

## Comments to Placerville City Council 12-12-23

### Re: Private Sewer Laterals, 10.1

Thank you for this opportunity to comment on the private sewer lateral issue, 10.1. It's obvious that you and your legal staff have taken our comments on the 11-14-23 meeting seriously. We thank you for addressing many of our concerns, especially the legal issues. However, there are a number of social and other issues that you have NOT addressed, at least as far as I've seen. However, if you have already addressed these issues raised at the last City Council Meeting of November 14, 2023, please so inform us. I, and many watching or, who **will** be watching this development, would be interested in knowing what and how you plan to deal with these issues.

These issues include, but are not limited to, the following paragraphs below. A number of Placerville's senior citizens could be priced out of their homes due to mandated costs associated with this Ordinance, raising the same issues as Prop. 13 years ago. Is this going to lead to another class action lawsuit over the same/similar principles? Most of our senior citizens live on a fixed income. Some in Congress are looking to reduce that limited income in the near future. Many seniors are watching their limited funding being reduced in the near future, including by EID fees. As corporate America increases their profit margin, these seniors see their household income declining.

When Measures H and L were proposed to the citizens for approval, were the PSLs specifically removed from the funding request? When both Measures were discussed, **there was no mention of PSLs NOT being included in the H & L funding base.** Was there full disclosure? When reading the past notices regarding H & L, one finds NO mention of PSLs NOT being included for funding. As a matter of fact, the provisions of H & L state that this funding is for the City's entire sewer system. Neither of these Measures may have passed if this were disclosed originally. Do we want to

visit this issue on another front and possibly loose this funding? I suspect not.

But before I get to the meat of this proposed Ordinance, there are still a couple of procedural issues that need to be addressed. First and foremost, at least to me, is **the question of state and federal funding**; as in the **Federal Infrastructure Bill**. I've asked, but have yet to see or hear any response to what actions the City Council, or their staff have taken to obtain disaster relief funding from the State or Federal governments, or from our local Congressman? Has the City caused or directed its staff to inquire and request Federal Infrastructure Funds for repairing and replacing portions of or as much of our dilapidated sewer system as is needed? Obviously, you, the Council, feel there is a need for repairing our sewer system. If you disagree with this assumption, then why are we talking about this onerous proposed Ordinance in the first place? If no requests have been made to either agency or persons to request financial aid, why haven't they been made? If requests have been submitted, what have been the results or reactions from both state and federal government agencies and our local Congressman?

Any funding received from any of these sources should be used to upgrade our entire sewer system, including all PSLs. As a City Council member and Mayor, you are entrusted to guide and manage this City for the betterment of our citizens. To use the flood disaster of December 2022 and January 2023 as an opportunity to shift the cost of rehabilitating the entire sewer system from the **City tax dollars** (for which we ALL pay) to a few of the city citizens living on PSLs is, in my opinion, a breach of your fiduciary duties to this City and its citizens, and an unequal application of available funding for any corrective measures taken for this city sewer system. All of the users of the City sewer system pay for their usage. The same dollar amount is paid by each user, whether they use the city sewer by PSL or the Main sewer. Amounts may vary depending on the size of home or size of property, but they all pay according to the same proration the city has established. This applies to renters as well as property owners. Their rents are in part based on the amount paid for sewer service and the city sewer service is the same

for all. All sewage goes through the same pipes once collected at the Main and travel through the same plumbing until it reaches the Sewer Treatment Facility.

Although not in order, there is mention at 7-17-15: of developing and implementing administrative and enforcement policies, procedures and guidance of this Ordinance. You will then, **AFTER THE FACT**, allow the public to view these new policies, procedures and guidelines or upon request. I'm not sure if you discussed this with your legal staff, but if you did, they should have forewarned you that this aspect falls under the CA Administrative Act and thus the rule-making process administered by this agency. If you haven't already discussed this issue with your legal staff, I suggest that you do so soon.

So instead of rushing this proposal through and finding it halted midstream, why not cull out all the issues potentially on your horizon and address those first? When the City, or its Director, promulgates any policies, procedures and/or guidelines, each of these give rise to public input in the form of satisfying due process requirements established in law and our Constitution. By complying with the Due Process requirements, this will satisfy the requirements of City Council members to represent their citizens equitably and legally.

