



AGENDA REPORT

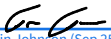
TO: Jestin D. Johnson
City Administrator

FROM: Josh Rowan
Interim Director, Public
Works

SUBJECT: Ensure Compliance with Sewer
Consent Decree

DATE: Sept 2, 2025

City Administrator Approval


Jestin Johnson (Sep 25, 2025 20:20:34 PDT)

Date: 09/25/2025

RECOMMENDATION

Staff Recommends That The City Council Adopt The Following Pieces Of Legislation:

- 1) Resolution To Ensure Compliance With The Sewer Consent Decree By Waiving All Local/Small Local Business Enterprise Program Requirements (Ordinance 13101, Ordinance 13640 As Amended) Except to Continue to Provide Bid Discounts To Local/Small Local Businesses; and**
- 2) Resolution To Ensure Compliance With The Sewer Consent Decree By Awarding Sanitary Sewer Construction Contracts To The Lowest Responsive And Responsible Bidder, In Accordance With Project Plans And Specifications And All City Contracting Program Requirements, Each Up To An Individual Contract Award Of Ten Million Dollars (\$10,000,000); And For Each Adopting Appropriate California Environmental Quality Act Findings, Without Return To City Council.**

EXECUTIVE SUMMARY

Given contracting delays resulting from the City's Local/Small Local Business Enterprise (L/SLBE) requirements, the City is failing to keep up with a key provision of the sewer consent decree. These delays risk triggering the consent decree's stipulated penalties of up to \$260,000 per year. The proposed resolutions will prevent delays and their associated stipulated penalties in sanitary sewer rehabilitation construction contracts until the Sewer Consent Decree ends on December 31, 2035.

Adoption of the proposed resolutions will waive the minimum L/SLBE participation requirements for sanitary sewer construction contracts; continue to incentivize local business enterprises (LBE) and small local business enterprises (SLBE) through the use of bid discounts; and allow the City Administrator to authorize contract awards for sanitary sewer construction projects up to \$10 million per contract award.

Sanitary sewer construction includes sewer main rehabilitation, maintenance hole rehabilitation, private lateral rehabilitation, root foam sewer mains, closed-caption television (CCTV) of sewer mains, cleaning of sewer mains, emergency repairs, elimination of cross-connections, paving, and any ancillary work, such as sidewalk, curb ramp, and curb replacements, where impacted by construction. These construction projects assist with the Sewer Consent Decree's overall goal of reducing minimally-treated sewage from entering the bay, and thus are an important contribution to a cleaner bay.

BACKGROUND / LEGISLATIVE HISTORY

City of Oakland Sewer System and the 2014 Consent Decree

The City of Oakland owns and operates a sanitary sewage collection system that serves approximately 420,000 residents within the City. The collection system includes approximately 934 miles of gravity sewer mains, less than two miles of pressure force main, and eleven sewage pump stations. There are approximately 102,000 private lateral sewer connections to the collection system. Some of the City's first sanitary sewer pipes were installed around 1852 (173 years ago) when Oakland was incorporated as a town.

Negotiations among the cities and districts, state and federal regulators, and local environmental groups resulted in a Sewer Consent Decree that was finalized on September 22, 2014. The consent decree requires East Bay Municipal Utility District and seven satellite agencies, including Oakland, to reduce sanitary sewer overflows, repair and replace sewer mains, reduce the amount of inflow and infiltration into the sewer system, and ultimately reduce minimally-treated discharges into the San Francisco Bay during heavy storms.

By the end of the Consent Decree, the City will complete 264 miles of sewer main rehabilitation and associated maintenance structures, representing 28% of the collections system. The consent decree mandates Oakland to rehabilitate 13 miles of sewer mains annually.

The annual rehabilitation is completed through multiple construction contracts funded by sewer capital improvement (CIP) projects. The City's CIP adopted budget includes these sewer projects, and funding is allocated from the Sewer Service Fund. Management of these construction contracts is performed by the Public Works Bureau of Design and Construction. Over the past several years, most sewer construction contracts were awarded to Andes Construction and Pacific Trenchless, contractors who began as certified small local business enterprises (SLBEs) and have grown into certified LBEs.

Informational reports on the status of compliance with the Sewer Consent Decree, Wastewater Discharge Requirements for wastewater sewer systems, and National Pollutant Discharge Elimination System Permit are provided to the City Council annually. This report includes progress on work required of the Sewer Consent Decree, including sewer main rehabilitation.

