



AGENDA BILL

Agenda Item No. 4(G)

Date: June 6, 2017
To: El Cerrito City Council
From: Will Provost, Environmental Analyst
Maria Sanders, Operations + Environmental Services Manager
Yvetteh Ortiz, Public Works Director/City Engineer
Subject: Support Senate Bill 231 Local Government: Fees and Charges

ACTION REQUESTED

Approve a recommendation authorizing the Mayor Abelson to sign and send letters to the authors, and other appropriate legislators and legislative bodies, in support of Senate Bill 231 (Hertzberg) Local Government: Fees and Charges, which allows cities to fund stormwater projects in the same manner as other public works utilities, such as water or sanitary sewer projects, under Proposition 218.

DISCUSSION

Under Proposition 218 Omnibus Implementation Act, approved by California voters in 1996, local governments are limited in their ability to charge new property-related fees without voter approval, with narrow exceptions for utilities such as water, sewer, and municipal solid waste. Prior to 2002, stormwater fees were thought to also be exempt from the voter-approval requirement under Proposition 218. However, in that year, a state appeals court in *Howard Jarvis Taxpayers Association v. City of Salinas* ruled that stormwater was not included in the original definition of “sewer,” removing the exemption for stormwater related fees and assessments. As a result, local agencies often struggle to finance stormwater projects to manage stormwater runoff and reduce stormwater pollution. Senate Bill (SB) 231 would clarify the definition to include storm drainage, making it consistent with the existing definition in the California Public Utilities Code.

While finding funding for stormwater projects has become more challenging in recent years, the demands on cities to improve their stormwater infrastructure, as well as to comply with increasingly stringent Clean Water requirements, have continued to climb. As reported in April's Clean Water report to City Council, El Cerrito must comply with federal, state, and regional regulations to protect water quality in accordance with a Municipal Regional Permit (MRP) through the Regional Water Quality Control Board. Moreover, compliance conditions of the MRP have expanded significantly over the years to include:

- Development and implementation of a Green Infrastructure Plan to meet future stormwater pollutant load reduction milestones through the incorporation of Low Impact Design (LID) systems, such as rain gardens, on public and private

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streets, roads, parking lots, and building roofs. On May 16, 2017, City Council adopted a resolution approving the framework for development of the Plan.

- Achievement of a 70% reduction of trash entering the storm drain system by July 2017, an 80% reduction by July 2019, and a 100% reduction by July 2022. In order to receive compliance credits towards these goals, permittees are required to perform and document on-land visual trash load assessments, monitor receiving waters for trash, and install and maintain Full Trash Capture Devices in the storm drain system. The permit also requires mapping and managing trash litter on private lands greater than 10,000 square feet by July 2018.
- Achievement of numeric weight reductions of Mercury and Polychlorinated Biphenyls Controls (PCBs) through the management of building demolition activities, installation of Green Infrastructure and the identification of properties that contain high and moderate Mercury and PCB removal opportunities.

In addition to other MRP mandates, these requirements and other compliance conditions have dramatically increased the costs associated with maintaining and improving El Cerrito's stormwater infrastructure. In recent years, efforts have been made to increase funding for compliance activities and green infrastructure projects. In 2012, the Contra Costa County Water Program (CWP) attempted to raise new funds through a county-wide property-owner mail-in ballot election. Although this regional initiative failed, support in El Cerrito was 54 percent. In December 2015, a coalition consisting of the California State Association of Counties, the League of California Cities, and the Association of California Water Agencies filed Constitutional Amendment language with the Attorney General's office as a potential ballot initiative for the November 2016 election. It would have created a new, optional funding method that local agencies could use to fund local stormwater services and flood control projects. Although the measure was not put on the ballot, the polling indicated that voters are concerned by the rising costs of complying with state and federal mandates and the lack of funding sources available to fund stormwater projects.

SB 231 is the most recent attempt to provide cities, counties, and local water agencies with the tools that they need to fund projects that will manage and clean stormwater. SB 231 would amend state law to clarify and expand the definition of "sewer" to include stormwater and storm drainage, thereby increasing the ability of cities, counties, and local water agencies to fund stormwater projects through property-related fees and assessments. That is, stormwater utilities would be provided the same Proposition 218 exemptions to voter approval as currently afforded to sanitary sewer and water utilities. This would provide local governments like El Cerrito with a more cost effective and efficient method to raise funding for stormwater projects that are necessary to protect people and property, manage California's supply of clean water, and ensure the long-term health of California's creeks, watersheds, and bays.

