



AGENDA REPORT

Public Works

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| DATE: | February 18, 2025 |
| TO: | Mayor Martinez and Members of the City Council |
| FROM: | Daniel Chavarria, PE, Director of Public Works Robert Armijo, PE, Deputy Director of Public Works / City Engineer Mary Phelps, Water Resource Recovery Manager |
| Subject: | Keller Beach Sanitary Sewer Moratorium- Adoption of Urgency Ordinance |
| FINANCIAL IMPACT: | <p>The Urgency Ordinance would likely impact City finances temporarily because it would prohibit the City from issuing building permits requiring new connections to the Keller Beach Sanitary Sewer (“KBSS”). New-construction building permits, for example, can include impact fees for various City services, including libraries, police, fire, etc.</p> <p>Costs associated with staff time for community engagement, regulatory coordination, and consultant procurement will be covered within existing departmental budgets. The upcoming consultant selection and development of interim sewage holding tank standards will be funded through previously allocated capital improvement funds, with no additional funding required for this action.</p> |
| PREVIOUS COUNCIL ACTION: | January 18, 2022 February 21, 2023 April 4, 2023 December 19, 2023 |

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| <p>STATEMENT OF THE ISSUE:</p> | <p>The City Council adopted Ordinance No. 03-23 N.S. extending a 45-day temporary moratorium for 22 months and 15 days on the issuance of building permits requiring a new sewer connection to the Keller Beach Sanitary Sewer, and Declaring the Urgency thereof pursuant to Government Code Section 65858. The existing moratorium on new sewer connections to the Keller Beach Sanitary Sewer (KBSS) is set to expire on February 19, 2025, but the necessary infrastructure improvements have not yet been completed. To prevent additional strain on the aging system and allow time for further engineering analysis, community engagement, and the development of interim solutions, staff recommends a new, temporary 45-day moratorium on the issuance of building permits requiring a new sewer connection to the Keller Beach Sanitary Sewer be adopted.</p> |
| <p>RECOMMENDED ACTION:</p> | <p>ADOPT an urgency ordinance, pursuant to Government Code Section 65858, establishing a temporary moratorium (45 days) on the issuance of building permits requiring a new sewer connection to the Keller Beach Sanitary Sewer (KBSS) and declaring the urgency thereof pursuant to Government Code Section 65858. The ordinance is not a project under the California Environmental Quality Act (CEQA), as it maintains the existing physical environment and prevents changes in the environment, thereby having no potential for direct or reasonably foreseeable indirect physical change (CEQA Guidelines Section 15378(a)). It is also exempt under Guidelines Sections 15060(c)(2), as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and Section 15061(b)(3), as there is no possibility that adoption of this ordinance will have a significant effect on the environment because it maintains the existing condition of the environment - Public Works Department (Daniel Chavarria 510-620-5478/Robert Armijo 510-620-5477).</p> |

DISCUSSION:

Background:

The Keller Beach Sanitary Sewer (KBSS), constructed in 1959, consists of approximately 5,392 linear feet of 8-to-12-inch concrete-encased cast iron pipe extending from Keller Beach into the San Francisco Bay. Over its decades of service,

the pipeline has experienced significant deterioration, including corrosion, structural instability, and sagging in areas exposed to tidal activity. Because of its location, maintenance and emergency repairs are extremely difficult, as the pipeline is submerged during high tides and access is limited by steep cliffs and private properties. Given these constraints, the KBSS remains vulnerable to failures that could result in sanitary sewer overflows into the Bay, leading to environmental and regulatory concerns.

