

**ROSS VALLEY SANITARY DISTRICT
ORDINANCE NO. 70
AN ORDINANCE ESTABLISHING A LATERAL REPLACEMENT LOAN PROGRAM,
AND REQUIRING CONTRACTUAL ASSESSMENT AGREEMENT**

WHEREAS, the Ross Valley Sanitary District (“District”) is authorized by the Sanitary District Act of 1923 (Health & Safety Code §6400 et seq.) to provide public services and facilities related to the acquisition, construction, replacement, maintenance and operation of wastewater collection facilities within the District’s service area; and

WHEREAS, the District finds and determines that Infiltration and Inflow (I&I) adds substantial cost to system operation and maintenance in that during heavy rains, additional flows are introduced to the wastewater collection system; and

WHEREAS, the District conducted a flow monitoring study in 2014 to collect wastewater flow, rainfall, and water quality data that can be used to validate the scope and size of near-term hydraulic capacity improvement projects; and

WHEREAS, the District operations records show that I&I flows result in peak system flows up to 15 times normal, dry weather flows, and these extreme peak flows increase the risk of sanitary sewer overflows; and

WHEREAS, the District implemented an Infrastructure Asset Management Plan in October 2013 introducing a risk assessment methodology for identifying and recommending specific pipeline improvements; and

WHEREAS, industry studies have determined that up to half or more of the I&I is introduced into the wastewater collection system from private sewer laterals or unpermitted drainage structures leading from the private property to the wastewater collection system; and

WHEREAS, the District has determined that it is in the interest of public health and safety that the private sewer lateral I&I problem be addressed; and

WHEREAS, the District has adopted Ordinance No. 66 relating to the regulation of the maintenance of private sewer laterals, requiring periodic testing and, if necessary, repair or replacement of private sewer laterals; and

WHEREAS, recent legislation by the California Legislature (AB741) has amended various sections of the Health and Safety Code thereby allowing public entities to enter into Contractual Assessment Agreements with private property owners under which the costs of repairs to an owner’s private sewer lateral can be financed and collected by use of the local county tax rolls; and

WHEREAS, the District finds this Ordinance No. 70 is statutorily exempt from the provisions of the California Environmental Quality Act of 1970 (“CEQA”) per CEQA Guidelines Section 15308, Actions by Regulatory Agencies for Protection of the Environment.

NOW, THEREFORE, the Board of Directors of the Ross Valley Sanitary District does ordain as follows:

SECTION 1. Recitals. All of the above Recitals are true and incorporated by reference herein.

SECTION 2. Background and Purpose

The District developed and implemented a program to plan, fund, and complete projects to upgrade the sewer collection system in a manner that reduces risk of Sanitary Sewer Overflows (SSO). The program includes proposed capacity improvements that are needed to address inflow and infiltration (I&I) that enters the system during heavy rainfall events.

Mainline replacements will help to eliminate cracks and holes that allow I&I to enter the pipes. However, industry studies have determined that in some Bay Area sewer systems, mainline pipes may be responsible for half or less of I&I. The rest of the I&I comes from failing private sewer laterals, due to poor condition of the laterals and the presence of illegally connected roof drains and other private property storm-water drainage connections. As a result, many agencies are pursuing private lateral replacements with the same urgency as mainline rehabilitation, to accelerate I&I reduction.

The District has over 15,000 lateral connections, which translates to approximately 200 miles of private lateral pipes within the service area. Private lateral pipes can be more problematic than mainline pipes because often they are not replaced along with the mainline. Therefore, the private laterals are older in general than the public system. Further, private laterals are often shallow and can be located in hillsides, making them more prone to movement and damage. Failing sewer laterals and connections not only cause localized private SSO's, but also allow debris such as roots, rocks, and soil that migrate to the public sewer system, causing blockages and public SSOs.

The District implemented a Lateral Replacement Grant Program in 2009 to provide an incentive for property owners to replace defective and leaking private laterals. The individual grant funding amount and number of laterals replaced have varied each year. The total amount of grant funds allocated, through the end of calendar year 2014 was \$1,841,938, with 606 total laterals replaced, or about 102 laterals per year. In FY 2014-15, RVSD allocated \$850,000 to grant funding, and issued an average grant amount of \$3,178. Given the number of laterals that need to be replaced to achieve I&I reduction, reliance on grant funding alone does not achieve the lateral replacements that are needed to sufficiently reduce I&I. The grant funding levels necessary to support a meaningful rate of lateral replacement was not financially sustainable under the District's five-year financial plan. Therefore, the District implemented a Lateral Replacement Loan Program.

Funding for the Lateral Replacement Loan Program will be determined by the Board of Directors each fiscal year as part of the annual budget process. If the District allocates 100% of the funding available for a fiscal year no additional loans will be approved without Board approval of additional funding for the current fiscal year.

The District determined that it is in the public interest to reduce the risk of SSOs and to ensure efficient and reliable provision of community wastewater service, and that I&I from private sewer laterals must be addressed. Therefore, facilitating the upgrade and replacement of private sewer laterals has become a priority for the District.