In April, SB 231 passed out of the California Senate and has now been referred to the Committee on Local Government in the State Assembly for consideration.

STRATEGIC PLAN CONSIDERATIONS

Support for SB 231 (Hertzberg) – Local Government: Fees and Charges is consistent with the following El Cerrito Strategic Plan Goals:

Goal B - *Achieve long-term financial sustainability* by tracking and promoting state and federal legislation that would create new funding opportunities; and

Goal D – *Develop and rehabilitate public facilities* as community focal points by helping to develop a plan to address ongoing and deferred maintenance of facilities and infrastructure; and

Goal E – *Ensure the public’s health and safety* by supporting initiatives that improve the management of scarce water resources, while decreasing pollution in our waterways and throughout our community; and

Goal F – *Foster environmental sustainability citywide* by supporting legislation that would help the City finance green infrastructure projects that would decrease the community’s impact on the local environment by decreasing pollution in our waterways.

ENVIRONMENTAL CONSIDERATIONS

There is no direct environmental impact of supporting SB 231 (Hertzberg) – Local Government: Fees and Charges.

FINANCIAL CONSIDERATIONS

There is no financial obligation associated with the requested action.

LEGAL CONSIDERATIONS

There is no legal obligation associated with the requested action.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Letter of Support for SB 231 (Hertzberg)
2. SB 231 Bill Language



OFFICE OF THE MAYOR
Janet Abelson

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Attachment 1

June 6, 2017

The Honorable Senator Hertzberg
State Capitol, Room 4038
Sacramento, CA 95814

Re: Senate Bill 231 (Hertzberg) – Local Government: Fees and Charges – SUPPORT

Dear Senator Hertzberg,

The City of El Cerrito supports Senate Bill (SB) 231 by Senator Bob Hertzberg, which authorizes counties, cities, and local water agencies to fund stormwater projects in the same manner as other public works utilities, like water or sanitary sewer projects, under Proposition 218.

Proposition 218, passed in 1996, imposes a variety of procedures for financing different kinds of water infrastructure projects. SB 231 would update the Proposition 218 Omnibus Implementation Act's definition of "sewer" to include storm drainage.

Under existing law, water and sewer projects are subject to one set of procedures regarding public notification and protests, while stormwater projects are subject to a different process. These inconsistent rules have resulted in a lack of funding options to adequately capture and treat stormwater.

Counties, cities, and local water agencies throughout California face many cost pressures and funding challenges on water projects, including maintenance of aging infrastructure and increasing requirements to comply with higher regulatory standards. Local agencies need to fund stormwater and flood control projects to protect people and property from flooding, remove pollutants from stormwater, and increase groundwater recharge.

The City of El Cerrito is dedicated to implementing green infrastructure projects to create and maintain a healthy environment in our streets, creeks, and the San Francisco Bay. Additional options that provide funding for infrastructure projects, including rain gardens, will be invaluable to the City as it strives to comply with federal and state requirements for stormwater discharges.

We strongly support the comments of Senator Bob Hertzberg on how SB231 will assist local agencies: "We have to be smarter and use more sustainable practices, and we need to start right now! That is why I have proposed legislation that would define stormwater the same as other types of dirty water. This means cities and counties could use existing infrastructure — or design new projects — that can manage storm flows to protect property, reduce pollution, and capture water for future use."

Authorizing stormwater projects to utilize these procedures will provide a more cost effective and efficient method to raise revenue urgently needed for these important public works projects, and will help counties, cities, and local water agencies to improve water supply reliability and maintain water quality for public and environmental health.



OFFICE OF THE MAYOR
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For these reasons, the City of El Cerrito supports SB 231 and encourages its passage in the legislature. Please contact Yvetteh Ortiz, Public Works Director/City Engineer at (510) 215-4382, or via email at yortiz@ci.el-cerrito.ca.us with any questions.

Sincerely,

Janet Abelson, Mayor
City of El Cerrito

AMENDED IN SENATE APRIL 19, 2017

SENATE BILL

No. 231

Introduced by Senator Hertzberg

February 2, 2017

An act to amend Section 53750 of, and to add Section 53751 to, the Government Code, relating to local government finance.

