City concedes its responsibility under Proposition 218 to provide notices and permit protests to property owners is no remedy. The District's Menlo Park residents will still lack a voice in their government.

Comment 3d

The City's response is incomplete. It neglects to address the cash shortfall that will be incurred by failing to charge new development an appropriate connection fee in the amount of \$14,464 as opposed to the City's proposal to charge only \$6,060. This shortfall will negatively impact the ability to fund pension liabilities.

Comment 3e

Here, LAFCo asked the City a direct question: "[D]oes the City's plan for service take into account the recent [CCTV by Sierra West] assessment by the District? The City never really answers this yes or no question. The City only addresses Priority 1 or high priority upgrades. It

³ Forty-two percent

⁴ Attachment 2 (Sierra West, *CCTV Survey Evaluation*, October 31, 2022, p. 3)

ignores the approximately \$64.7 million to replace the 90,000 linear feet of pipelines in areas 1, 3 and 4 as identified by Sierra West for structural and capacity upgrades. Thus, the City's proposal is vastly underfunded so that it can provide a substantial, 58 percent discount for new connection fees to profit, mostly commercial, new development. It should also be noted that the currently proposed improvements only cover seventy-five percent (75%) of the District's pipes because the CCTV project review has not yet been completed.⁵

Comment 3f

The system under its current load does not have a capacity deficiency. Systems are generally designed for 1 in 10-year flood conditions. Yet despite the recent 1 in 100-year flood conditions that caused SSO's throughout the region, including San Francisco where public officials were issuing warnings not to play in the puddles for fear of contamination, EPASD's system did not overflow into the streets of the City. Under its current load, the system does require substantial maintenance and repair due to age. However, it is the influx of new development that will require system expansion and that maintenance and repairs be completed at an accelerated rate.

Comment 3g

The City's reliance on the 2015 Master Plan for the proposition that designing the system to intentionally surcharge⁶ under wet weather flow conditions is both outdated and not an acceptable practice. Indeed, as the City notes in its response, the Addendum to the EPASD March 2015 Master Plan Update from April 2021 does not allow for surcharging. It achieves this goal by upsizing select sections of pipe to manage wet weather flow.

The City's proffered "lack of velocity during dry season" as an excuse to surcharge the system is not an appropriate justification and is a non-issue. Velocity is primarily a function of the slope of the pipe, not the size of the pipe. From an engineering standpoint, so long as the slope of the pipe allows for the flow to stay between two (2) and ten (10) linear feet per second, there should be no issues.

Further, contrary to the City's assertion, surcharging is not acceptable and designing a system to intentionally surcharge is contrary to industry standards. For example, neighboring West Bay Sanitary District's Standard Specifications for Design and Construction of Sanitary Sewer Collection and Conveyance Facilities state "[n]o surcharging of gravity sewers shall be allowed."⁷ The City of Brisbane's Sanitary Sewer Design Standards prohibit surcharging

⁵ Attachment 2 (Sierra West, *CCTV Survey Evaluation*, October 31, 2022)

⁶ A surcharge occurs when the flow is greater than the capacity of the pipes in the system.

⁷ Attachment 3 (West Bay Sanitary District, *Standard Specifications for Design and Construction of Sanitary Sewer Collection and Conveyance Facilities*, June 24, 2015, p. B2-01, Section B2.02)

specifying that the “maximum depth of flow for pipes between eight and ten inches in diameter shall be one-half (1/2) of the pipe diameter at design flows. For pipes twelve inches and larger in diameter, the maximum flow depth shall be two-thirds (2/3) the pipe at design flows.”⁸ The City of San Diego also prohibits surcharging mandating that pipes 15 inches or smaller not exceed half of the inside diameter of the pipe and pipes 18 inches and larger not exceed three-fourths of the inside diameter of the pipe.⁹

Indeed, the District is unaware of any sewer provider that intentionally designed the system to surcharge and the City offers no successful examples. The City also fails to provide information that such a design is within industry standards, let alone within best practices to prevent SSO’s and protect the health and safety of its residents. Instead, it is clear that allowing the system to intentionally surcharge is merely another way for the City to understate the cost of system maintenance, repair and upgrades, which places the public at greater risk for SSO’s, while providing connection fees to new development at a substantial discount.