SECTION 3. Lateral Replacement Loan Program Guidelines

1. All applications will be taken on a first-come, first-served basis.
2. The Lateral Replacement Loan Program may not be used in conjunction with any other financial assistance program(s) offered by the District.
3. Property Owners must submit an application for review and approval by the District. Any repair work performed prior to receiving a letter of obligation from the District is performed solely at the risk and cost of the Property Owner.
4. The Property Owner must have a video inspection of the sewer lateral conducted by a licensed (Class A, B, C-36, C-42) or PACP-certified contractor. The District may require that a representative be present to witness this inspection.
 - a. The video will be reviewed by District staff and rated using the Pipeline Assessment Certification Program (PACP) guidelines.
 - b. Only laterals meeting at least one (1) the following requirements will qualify for a loan:
 - i. The sewer later lateral has at least one (1) PACP rated defect;
 - ii. The lateral has failed to pass a pressure test under the requirements of Ordinance 66; or
 - iii. The pipe is partially or wholly constructed of material not listed in Table 1 – Approved Side Sewer/Lateral Pipe Materials of the District’s Standard Specifications and Drawings.
5. The Property Owner must obtain at least two (2) estimates for work to replace the lateral. The District has the discretion to provide Contractual Assessment Funds in the amount not to exceed either;
 - a. The lowest of the qualified bids submitted to the District by the Property Owner, or
 - b. The actual cost of construction of the work performed, whichever is less.
6. The Property Owner is responsible for managing the work, including the activities of the contractor, District permitting and inspection, restoration work, repairs and claims for damages incurred. The Property Owner shall retain all receipts, permits, inspection reports and other documents.
7. The District may authorize payment once the Property Owner has submitted an itemized statement of costs, copies of all necessary permits and inspections, and a Notice of Completion, executed by the Property Owner, accepting the improvements and authorizing payment. A “Contractual Assessment Agreement” (a copy of which is attached hereto in Exhibit “A”) shall be executed and submitted to the District and approved by the District prior to payment. The District will pay the contractor directly for the work performed.

8. The District shall have sole discretion to approve/disapprove any additional Contractual Assessment Funds for any extra work.
9. Contractual Assessment Funds will be obligated for a period not to exceed ninety (90) days from date of approval of the Contractual Assessment Agreement. The obligation period shall include all work, inspections, and submission of receipts for payments.

SECTION 4. Permits and Lateral Specifications

1. A sewer repair permit must be obtained from the District. The lateral must pass final inspection by the District prior to payment being administered.
2. As a condition of the loan program the entire lateral must be replaced from the exit of the foundation of the house to the connection with the public sewer main.

Note: If a section of the lateral has previously been replaced and meets current District standards, said section may be excluded from the replacement project if it passes a pressure test (see the District's Standard Specifications and Drawings, 3-07 – Testing of Gravity Sewers for requirements).

3. All work must conform to the District's then current Standard Specifications and Drawings.

SECTION 5. Retroactive Requests for Loan Assistance for Emergency Situations

In the event that a sewer lateral fails, causes a private sewer overflow, and requires immediate replacement, the Property Owner may request loan assistance after the work has been completed, in compliance with the requirements of this Section. A failed lateral is only considered an emergency situation if the cause of the failure cannot be corrected through reasonable efforts, such as mechanical rodding or hydro jetting.

Retroactive requests for loan assistance will only be considered if the work was done under an emergency situation. The granting of relief by the District to allow a property owner leave to file a "Retroactive Application" shall not be construed to guarantee, represent, or warranty that a property owner will be allowed to participate in the Lateral Replacement Loan Program. It is solely within the District's discretion whether to allow a Property Owner to participate in the Loan Program. Any work performed that is sought to be included in the Lateral Rehabilitation Program pursuant to the submission of a "Retroactive Application" is at the owner's risk and cost.

In no case may a "Retroactive Application" be filed with the District greater than thirty (30) days from the substantial completion of the work or after a Notice of Completion has been recorded, whichever is earlier. "Retroactive Applications" filed after thirty (30) days shall be rejected and are not subject to further request for relief or appeal.

Only "Retroactive Applications" meeting the requirements outlined in Section 4 will be considered for approval.

SECTION 6. Contractual Assessment Principal and Interest Rate

1. The principal sum of cost of the replacement to each Property Owner's sewer lateral shall constitute a lien against the Owner(s) property, for purposes of collection of said principal sum and interest.
2. Said principal sum to accrue interest at a rate of 3.6% per annum. This rate may be modified by the Board of Directors by resolution.
3. The maximum amount of the initial Contractual Assessment Principal allowed per property shall be \$25,000.
4. The maximum term of each Contractual Assessment shall be ten (10) years.
5. There shall be no prepayment penalty.
6. The Contractual Assessment will remain with the property until completely paid regardless of transfer of ownership.