LEGISLATIVE COUNSEL'S DIGEST

SB 231, as amended, Hertzberg. Local government: fees and charges.

Articles XIII C and XIII D of the California Constitution generally require that assessments, fees, and charges be submitted to property owners for approval or rejection after the provision of written notice and the holding of a public hearing. Existing law, the Proposition 218 Omnibus Implementation Act, prescribes specific procedures and parameters for local jurisdictions to comply with Articles XIII C and XIII D of the California Constitution and defines terms for these purposes.

This bill would define the term "sewer" for these purposes. The bill would also make findings and declarations relating to the definition of the term "sewer" for these purposes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 53750 of the Government Code is
- 2 amended to read:
- 3 53750. For purposes of Article XIII C and Article XIII D of
- 4 the California Constitution and this article, the following words

1 have the following meanings, and shall be read and interpreted in
2 light of the findings and declarations contained in Section 53751:

3 (a) “Agency” means any local government as defined in
4 subdivision (b) of Section 1 of Article XIII C of the California
5 Constitution.

6 (b) “Assessment” means any levy or charge by an agency upon
7 real property that is based upon the special benefit conferred upon
8 the real property by a public improvement or service, that is
9 imposed to pay the capital cost of the public improvement, the
10 maintenance and operation expenses of the public improvement,
11 or the cost of the service being provided. “Assessment” includes,
12 but is not limited to, “special assessment,” “benefit assessment,”
13 “maintenance assessment,” and “special assessment tax.”

14 (c) “District” means an area that is determined by an agency to
15 contain all of the parcels that will receive a special benefit from a
16 proposed public improvement or service.

17 (d) “Drainage system” means any system of public
18 improvements that is intended to provide for erosion control, for
19 landslide abatement, or for other types of water drainage.

20 (e) “Extended,” when applied to an existing tax or fee or charge,
21 means a decision by an agency to extend the stated effective period
22 for the tax or fee or charge, including, but not limited to,
23 amendment or removal of a sunset provision or expiration date.

24 (f) “Flood control” means any system of public improvements
25 that is intended to protect property from overflow by water.

26 (g) “Identified parcel” means a parcel of real property that an
27 agency has identified as having a special benefit conferred upon
28 it and upon which a proposed assessment is to be imposed, or a
29 parcel of real property upon which a proposed property-related
30 fee or charge is proposed to be imposed.

31 (h) (1) “Increased,” when applied to a tax, assessment, or
32 property-related fee or charge, means a decision by an agency that
33 does either of the following:

34 (A) Increases any applicable rate used to calculate the tax,
35 assessment, fee, or charge.

36 (B) Revises the methodology by which the tax, assessment, fee,
37 or charge is calculated, if that revision results in an increased
38 amount being levied on any person or parcel.

39 (2) A tax, fee, or charge is not deemed to be “increased” by an
40 agency action that does either or both of the following:

1 (A) Adjusts the amount of a tax, fee, or charge in accordance
2 with a schedule of adjustments, including a clearly defined formula
3 for inflation adjustment that was adopted by the agency prior to
4 November 6, 1996.

5 (B) Implements or collects a previously approved tax, fee, or
6 charge, so long as the rate is not increased beyond the level
7 previously approved by the agency, and the methodology
8 previously approved by the agency is not revised so as to result in
9 an increase in the amount being levied on any person or parcel.

10 (3) A tax, assessment, fee, or charge is not deemed to be
11 “increased” in the case in which the actual payments from a person
12 or property are higher than would have resulted when the agency
13 approved the tax, assessment, fee, or charge, if those higher
14 payments are attributable to events other than an increased rate or
15 revised methodology, such as a change in the density, intensity,
16 or nature of the use of land.

17 (i) “Notice by mail” means any notice required by Article XIII C
18 or XIII D of the California Constitution that is accomplished
19 through a mailing, postage prepaid, deposited in the United States
20 Postal Service and is deemed given when so deposited. Notice by
21 mail may be included in any other mailing to the record owner
22 that otherwise complies with Article XIII C or XIII D of the
23 California Constitution and this article, including, but not limited
24 to, the mailing of a bill for the collection of an assessment or a
25 property-related fee or charge.

