



AGENDA REPORT

Public Works

DATE:	January 18, 2022
TO:	Mayor Butt and Members of the City Council
FROM: <i>(List all relevant/responsive staff persons)</i>	Joe Leach, P.E., Public Works Director
Subject: <i>(This will appear on the agenda)</i>	Temporary (45-day) Moratorium on certain building permits related to sewer connections to the Keller Beach Sanitary Sewer
FINANCIAL IMPACT:	The proposed urgency ordinance would have a temporary adverse impact on City finances in that the City would not be able to issue any building permits for new construction requiring connections to the Keller Beach Sanitary Sewer. Building permits for new construction typically include impact fees paid for Fire, Police, Parks, Library, Community Center, traffic, storm drainage, and sewer connection fees.
PREVIOUS COUNCIL ACTION: <i>(List all dates items were heard or council action took place)</i>	None
STATEMENT OF THE ISSUE:	The City recently completed an assessment and CCTV analysis of the Keller Beach Sanitary Sewer and interceptor. The assessment has determined that the Keller Beach interceptor has severe internal corrosion, sand deposits, defective laterals, buried manholes, and limited maintenance access. The current conditions indicate pipe failure is an imminent possibility that would be exacerbated by additional connections and/or increased use of the Keller Beach Sanitary Sewer (KBSS). The proposed urgency ordinance would impose an immediate 45-day moratorium on the issuance of building permits for certain development activities requiring new connections to the KBSS in order for the

	City to evaluate remediation options and development alternatives in lieu of connection to the KBSS.
RECOMMENDED ACTION: <i>(This will appear on the agenda)</i>	ADOPT an urgency ordinance, pursuant to Government Code Section 65858, establishing a temporary moratorium (45 days) on the issuance of certain building permits for development requiring new sewer connections to the Keller Beach Sanitary Sewer – Public Works Department (Joe Leach 510-620-5478).

DISCUSSION:

Background:

The Keller Beach Sanitary Sewer consists of 5,392 linear feet of 8-to-12-inch concrete-encased cast iron pipe. The pipeline, constructed in 1959, is located off Keller Beach in the San Francisco Bay and is submerged during average tides. The location of the sewer is indicated by a red line in the image below and extends from sanitary sewer manhole MH Q-1 (adjacent to the Keller Beach sanitary sewer pump station) to sanitary sewer manhole MH Q-25.



Access to the sanitary sewer pipeline for maintenance or repair is extremely difficult because the manholes are submerged during high tides, and vehicles cannot get within fifty feet of the pipeline due to the cliffs and private property. Access for foot traffic is also limited to public beach access and through private properties. These conditions make it difficult to get appropriate equipment in the area to maintain the pipeline.

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 been in service for approximately 62 years and 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.

Adoption of Sewer Moratorium as Urgency Measure

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. Government Code § 65858 authorizes cities and counties to adopt an ordinance prohibiting uses that may be in conflict with a contemplated planning or zoning proposal. The State law also establishes procedures the City must follow prior to adoption of an interim ordinance establishing a development moratorium. Such an ordinance does not require a public hearing and requires only one reading becoming effective immediately upon adoption. Adoption of an urgency ordinance does, however, require a four-fifths vote, 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 §65858 (c). An urgency ordinance can be in effect up to

45 days, with potential extensions in the aggregate of two (2) years. As used in this paragraph, "current and immediate threat" means 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". Adverse impacts upon welfare are not sufficient to extend the ordinance in this case. In addition, the health and safety impacts would have to be measured based on "public health or safety standards, policies, or conditions" as stated in §65858 (c)(1). Examples of situation where such findings could be made might be proposed housing within a flash flood prone area, or in an area with a failed sanitary sewer system. There would be a clear connection between development approval, objective health or safety standards, and immediate threat to public health, safety, or welfare.

Adoption and implementation of this urgency ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that the ordinance or its implementation would have a significant effect on the environment.

Separately, Government Code § 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..." Further, any such moratorium shall not be enforced until the ordinance has been submitted to and approved by the Department of Housing and Community Development ("HCD"). The City has consulted with HCD and has submitted the moratorium ordinance and supporting documentation for HCD's review. 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 and its temporary nature 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.

An urgency ordinance may remain in effect for only 45 days unless it is extended by another four-fifths vote . After notice and a hearing, a local government can extend the Moratorium for ten months and 15 days, with the option of an additional one-year extension. In other words, an urgency ordinance can be extended so that its full duration is up to two years. Any extension requires a four-fifths vote of the local legislative body. 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. Special 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.

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Prior to the expiration of an interim ordinance or an extension, the legislative body 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 City provides sewer service to all the residential lots in Point Richmond, with at least 290 residences on the West Side of Point Richmond connecting to the KBSS interceptor, and approximately 362 parcels that would ordinarily require connecting to KBSS. Given the condition and location of the KBSS interceptor, additional connections to the pipeline increases the risk of pipeline failure and/or leaks, causing extensive environmental harm with limited City ability to remediate the failure and stop the damage. The Public Works Department has begun analyzing potential alternatives for development in the Keller Beach area, including pump stations to connect residences to alternate sewer mains. Additionally, preparing and implementing remediation efforts to address the existing pipeline conditions, including potential relocation of the KBSS interceptor are underway.

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. Over the past five year, the City has seen an increase in development application for infill development on vacant lots that would require new connections to the KBSS interceptor. Currently, there are 13 approved projects, six with issued permits, and 2 with permits currently under review. The proposed moratorium would not impact projects that are currently under construction but would restrict the ability of approved projects to obtain building permits until a solution or interim solution is identified. Any project that is delayed due to the moratorium would be automatically extended for the time the moratorium is in place.

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 allow time to develop a strategy for undertaking necessary long-range planning, as well as the

identification of actions that can be undertaken in the near term to improve the safety of the residents in the Keller Beach area. 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 location of the KBSS interceptor places severe burdens on the City's emergency response capabilities and reducing or at least preventing the increase of risk related to the potential failure of the KBSS is necessary.

The City has also begun to identify and develop options and procedures to allow for development in the Keller Beach area during the moratorium and in advance of the KBSS' rehabilitation and/or potential relocation. To that end, this moratorium provides the City with time to review and promulgate policies that will allow for development without additional strain/risk to existing infrastructure. Several issues related to the allowance of privately funded and/or maintained pump stations to bypass the KBSS interceptor are being studied, including, but not limited to the location of alternate infrastructure, the implementation and/or design of facilities, operation and maintenance cost allocations, and how subsequent property owners will compensate owners that initially invested in alternate infrastructure.

ALTERNATIVES CONSIDERED:

1. Limit time of moratorium
2. Moratorium to include new sewer connections and increased usage
3. Take no action

DOCUMENTS ATTACHED:

Attachment 1 – Draft Urgency Ordinance
Attachment 2 – Keller Beach Map
Attachment 3 – Government Code Section 65858