SECTION 7. Terms of Agreement

1. Each property owner shall be responsible for any additional fees or charges to include, but not limited to, title search fees and recording fees, related to the participation, execution, and/or recording of the Contractual Assessment Agreement. These fees may be added to the principal amount of the lien against the property which is to be added to the County Tax Rolls at the District's discretion.
2. Pursuant to Health & Safety Code §§ 5470 – 5474.10 and 6940 – 6941.9, the Property Owner(s) and the District shall enter into a "Contractual Assessment Agreement" whereby it is agreed that the above-referenced semi-annual principal and interest installment amounts shall be installment payments to the County of Marin Tax Rolls, to be collected at the same time and in the same manner as county taxes are collected.
3. Said lien/assessment shall be of the same force and effect as other liens for taxes, and their collection shall be enforced by the same means as provided for the enforcement for liens for county taxes.
4. The "Contractual Assessment Agreement" executed by each Property Owner and approved by the District shall be recorded with the Marin County Recorder's office. A copy shall also be provided to the Marin Tax Collector if necessary.
5. Pursuant to Health & Safety Code § 6487, the District's General Manager or designee is hereby authorized, on behalf of and in the name of the District, to execute each "Contractual Assessment Agreement" entered into with a Property Owner.
6. The work done on the lateral sewers shall not grant the District, its agents, or employees and/or contractors the power to exercise dominion or control over the subject property and shall not be construed as creating a public project or substantial participation in the planning, approval, construction, or operation of the lateral sewers for any purposes. The

work does not constitute a grant of any permanent real property rights to the District. Nor is the District's participation in this program to be construed as an acceptance of any permanent real property rights or obligations without express approval of the District's Board of Directors and conveyance by a separate written instrument executed by the appropriate party(ies).

7. The Property Owner of the lateral sewers shall be solely responsible for all future maintenance and repairs to the sewer lateral, or everything required to install and maintain said laterals, including cleanout or any wyes or tees attached or "cut-in" to the main sewer lines. Any warranty(ies) provided for materials supplied or work performed shall remain with the Property Owner and it shall be the Property Owner's responsibility to maintain and/or make any claims thereunder.

SECTION 8. Severability

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held invalid, unconstitutional or unenforceable, such holding shall not affect the validity of the remaining portions of this Ordinance. The Board of Directors hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases is for any reason held invalid, unconstitutional or unenforceable.

SECTION 9. Effective Date of Ordinance

This Ordinance shall be published once in the Marin Independent Journal, a newspaper of general circulation published in the District. The effective date of this Ordinance shall be March 1, 2015.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of Ross Valley Sanitary District, held on the 21st day of July 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:



Mary Sylla
President of the Board

Attest:



Michael Boorstein
Secretary of the Board

CONTRACTUAL ASSESSMENT AGREEMENT
[Health & Safety Code §§5464, 5465, 5474 & 5474.6]

THIS CONTRACTUAL ASSESSMENT AGREEMENT made this of _____ day of _____, between _____ (the "Owner(s)"), whose address is _____, _____, CA, _____, A.P.N. _____, and the ROSS VALLEY SANITARY DISTRICT, (the "RVSD"), a sanitary district, created pursuant to The Sanitary District Act of 1923, Health & Safety Code §§ 6400 et seq., whose address is 2960 Kerner Blvd., San Rafael, CA 94901; and

WHEREAS, the Owner(s) and RVSD did agree, pursuant to Health & Safety Code §§ 5465 and 5465, to the replacement of existing sewer laterals on Owner(s)' property and that said cost of the lateral replacement shall constitute the cost of an improvement for connection to a sewer system pursuant to Health & Safety Code §§ 5464 AND 5474; and

WHEREAS, RVSD did fund said cost of the lateral replacement in the sum of \$ _____; and

WHEREAS, IN CONSIDERATION for the replacement of Owner(s) entire Sewer Laterals and for RVSD's having funded the costs of construction and repair of Owners(s) Private Sewer Laterals for the principal sum of \$ _____;

OWNER(S) AND RVSD DO HEREBY AGREE AS FOLLOWS:

Said principal sum of \$ _____, shall constitute a lien against Owner(s) property, whose address is _____, _____, CA, _____ A.P.N. _____, not unlike that of a regular assessment against said property for the RVSD's regular annual assessment for sewer charges related to sewer service for purposes of collection of said principal sum and interest; and

Said principal sum of \$ _____ to accrue interest at the rate of _____ percent per annum; and

Said lien/assessment amount plus interest shall be payable to RVSD in semi-annual installments of \$ _____; commencing on _____ and ending on _____; Attached is a amortization schedule which shows the installment amounts and due dates;

Pursuant to Health & Safety Code §§ 5470 -5474.10 and 6940 – 6941.9, Owners(s) and RVSD agree that said semi-annual principal and interest installment amounts shall be collected pursuant to the procedures for regular assessment by addition of said installment payment to the County of Marin Tax Rolls, to be collected at the same time and in the same manner as county taxes are collected; and

Said lien/assessment shall be of the same force and effect as other liens for taxes, and their collection shall be enforced by the same means as provided for the enforcement for liens for county taxes.

ACKNOWLEDGMENT