26 (j) “Record owner” means the owner of a parcel whose name
27 and address appears on the last equalized secured property tax
28 assessment roll, or in the case of any public entity, the State of
29 California, or the United States, means the representative of that
30 public entity at the address of that entity known to the agency.

31 (k) “Sewer” ~~means services and systems provided by~~ *includes*
32 *systems*, all real estate, fixtures, and personal property owned,
33 controlled, operated, or managed in connection with or to facilitate
34 sewage collection, treatment, or disposition for sanitary or drainage
35 purposes, including lateral and connecting sewers, interceptors,
36 trunk and outfall lines, sanitary sewage treatment or disposal plants
37 or works, drains, conduits, outlets for surface or storm waters, and
38 any and all other works, property, or structures necessary or
39 convenient for the collection or disposal of sewage, industrial
40 waste, or surface or storm waters. “Sewer system” shall not include

1 a sewer system that merely collects sewage on the property of a
2 single owner.

3 (l) “Registered professional engineer” means an engineer
4 registered pursuant to the Professional Engineers Act (Chapter 7
5 (commencing with Section 6700) of Division 3 of the Business
6 and Professions Code).

7 (m) “Vector control” means any system of public improvements
8 or services that is intended to provide for the surveillance,
9 prevention, abatement, and control of vectors as defined in
10 subdivision (k) of Section 2002 of the Health and Safety Code and
11 a pest as defined in Section 5006 of the Food and Agricultural
12 Code.

13 (n) “Water” means any system of public improvements intended
14 to provide for the production, storage, supply, treatment, or
15 distribution of water from any source.

16 SEC. 2. Section 53751 is added to the Government Code, to
17 read:

18 53751. The Legislature finds and declares all of the following:

19 (a) The ongoing, historic drought has made clear that California
20 must invest in a 21st century water management system capable
21 of effectively meeting the economic, social, and environmental
22 needs of the state.

23 (b) Sufficient and reliable funding to pay for local water projects
24 is necessary to improve the state’s water infrastructure.

25 (c) Proposition 218 was approved by the voters at the November
26 5, 1996, statewide ~~General Election~~: *general election*. Some court
27 interpretations of the law have constrained important tools that
28 local governments need to manage storm water and drainage runoff.

29 (d) Storm waters are carried off in storm sewers, and careful
30 management is necessary to *ensure adequate state water supplies,*
31 *especially during drought, and to reduce pollution.* But a court
32 decision has ~~excluded~~ *found* storm water ~~from those~~ *subject to the*
33 *voter-approval* provisions of Proposition 218 that apply to
34 property-related ~~fees for sewer and water, fees,~~ preventing many
35 important projects from being built.

36 (e) The court of appeal in *Howard Jarvis Taxpayers Ass’n v.*
37 *City of Salinas* (2002) 98 Cal.App.4th 1351 concluded that the
38 term “sewer,” as used in Proposition 218, is “ambiguous” and
39 declined to use the statutory definition of the term “sewer system”

1 *system,*” which was part of the then-existing law as Section 230.5
2 of the Public Utilities Code.

3 (f) The court in *Howard Jarvis Taxpayers Ass’n v. City of*
4 *Salinas* (2002) 98 Cal.App.4th 1351 failed to follow long-standing
5 principles of statutory construction by disregarding the plain
6 meaning of the term “sewer.” Courts have long held that statutory
7 construction rules apply to initiative measures, including in cases
8 that apply specifically to Proposition 218 (see *People v. Bustamante*
9 ~~(1996)~~ (1997) 57 Cal.App.4th 693, 693; *Keller v. Chowchilla*
10 *Water Dist.* (2000) 80 Cal.App.4th 1006). When construing
11 statutes, courts look first to the words of the statute, which should
12 be given their usual, ordinary, and commonsense meaning (*People*
13 *v. Mejia* (2012) 211 Cal.App.4th 586, 611). The purpose of
14 utilizing the plain meaning of statutory language is to spare the
15 courts the necessity of trying to divine the voters’ intent by
16 resorting to secondary or subjective indicators. The court in
17 *Howard Jarvis Taxpayers Ass’n v. City of Salinas* (2002) 98
18 Cal.App.4th 1351 asserted its belief as to what most voters thought
19 when voting for Proposition 218, but did not cite the voter pamphlet
20 or other accepted sources for determining legislative intent. Instead,
21 the court substituted its own judgment for the judgment of voters.