Assessment of Keller Beach Sanitary Sewer:

On November 17, 2021, the City received a commissioned study and assessment of the KBSS system. The study confirmed the City's concerns regarding the sustainability and increased use of the KBSS sewer interceptor and other infrastructure. The following issues have been identified:

- **Poor Pipe Conditions:** KBSS sewer has reached the end of its useful design life. The pipe that is visible and CCTV inspected is highly corroded and the remaining wall thickness and structural strength is unknown, but clearly compromised. The sewer main has been partially descaled but remains weakened and increasingly prone to cracks and breaks. The pipe's profile has extensive sags and will continue to sag and adjust due to its location in the surf zone under the force of shifting sand and wave action. Laterals are in poor condition with known and suspected defects which the City/Homeowners are obligated to correct.
- **Limited Access for Maintenance and Repair:** No vehicle access to beach, limited walkability due to cliffs and private property, and restricted work periods due to the ocean tides all contribute to limited sustainability of KBSS.
- **Environmental Risk:** Due to location of KBSS, paired with its condition, infrastructure failures would likely result in severe environmental harm and an inability to quickly remediate damage/leaks. In addition to environmental harm, the City faces extensive liability in the event of a major leak into the San Francisco Bay.

Previous Moratoria

Recognizing these risks, the City Council originally adopted an urgency ordinance (Ordinance No. 01-22 N.S.) on January 18, 2022, imposing a temporary moratorium on the issuance of new sewer connections to the KBSS. When the moratorium expired, City Council adopted a new 45-day moratorium on February 21, 2023, via Ordinance No. 02-23 N.S., which was extended on April 4, 2023, via Ordinance No. 03-23 N.S. for 22 months and 15 days, setting an expiration date of February 19, 2025. The purpose of these actions was to allow the City time to evaluate options for repairing or replacing the KBSS while preventing new connections that could further strain an already compromised system.

Work Completed since Previous Moratoria

Since the adoption of the previous moratoria, the City has worked to evaluate solutions for the KBSS, but various challenges have hindered progress. The City initially retained Coastland Engineers to conduct technical analysis, with a contract approved in July 2022. Although preliminary work was completed, in March 2024 Coastland withdrew from the project. Coastland cited various reasons for its withdrawal, including challenges related to public engagement and concerns over a December 2023 directive from the City Council, which introduced additional requirements, including a peer review of the work completed to date. With Coastland's withdrawal, staff had to restart the consultant procurement process.

Public engagement has also been a factor in project delays. The initial community outreach meeting in April 2023 presented difficulties in facilitation and maintaining a productive dialogue, with many attendees expressing frustration over the potential for sewer relocation. The City has since taken steps to improve communication and transparency, including engaging Kearns and West in July 2024 to lead future outreach efforts. Their involvement has greatly improved the quality and civility of discussions, allowing for more constructive dialogue between the City and the community. While disagreements remain regarding potential solutions, the ongoing engagement efforts are producing measurable progress in building a shared understanding of project constraints and next steps.

In parallel with these outreach efforts, staff has worked to identify a new consultant to reassess engineering alternatives, including to determine whether rehabilitation, replacement, or relocation of the KBSS is the most viable solution. However, because a consultant has not yet been engaged, the City does not yet have a final scope, schedule, or cost estimate for addressing the sewer system's deficiencies. Staff anticipates issuing a request for proposals for a new consultant in March 2025.

Additionally, staff is working on interim solutions to allow limited development to proceed while ensuring the KBSS is not further strained. One such approach is the use of sanitary sewage holding tanks, with technical standards currently being drafted. Staff anticipate presenting standards for review and approval by City Council within the next six to nine months, which could allow certain projects to move forward under controlled conditions. The City established a list of on-call consultants in 2024 and is currently negotiating and intends to finalize a work authorization with one of its on-call consultants to develop design standards for an interim alternative to connecting to the KBSS.

While staff remains committed to advancing this project, competing priorities and workload constraints have contributed to delays. The process of securing new consultants, conducting technical reviews, and maintaining public engagement requires significant staff time and resources. Additionally, the December 2023 Council directive introduced a shift in project direction that required additional coordination and

contributed to the consultant's decision to withdrawal, further complicating efforts to move forward.