At 7-17-5 (B) 4 it states that all owners SHALL acknowledge that the City shall have the enforcement rights respecting this Ordinance ... and if the City is required to bring action to enforce this Ordinance, all owners agree to pay for reasonable legal fees and staff time! Isn't this what our taxes are already allocated for: staff time and legal fees? Is this another way for the City to burden the citizens of Placerville with yet another TAX without going through the legal process of having all registered voters in Placerville vote to approve any additional tax?? We approved H & L.

The requirement for all to acknowledge that the City shall have the enforcement rights respecting this Ordinance mentioned above is an insult to every citizen of Placerville to force their approval of this Ordinance and

basically waive their right to contest any provision of this Ordinance in whatever arena they so choose. Adhesion comes to mind here. If someone on another PSL has legal issues, the way this reads, all who sign this acknowledgement can be held legally and financially responsible for any action of the City, whether the City (employee) is personally liable for whatever conduct which gave rise to this legal action or not? Am I correct in assuming this by the way this is worded? If not, that needs to be specifically spelled out. **This Ordinance fails legal muster on its face as it stands.** In closing to this issue, the City does Not need this paragraph IF it already has the legal authority to take whatever action they want the citizens to approve. Without further defining this wording, it contradicts 7-17-5 (B) 1.

Regarding the COLC under section 7-17-6-(A) 1, when a PSL runs across a non PSL users' property and who sells their property, this ostensibly triggers this Ordinance. This section should be removed as it has no bearing on the duties, responsibilities or financial responsibility of said owner. Someone not even being associated with the PSL should not trigger any action whatsoever by this Ordinance! You may as well state that anyone living in the same zip code is responsible as well. The ONLY responsibility for someone moving and selling their home is to guarantee that their sewer line from their home to the sewer connection, whether it be a PSL or a Main, is all that they are responsible for. After that, the City takes over responsibility regardless of how you're attempting to change the facts and the law with this Ordinance.

Many cities recognize that PSLs are part of their City sewer system, it is not without precedent. If you use the funding available under the Federal Infrastructure Bill and funds from Measures H & L, the City should have funding to locate and map all of the unknown PSLs throughout the City and rehabilitate them.

In section 7-17-7 (A) 3. you cite the Plumbing Code but what you fail to state is that the new code requirements don't attach immediately. They do once a property is sold and changes hands. Only then do these new

updated requirements come into effect (unless we're talking about new construction). This subsection should be deleted.

In section 7-17-7 (B) it discusses fees: The City should spell out exactly WHAT the current fee is and all associated costs for a property owner to obtain a COLC. This should be in the introduction and underlined as new language. The City recently raised their permit fees SUBSTANTIALLY when knowing full well that this fee generating Ordinance was just around the corner. I'm suggesting that this is just another TAX on all PSL utiliziers to fulfill the requirements of the City to maintain their sewer system without actually calling this a TAX. The public notice of this Ordinance should be as transparent as possible for the general public to understand the general costs to them and when those costs will be applicable and know that this is NOT the same proposed Ordinance as the previous proposal they may have already read as of the last posting on 11-14-23.

Under the same section at (C) it states that if a non-compliant property owner does not agree in writing to perform the specified repairs to obtain compliance, then all of the property owners utilizing this PSL will be on notice that they are in violation and subject to enforcement action, including fines and fees of the non-compliant property owner. This is absurd to try to ensnare the adjacent property owners to carry the financial load of this one or more non-compliant property owners. This issue needs to be rectified and either deleted or modified to put the responsibility on the non-compliant property owner. Again, if this subsection remains in this Ordinance, this Ordinance will fail legal scrutiny. Revise it please.

Section 7-17-9 (A) the requirement to renew the COLC every 20 years is obstreperous and without merit. If the required COLC requires 40 -60-year ABS, then why are PSL utiliziers required to renew this COLC every 20 years? The renewal procedure should be based on probable cause where there is EVIDENCE of failure or contamination to neighboring properties. Please revise this section to reflect the actual need for expenditures, especially for those with limited financial means.