22 (g) *Neither the words “sanitary” nor “sewerage” are used in*
23 *Proposition 218, and the common meaning of the term “sewer*
24 *services” is not “sanitary sewerage.” In fact, the phrase “sanitary*
25 *sewerage” is uncommon.*

26 (h) *Proposition 218 exempts sewer and water services from the*
27 *voter-approval requirement. Sewer and water services are*
28 *commonly considered to have a broad reach, encompassing the*
29 *provision of clean water and then addressing the conveyance and*
30 *treatment of dirty water, whether that water is rendered unclean*
31 *by coming into contact with sewage or by flowing over the built-out*
32 *human environment and becoming urban runoff.*

33 ~~(g)~~

34 (i) Numerous sources predating Proposition 218 reject the notion
35 that the term “sewer” applies only to sanitary-sewers, *sewers and*
36 *sanitary sewerage*, including, but not limited to:

37 (1) Section 230.5 of the Public Utilities Code. *Code, added by*
38 *Chapter 1109 of the Statutes of 1970.*

39 (2) Section 23010.3, which was first added by Chapter 1193 of
40 the Statutes of 1963.

1 (3) ~~The Street Improvement Act of 1913 (repealed by Chapter~~
 2 ~~346 of the Statutes of 1963): 1913.~~

3 (4) ~~The California Supreme Court stated in Los Angeles-L.A.~~
 4 ~~County Flood Control District Dist. v. Southern California Cal.~~
 5 ~~Edison Co. (1958) 51 Cal.2d 331, where the California Supreme~~
 6 ~~Court stated that “no distinction has been made between sanitary~~
 7 ~~sewers and storm drains or sewers.”~~

8 (5) ~~The term, Many other cases where the term “sewer” has~~
 9 ~~been used interchangeably to refer to both sanitary and storm~~
 10 ~~sewers in many other cases, including, include, but are not limited~~
 11 ~~to, County of Riverside v. Whitlock (1972) 22 Cal.App.3d 863,~~
 12 ~~Ramseier v. Oakley Sanitary Dist. (1961) 197 Cal.App.2d 722,~~
 13 ~~and Torson v. Fleming (1928) 91 Cal.App. 168.~~

14 (6) Dictionary definitions of sewer, which courts have found to
 15 be an objective source for determining common or ordinary
 16 meaning, including ~~Websters Webster’s~~ (1976), American Heritage
 17 (1969), and Oxford English Dictionary (1971).

18 (h)

19 (j) Prior legislation has affirmed particular interpretations of
 20 words in Proposition 218, specifically Assembly Bill 2403 of the
 21 2013–14 Regular Session (Chapter 78 of the Statutes of 2014).

22 (k) *In Crawley v. Alameda Waste Management Authority (2015)*
 23 *243 Cal.App.4th 396, the Court of Appeal relied on the statutory*
 24 *definition of “refuse collection services” to interpret the meaning*
 25 *of that phrase in Proposition 218, and found that this interpretation*
 26 *was further supported by the plain meaning of refuse. Consistent*
 27 *with this decision, in determining the definition of “sewer,” the*
 28 *plain meaning rule shall apply in conjunction with the definitions*
 29 *of terms as provided in Section 53750.*

30 (i)

31 (l) The Legislature reaffirms and reiterates that the definition
 32 found in Section 230.5 of the Public Utilities Code is the definition
 33 of “sewer” or “sewer service” that should be used in the Proposition
 34 218 Omnibus Implementation Act.

35 (m) *Courts have read the Legislature’s definition of “water”*
 36 *in the Proposition 218 Omnibus Implementation Act to include*
 37 *related services. In Griffith v. Pajaro Valley Water Management*
 38 *Agency (2013) 220 Cal.App.4th 586, the Court of Appeal concurred*
 39 *with the Legislature’s view that “water service means more than*
 40 *just supplying water,” based upon the definition of water provided*

1 *by the Proposition 218 Omnibus Implementation Act, and found*
2 *that actions necessary to provide water can be funded through*
3 *fees for water service. Consistent with this decision, “sewer”*
4 *should be interpreted to include services necessary to collect, treat,*
5 *or dispose of sewage, industrial waste, or surface or storm waters,*
6 *and any entity that collects, treats, or disposes of any of these*
7 *necessarily provides sewer service.*

O