Given the incomplete status of the engineering evaluation, the continued environmental and structural risks, and delays associated with consultant transitions and public engagement, adopting a new moratorium is necessary. The proposed ordinance would establish a 45-day moratorium, with potential extensions in the aggregate of two (2) years, through February 19, 2027. The moratorium would allow the City to secure a new consultant, finalize engineering recommendations, implement an interim solution for affected property owners, and prevent new sewer connections prior to the repair or replacement of the KBSS. Without the adoption of the moratorium, premature connections could expose the KBSS to additional strain, increasing the likelihood of system failures, regulatory violations, and environmental harm.

Adoption of Sewer Moratorium as Urgency Measure

California state statutes and case law support the right of a legislative body to consider and enact a moratorium on the issuance of development entitlements and building permits when a public agency is studying or intends to study a proposed general plan or zoning change that might affect the issuance of such permits for development. [E.g. California Government Code § 65858; *Crown Motors v. City of Redding*, 232 Cal.App.3d 173 (1991)] Government Code section 65858 authorizes cities and counties to adopt an ordinance prohibiting uses that may conflict with a contemplated planning or zoning proposal. This State law also establishes procedures the City must follow prior to adopt an interim ordinance establishing a development moratorium. Such an ordinance requires only one reading and is effective immediately upon adoption. Adoption of an urgency ordinance requires a four-fifths vote of the legislative body, which, in Richmond, would mean 6 of 7 members of the City Council.

Adoption of an interim ordinance requires findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approvals of additional entitlements for use would result in that threat to public health safety or welfare, as stated in the first sentence of Government Code § 65858 (c). An urgency ordinance can be in effect up to 45 days, with potential extensions by another four-fifths vote in the aggregate of two (2) years. In other words, after further notice and a hearing, the City Council can extend the moratorium for twenty-two months and 15 days. California law requires that a moratorium ordinance contain findings stating why the ordinance is needed to address a current and immediate threat to public health, safety, or welfare.

Additionally, if the urgency ordinance would have the effect of denying approvals for multifamily projects, then the ordinance cannot be extended beyond 45 days unless the continued approval of multifamily housing would have a "specific, adverse impact" on public health or safety. This means that the multifamily housing would have a "significant, quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date that the ordinance is adopted by the legislative body," and there is no feasible

alternative to avoid the impact with a less burdensome or restrictive effect. The additional findings regarding a specific quantifiable adverse impact will also need to be made at the extension hearing as the moratorium impacts the potential to develop multi-family housing units.

Separately, Government Code section 66300 prohibits moratoriums impacting housing development “other than to specifically protect against an imminent threat to the health and safety of persons residing in, or within the immediate vicinity of, the area subject to the moratorium...” Any such moratorium cannot be enforced against housing development (which includes development of single-family homes and ADUs) until the ordinance has been submitted to and approved by the Department of Housing and Community Development (“HCD”). The City consulted with HCD back in 2022 and 2023 with adoption of the previous moratoria and has requested HCD approval to enforce this moratorium on housing development. Given the failing KBSS infrastructure and its environmentally sensitive area, an imminent threat exists that would be worsened with new sewer connections to KBSS. The narrow scope of the moratorium, the efforts of the City to address the threat posed by the condition of the KBSS, and the temporary nature of the moratorium demonstrate that the moratorium is not a pretense for limiting housing development but addresses an ongoing imminent threat to the health and safety of residents that would be severely impacted in the event of KBSS’s failure. In addition, as further explained below, the City is exploring interim measures to allow construction to proceed before the KBSS line is fully repaired or relocated.

Prior to the expiration of an interim ordinance or an extension, the City Council is required to issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance.

