

RESOLUTION NO. 16-30

RESOLUTION NO.

**CITY OF MILLBRAE, COUNTY OF SAN MATEO
STATE OF CALIFORNIA**

**RESOLUTION APPROVING AMENDED CONSENT DECREE WITH SAN
FRANCISCO BAYKEEPER AND AUTHORIZING
THE CITY MANAGER TO EXECUTE THE AMENDED CONSENT DECREE**

WHEREAS, on or about September 30, 2009, the City of Millbrae received a Notice of Intent to File a Lawsuit from San Francisco Baykeeper related to alleged Sanitary Sewer Overflows (SSOs); and

WHEREAS, on December 1, 2009, San Francisco Baykeeper filed suit against the City of Millbrae in the U.S. District Court Northern District, Case No. 2009-CV-05675, requesting injunctive relief, civil penalties and a writ of mandate, and alleging violations of the Federal Clean Water Act, the California Water Code, the San Mateo County Ordinance and the Millbrae Municipal Code; and

WHEREAS, the City Attorney, consultants, and staff successfully negotiated a settlement to the matter that is contained in a Consent Decree, which was approved by the City Council on July 13, 2010 (Resolution 10-29) and was filed with the Court on November 16, 2010; and

WHEREAS, the Consent Decree, which constitutes a court order, is set to expire on November 16, 2016 and imposes requirements on the City to improve the wastewater collection system to convey peak wet weather flows, reduce the number of sanitary sewer overflows (SSOs) from the City's system per year, and make payments to Baykeeper for its attorneys' fees and costs as well as for its ongoing monitoring of the City's compliance; and

WHEREAS, the City has already complied with many of the Consent Decree's obligations and has made significant improvements to its sanitary sewer collections system, including (1) significantly reducing its number of SSOs from 49 in the highest year in 2011 to only 3 in 2014, (2) achieving a low number of pipeline assessment condition protocol Grade 4 or Grade 5 scores for both maintenance and structural inspection, (3) reducing the number of pipelines on the Hot Spot Cleaning Work Plan, with the total pipelines from 2014 representing only 56% of the total pipelines found during the maximum year in 2012; and

WHEREAS, the City must implement its capital improvement plan before it can fully comply with the Consent Decree; and

WHEREAS, the City had initially intended to implement a capital improvement plan to meet the peak wet weather flows solely by increasing the size and capacity of the system, which would have included the construction of a new wastewater station; and

WHEREAS, the City has since evaluated the efficacy of the capital improvement plan and elected to shift the approach to include increases to the system's capacity and size while also reducing rainfall dependent inflow and infiltration, which will provide a more long-term, effective, sustainable, and less costly approach to achieving peak wet weather flows without SSOs; and

WHEREAS, in order for the City to implement the capital improvement plan, the Consent Decree must be extended by two years, until November 16, 2018; and

WHEREAS, staff and the City Attorney have successfully negotiated with Baykeeper amendments to the Consent Decree, which include the following substantive changes:

1. Achieve substantial completion of the capital improvements by the termination date, meaning that the City will reduce its RDII levels to the allowable limits before the Consent Decree can expire;
2. Maintain the maximum allowable SSOs per 100-miles of sewer line per year at three, which is the current allowable amount under the Consent Decree; and
3. Extend the termination date until November 16, 2018.

WHEREAS, Baykeeper has agreed to the terms of the Amended Consent Decree; and

WHEREAS, staff and the City Attorney recommend that the City Council approve the Amended Consent Decree and authorize the City Manager to execute the Amended Consent Decree.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Millbrae approves the Amended Consent Decree and authorizes the City Manager to execute the Consent Decree related to San Francisco Baykeeper v. City of Millbrae, U.S. District Court Northern District, Case No. 2009-CV-05675.

REGULARLY PASSED and adopted this 26th day of July, 2016.



MAYOR

ATTEST:



CITY CLERK

I do hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of Millbrae this 26th day of July, 2016, by the following vote:

AYES:	COUNCILMEMBERS:	Oliva, Holoher, Papan, and Schneider
NOES:	COUNCILMEMBERS:	None
ABSENT:	COUNCILMEMBERS:	None
ABSTAIN:	COUNCILMEMBERS:	None
EXCUSED:	COUNCILMEMBERS:	Lee



CITY CLERK