Comment 3h

In the Addendum to the March 2015 East Palo Alto Sanitary District Master Plan Update, Freyer & Lauretta, Inc. (“F&L”) determined that a restoration of the trunk sewer pipeline to its existing operating conditions by constructing a parallel pipeline will be necessary due to the additional system load caused by new development.¹⁰ This will cost approximately \$13 million.¹¹ The City ignored this substantial item in its initial submission. In response to LAFCo’s further inquiry, the City sidesteps the question, admitting it has no plan, no budget and no methodology with respect to who will pay for this substantial project made necessary by new development.

Comment 3i

A proper budget is a plan prepared based, in part, on the improvement needs of the agency and other cost drivers such as support staff. Utilizing another agency’s financial ratios is neither prudent, nor will it result in accurate budgeting as each agency, despite serving a similar function, is unique in terms of age, condition, required expansion and other factors. With respect to a sanitary system, the largest budgetary drivers are the condition of the existing pipes in terms of maintenance and installation of new pipes to increase capacity for new development. The District currently implements an Activity Based Budgeting Technique which involves process analysis, process re-engineering, activity-based management and functional analysis.

⁸ Attachment 4 (City of Brisbane, *Sanitary Sewer Design Standards*, p. 2, Section 1.C)

⁹ Attachment 5 (City of San Diego Public Utilities Department, *Sewer Design Guide*, May 2015, p. 1-9, Section 1.3.3.3)

¹⁰ Attachment 6 (F&L, *Addendum to the March 2015 East Palo Alto Sanitary District Master Plan Update*, April 28, 2021, pp. 6-7)

¹¹ Attachment 7 (GFSI, *Memorandum: Financing Sanitary System Infrastructure*, December 14, 2022, p. 3)

A budget should serve the following purposes:

- An aid in making and coordinating short range plan
- A device for communicating these plans to stakeholders
- A way of motivating managers
- A benchmark for internal control
- A means of evaluating management performance
- A means of educating the General Public

The budget methodology presented by the City does not meet these criteria. It is simply based on the plans of other, non-similarly situated agencies.

Concluding Remarks

The City's proposal is grossly underfunded in order to provide a 58 percent connection fee discount to new, for profit, mostly commercial development. That will result in a massive budget shortfall that will in turn have to be paid for by the current ratepayers who have already paid into the system. The City's underfunded proposal also increases the health and safety risk to the public due to the City's proposed surcharging of the system and insufficient financial resources to maintain, repair and expand the system caused by the City's new development discount. The District has no issues with new development. It merely believes that as a matter of good government, new development should pay its own way. The City's proposal should be rejected.

Sincerely,



Ronald J. Scholar
COLE HUBER LLP

RJS/kgm
Attachments
cc: Client

ATTACHMENTS

1. Hildebrand Financial Services, LLC, *Capacity Charge Study*, September 7, 2022
2. Sierra West, *CCTV Survey Evaluation*, October 31, 2022
3. West Bay Sanitary District, *Standard Specifications for Design and Construction of Sanitary Sewer Collection and Conveyance Facilities*, June 24, 2015
4. City of Brisbane, *Sanitary Sewer Design Standards*
5. City of San Diego Public Utilities Department, *Sewer Design Guide*, May 2015
6. Freyer & Laureta, Inc., *Addendum to the March 2015 East Palo Alto Sanitary District Master Plan Update*, April 28, 2021
7. Government Financial Strategies, Inc., *Memorandum: Financing Sanitary System Infrastructure*, December 14, 2022