Rationale for Recommendation:

The purpose of adopting an urgency ordinance and imposing a moratorium on building permits that would require a new sewer connection to the KBSS is to avoid the risk of a catastrophic failure of the current pipeline. It would be irresponsible for the City to allow new sewer connections to the KBSS, as the strain on the already deteriorated system would be exacerbated, placing the environment and current residents in the vicinity at significant risk. The City, by operating and maintaining a public sewer collection system, is required by the State Water Code to comply with waste discharge requirements and to protect the beneficial uses of receiving waters. Among these requirements is the obligation to provide the best practicable treatment or control of wastewater as necessary to ensure pollution or nuisance will not occur, and to maintain the highest water quality consistent with the maximum benefit to the people of the State.

The City cannot ensure that the KBSS is functioning as designed. There is reasonable concern that it may be contributing pollution to the Bay. The KBSS is located offshore within the tidal zone of Keller Beach and is unreachable by City staff during significant periods of the day when manholes are inundated by the tide. The KBSS is constructed in such a manner that it cannot be inspected or maintained, even after taking

extraordinary measures and expense to do so. The pipeline is constructed with tight bends that prevent the normal inspection by closed circuit television equipment. Further, some inspected portions of pipe in 2022 were found to be full of sand, preventing conveyance of wastewater. The pipeline condition of other significant portions of the pipeline is unknown because inspection is impossible due to the tight bends.

The infrastructure deficiencies that impede new development in and around the Keller Beach Sanitary Sewer also impose substantial burdens on the area's existing residents. In light of the sewer system's physical condition and precarious location, a comprehensive plan is necessary to determine how the vacant land and existing residences should be developed and/or improved, given the public safety concerns related to potential pipeline failure of the KBSS interceptor.

The City remains committed to resolving the long-standing challenges associated with the KBSS. However, due to consultant turnover, evolving project requirements, and continued uncertainties regarding funding and regulatory approvals, a moratorium is necessary to protect public health and safety while ensuring that the City has the time and resources needed to develop and implement a viable long-term solution. Until the City can ensure that it is not contributing pollution to waters of the United States, the City is obligated to minimize any potential pollutant discharge to the Bay by continuing its moratorium on new sewer connections to the KBSS until a replacement sewer is constructed. Therefore, staff recommends the City Council adopt the proposed ordinance establishing a temporary moratorium (45 days) on the issuance of certain building permits for development requiring a new sewer connection to the Keller Beach Sanitary Sewer and declaring the urgency thereof pursuant to Government Code Section 65858.

CEQA Analysis:

The Ordinance is not a project under the California Environmental Quality Act (CEQA), in that it maintains the existing physical environment and prevents changes in the environment and so it does not have the potential for resulting in either a direct or reasonably foreseeable indirect physical change in the environment (CEQA Guidelines Section 15378(a)). It is also exempt under Guidelines Sections 15060(c)(2), as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and Section 15061(b)(3), as there is no possibility that the adoption of this ordinance may have a significant effect on the environment because it maintains the existing condition of the environment.

Alternatives Considered:

1. Limit time of moratorium: The intended expanded time for the moratorium is necessary given the time required to develop an alternative to the KBSS, which is at the end of its useful life and cannot be replaced due to the severe limitations on site access and work limited to periods of low tide.

2. Moratorium to include new fixtures as well as new sewer connections: The moratorium is limited to new sewer connections to ensure existing owners perform remodels and additions to existing properties as long as a new sewer connection is not needed.
3. Take no action: This alternative was considered. However, given the Study and Assessment of the KBSS completed in 2021, staff is no longer able to ignore the high potential for failure should no action be taken to limit the stress on the KBSS.

SYNERGISTIC POLICIES:

The proposed moratorium supports Richmond's General Plan 2030 Policy CN3.5 Municipal Sewer District, which calls for the City to modernize its wastewater treatment facilities to avoid overflows of untreated sewage.

DOCUMENTS ATTACHED:

- Attachment 1 – Draft Urgency Ordinance
- Attachment 2 – Moratorium Map
- Attachment 3 – Public Hearing Notice