Non-compliance with the annual rehabilitation requirements is subject to potential stipulated penalties. Penalties are assessed on a per-day basis. The penalties are as follows:

Period of Noncompliance	Penalty Per Deliverable Per Day
1-15 Days	\$100
16-30 Days	\$300
31-60 Days	\$500
More than 60 Days	\$2,000

As shown below, the City is approximately 5 miles short of its required mileage for rehabilitation. Staff estimate that these 5 miles will be completed ~6 months after the consent decree's annual deadline. Given this delay, staff estimate the City may be subject to up to \$260,000 in the consent decree's stipulated penalties.

Sanitary Sewer Rehabilitation Progress

In the last ten years, an average of 11 miles of rehabilitation of sewer mains have been completed. The Sewer Consent Decree mandates an annual average of 13 miles a year, with a cumulative length of sewer mains to be met each fiscal year. Specified sewer rehabilitation performed prior to the start of the Sewer Consent Decree in 2014 were counted towards the first cumulative requirement in 2016. For that reason, the City met the annual requirements since the start of the Consent Decree until FY 2025. Staff anticipates a shortfall of approximately 5 miles in FY 2025. See **Table 1** below.

Table 1: Sanitary Sewer Rehabilitation Progress

Fiscal Year	Sewer Mains Rehabilitated (mi)	Cumulative Total (mi)	CD Requirement (mi)
FY14 and Prior	24.9	24.9	-
FY15	11.5	36.4	-
FY16	13.6	50	30
FY17	11.2	61.2	42
FY18	11.2	72.4	54
FY19	7.8	80.2	66
FY20	7.4	87.6	78
FY21	3.7	91.3	90

FY22	10.1	101.4	102
FY23	14.1	115.5	114
FY24	11.3	126.8	126
FY25	6.0	132.8	138

ANALYSIS AND POLICY ALTERNATIVES

Approval of these two legislations will streamline delivery of sewer main rehabilitation to advance citywide priorities of **holistic community safety** and **vibrant, sustainable infrastructure** by addressing the deterioration of the sanitary sewer collection system, reduce minimally-treated sewage from entering the bay, and meeting the requirements of regulatory agencies and Sewer Consent Decree. In FY 2025, there were contracting delays in 7 out of 9 sewer rehabilitation solicitations. These delays can range from 2 to 4 months per contract, and cumulatively, contribute significantly to the City's 5-mile shortfall in rehabilitation work by the consent decree's deadline. The delays result from solicitations receiving bids that were not compliant with the City's L/SLBE requirements, bids that required additional work to gain compliance with the L/SLBE program, bids significantly above engineering estimates, or solicitations receiving no bids at all.

Failure to meet the annual requirements for sewer main rehabilitation may result in stipulated penalties as defined in the Consent Decree. The proposed resolutions will help reduce the delay in awarding sewer construction contracts, ensure compliance with the Consent Decree, and continue to provide incentives for small and/or local contractors.

Waiving All Local/Small Local Business Enterprise Program Requirements Except Bid Discounts

The proposed resolution seeks to balance the City's interests in sewer consent decree compliance, efficient and effective delivery of services and projects, and promotion of local businesses. The resolution addresses this balance by waiving the L/SLBE program for all sanitary sewer construction contracts, except to continue to incentivize local contractors through the use of existing bid discounts.

The City's L/SLBE program requires 50% local business participation, which must be met with a minimum participation of 25% for LBEs and 25% for SLBEs. Yet there are not enough LBEs and SLBEs to complete the amount of sewer construction work in Oakland required by the consent decree. On average, the City received less than 2 bids per sewer solicitation, below the construction industry's standard. In fact, 24 of the 29 sewer solicitations from July 2023 to May 2025 received either 0, 1, or 2 bids. Where no bids are received, construction is delayed several more months while the project is rebid. Even when bids are received, sometimes these are later found to be non-compliant, thus causing more delays.

Staff compared the number of contractors competing for Oakland's sewer construction work with other cities, including those subject to the consent decree. See **Attachment A**. On average, those other cities receive 5.7 bids per sewer construction solicitation versus Oakland's two bids per sewer solicitation. The discrepancy between other cities and Oakland is attributable to the L/SLBE participation requirements. Seven of the nine cities had no L/SLBE participation requirements whatsoever, and the two with L/SLBE requirements were considerably lower than Oakland's.

Staff have identified thirty-one contractors that bid in other cities' sanitary sewer contracts and not in Oakland's.