At section 7-17-10 there is discussion only of a 180-day extension but no discussion of the procedure for foreclosures or condemned properties (red tags). How will these be handled and who is responsible? By this Ordinance the mortgage lender will be responsible when the property reverts, and when that happens, the housing market will come to a standstill. Is this what the City Council is recommending? I sure hope not. Just maybe some clarification is in order before moving forward with this Ordinance.

Section 7-17-12 has been revised to conform with the current state of the law. Thank you for making this revision.

Section 7-17-13 (C) discusses a public nuisance and what happens after that, but there is no appeal process specifically mentioned, other than by camouflaging the process in City Codes. This Ordinance needs to be factual and transparent and needs to include an **Appeal Process** spelled out in text and not in the form of related City Code sections one needs to research. Add a new Roman Numeral Section V and renumber the Effective Date to Roman Numeral VI. Spell out in V that one has ONLY 30 days to file a written Appeal with the City Clerk on a form specified by the City and include a copy of that form in this subsection. We suggest that a 30-day time frame for filing an Appeal replace the 10-day time frame. Briefly include that the appeal process includes mediation and an administrative hearing. Many of our citizens of Placerville are not sophisticated enough to research the various code section specified in this Ordinance so they can understand what this Ordinance really means. However, if you are trying to obfuscate these issues, you're doing a good job of it. Specifically spell out the details for all of the public to understand. I certainly hope you're not afraid of the public knowing exactly what they are in store for if this Ordinance is passed. If you are concerned about public response, then maybe this is an indicator that this is NOT the best approach to comply with the Water Boards NOV or to clean up any leaking sewer lines, privately or publicly installed.

Section 7-17-13(F) discusses enforcement action against a person who violates this Ordinance. Looking back on previous subsections, the financial

responsibility falls on all PSL utilizors of the same PSL, same as this person in question. This conflict of financial and personal responsibility must be rectified before this Ordinance is approved. The last sentence of this section spells out financial disaster for other users of this PSL. This is illegal to mandate that others cover the cost of their neighbor who violates this Ordinance. This language needs to be cleaned up before this Ordinance survives legal scrutiny.

Section 7-17-15 anoints the Director as the person to solely develop the policies, procedures and guidelines for the implementation of this Ordinance. This section needs to spell out that when the Director initiates this process, he will make the process open to the public and request public input to comply with due process requirements. As they say, the **devil is in the details**. If you proceed without spelling out the right of public input, I'm certain there will be a Request for Determination filed with the OAL. Why go through all of that when you know this is what is required? If you're concerned about public input, then maybe this is headed in the wrong direction. If your lawyers didn't forewarn you of this probability, then you may have a personnel problem.

This Ordinance is allegedly without cost to the City. That misconception is far from the truth. If the City survives this process without defending any legal action and proceeds with the concept as generally designed through this Ordinance, the cost of additional inspectors, secretarial staff and other staff including their benefits will be huge. It's disingenuous to state otherwise.

There seems to be a theme throughout this Ordinance that PSL users are not paying their fair share of the City sewer system expenses. This concept is far from reality. The City allowed homes to be developed in areas where the planners had not anticipated. So, these homeowners got a real deal, right? Not so fast here, these homeowners pay the same rate for sewer service as those on the main sewer line. The City has saved the expense of installing and maintaining these PSL lines while incurring the expense of maintaining the main sewer lines. The City also saved the expense of having

insufficient staff to install these PSLs when these houses were built. At the same time, the City has been the beneficiary from the taxes these PSL homeowners pay, just like others do whose homes were built on the main sewer lines. So, in actuality, **the City has BENEFITED from homes built on PSLs!** The extra fees and taxes associated with homeownership go to the local Fire Department, schools, City Hall, City parks, and all of the other amenities provided by the City. Not only do the PSL homeowners pay a larger share of City expenses when factoring in maintaining their own PSLs, they also are now subject to additional costs and fees for rehabilitating all the City sewer lines through this Ordinance.

I see in your letter to the Regional Water Quality Control Board that Measure H and L funds will pay for our Capital Improvement Projects. Did you receive Federal Infrastructure Funding or state storm disaster funds? These funds should help with paying for PSL rehabilitation as well. I read online that there are cities which are using their public funds for PSL's, saying that the downstream contamination the PSL's may cause is a public issue, not a private issue, therefore public funds can be used to pay for PSL issues.

**Joint and several** responsibility, especially financial responsibility, bears more discussion. How do you justify forcing a homeowner to pay for the actions of their neighbor? Once a sewer revision takes place the financial clock starts ticking. Many Placerville senior citizens are on a pension and have limited discretionary spending. To place such a burden on them is unconscionable and likely illegal. Since there you plan to put a lien on their property, you need to find a way to suspend any interest on these costs (instead of the 10% interest compounded annually that the City Code now specifies). Suspend these costs until that individual person(s) decides to take some action where they will be financially liable for those actions. So instead of spending the City's (and our own tax dollars) legal budget monies on this, use that money to suspend interest payments for those affected by other neighbors' actions and bill the homeowner causing this expense. Additionally, how does the owner who incurred these expenses retrieve their share of costs from the deficient landowner since a **city** lien will be



placed on that person's property? You have a number of intertwining issues to deal with here. As long as the City is making a good faith effort to address the NOV, the Water Boards have been acceptable of these types of effort.

How much of the City's Legal budget do you plan to spend on enforcing these regulations and how much do you plan to spend on fighting the class action legal battles you'll likely incur over this Ordinance? What is your estimate of legal costs for these issues? Is this a wise expenditure of our tax dollars? Shouldn't you take your time to flesh out the particulars of this proposal before you waste our tax dollars? Are you planning to use Federal Infrastructure money for these legal actions? Isn't that money designed/intended for Capital Improvement Projects primarily?

The **implementation** of this Ordinance is altogether another issue. When do you plan to discuss how you plan to implement the actual process? Is this where you intend for the Director to develop his rules and procedures? Like I said before, this requires public input to satisfy due process requirements.

Have you taken any action on the 144 problem PSLs? If not, why not and if so, what have the results been? We, the public, should know all of these answers before jumping headlong into a potential morass of conflicting issues. **You should start implementation with these 144 PSL problem areas and report back to the citizens what type of issues arose and how you can best alleviate those issues, revise this Ordinance to reflect those issues and resubmit for the citizens of Placerville to comment on.**

During the 1998 smoke test we've heard so much about, how many non-PSLs failed this test? Has the City rectified these failures yet? If not, why not? Did the City charge these property owners as you're planning to encumber the PSL property owners? Your reply to this and all of our questions should be enlightening.

Big question, how did you discern PSL waste water from the city's waste water in Hangtown Creek or any other creek that reached the Treatment Facility? Did you perform dye tests? If not, then this is purely speculation and an attempt to transfer the problem Noticed by the Water Board to PSLs and their utilizers, instead of admitting that the city's own sewer system had failures of its own. It's common knowledge that the super storms of December/January caused the overflowing of Placerville's sewer system. We all understand the need to fix that problem but it's disingenuous to place most of the blame (and expense) on PSLs when we all know it's a bigger issue than PSLs. If citizens on a currently approved city main sewer line will not need to pay for the upgrading of their lines once they're upgraded, why should the PSL property owners be billed separately for their fix? Isn't this unequal taxation and unequal application of a law or in this case City Ordinance?

Whoever told the Council members that this is what's needed to satisfy the Water Board's NOV, then you have been sold a bill of goods! Each Councilperson should take a step back a look at this from a distance. It should be clear that the 500-year storm that gave rise to the NOV was an anomaly. One of the main reasons the streets and sewers flooded are the number of roofs over houses and the concrete and asphalt covering the roads we drive on, basically the rise in population. These are a necessity, but they also cover bare ground where much of this storm water would be soaking into the ground and not all of it running down the natural flow of the terrain of our fine City.

There are inconsistencies between this new Ordinance and the City Code. These should be discussed when we have more than a 3-minute monologue; we should have a dialogue to discuss all issues. As discussed above, please schedule another Town Hall workshop to discuss these issues and others presented tonight.

In closing, Thank You for the opportunity to comment on this proposed Ordinance and I request that you postpone the approval of this incomplete Ordinance until you, your staff and the public have come to a consensus on

the language and application of this proposal. We hope to hear your answers to these, and other issues/questions raised tonight.

JE Sikora

[jesikora@sbcglobal.net](mailto:jesikora@sbcglobal.net)

916-502-2433.