Waiving this L/SLBE participation requirement will ensure the City has a robust pool of contractors—both local and non-local—that can perform the annual amount of sanitary sewer construction required for consent decree compliance. With more contractors competing for the work, the City will receive more bids, obtain better bid prices due to increased competition between contractors, and expand the number of contractors who can deliver sewer main mileage. Without a more robust pool of contractors, the City will continue to experience few (or no) bids per project and significant delays attributable to the L/SLBE program.

The proposed resolution continues to support local businesses. The resolution continues already-established bid discounts to certified LBEs and SLBEs that perform sewer construction. A bid discount is the application of a percentage discount to the total amount of a bid submitted by a bidder for a contract solely for the purpose of bid comparisons when evaluating the lowest responsible bid. Bid discounts of up to 10% are earned based on the level of L/SLBE participation proposed prior to the award of a contract. Details of how bid discounts are applied are in the [L/SLBE Business Enterprise Program Manual](#).

Finally, the City and its sewer program will continue to support local businesses in two more ways. One, the City will continue to apply the S/LBE program for the sewer program's professional services contracting. Two, the City will use the *Mandatory Preferred Small Local Business* program that establishes a list of local contractors qualified and eligible to perform sewer construction repairs of less than \$250,000. This list is established per Oakland Municipal Code section 2.04.045 and reserved for Oakland-certified SLBEs.

Authorizing The City Administrator to Award Sanitary Sewer Construction Contracts, Without Return To Council

Permitting the City Administrator to award sanitary sewer construction contracts will streamline the award phase of the construction contracting process. On average, the current process for City Council approval of contracts necessitates an additional 2 months in the project schedule. This accounts for the time staff take to draft the staff report, obtain various input and approvals, and deliver the report to City Council for its formal award. While these delays may not seem impactful on a contract-by-contract basis, their cumulative effect is to make timely compliance with the sewer consent decree more difficult.

This resolution does not waive any other purchasing ordinance requirement. The resolution defines “sanitary sewer construction contract” as any construction contract for construction of sewer main rehabilitation, private sewer lateral reconnections, lower lateral replacements in the public right-of-way, rehabilitation of maintenance structures, closed-circuit television (CCTV) of sewer mains, cleaning of sewer mains, emergency repairs, elimination of cross-connections, paving, and ancillary work such as sidewalk/curb ramp/curb replacements when impacted.

Policy Alternatives

Staff considered other alternatives, including other changes to the LBE program’s application, and considered other ways to expedite sewer construction contracting. Unfortunately, staff could not find another alternative that addressed the fundamental issue of delay while also incentivizing local contractors.

FISCAL IMPACT

This resolution will streamline the award phase and prevent missed annual mandated targets that can lead to stipulated penalties. Cost savings by this resolution directly benefit Oakland sewer service rate payers. An estimated \$260,000 of potential stipulated penalties can be avoided if sanitary sewer construction delays are minimized by the proposed resolutions. In addition, waiver of the minimum L/SLBE participation requirements will likely increase the number of bidders per project. More bidders should increase competition and reduce bid amounts. Lower bids mean lower sewer construction costs, which will benefit ratepayers.

There is no minimum commitment to any awarded contract, and funds will not be committed unless funding is identified.

PUBLIC OUTREACH / INTEREST

No outreach was deemed necessary for the proposed policy action beyond the standard City Council agenda noticing procedures.

COORDINATION

This report was developed in coordination with:

- Department of Workforce and Employment Standards
- Oakland Public Works – Bureau of Design and Construction

In addition, the following offices have reviewed this report:

- Office of the City Attorney
- City Budget Bureau

SUSTAINABLE OPPORTUNITIES

Economic: Improved continued efforts of maintaining the sanitary sewer infrastructure delivers an essential sewer service for residents and businesses.

Environmental: Improved compliance to regulatory requirements and compliance to a long-term plan to eliminate wastewater discharges and overflows to the bay.

Social Equity: The Sanitary Sewer Program strives to eliminate wastewater discharges and overflows to the bay, thereby benefiting all Oakland residents.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Adopt The Following Pieces Of Legislation:

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For questions regarding this report, please contact Jimmy Mach, Principal Civil Engineer at (510) 238-3303.

Respectfully submitted,


[Josh Rowan \(Sep 22, 2025 11:42:51 PDT\)](#)

JOSH ROWAN
Interim Director, Oakland Public Works

Reviewed by:
Liam Garland, Interim Assistant Director
Department of Public Works

Prepared by:
Jimmy Mach, PE, Principal Civil Engineer
Wastewater Engineering Management Division

Attachment: (1)

Attachment A - Table: Comparisons To Other Local Agencies And Sewer Districts