

RESOLUTION NO. 1312

**RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION
OF THE COUNTY OF SAN MATEO
MAKING DETERMINATIONS AND APPROVING LAFCO FILE NO. 22-09 –
A PROPOSAL TO ESTABLISH THE EAST PALO ALTO SANITARY DISTRICT (EPASD) AS A SUBSIDIARY
DISTRICT OF THE CITY OF EAST PALO ALTO**

RESOLVED, by the Local Agency Formation Commission of the County of San Mateo, State of California, that

WHEREAS, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 governs the organization and reorganization of cities and special districts by a local agency formation commission (LAFCo or Commission) established in each county, as defined and specified in Government Code sections 56000 *et seq.* (unless otherwise indicated all statutory references are to the Government Code); and

WHEREAS, Section 56375 authorizes LAFCo to review and approve proposals for “changes in organization” consistently with policies adopted by the Commission and Section 56880 authorizes LAFCo to impose conditions on its approval of a change in organization; and

WHEREAS, Section 56021 defines “change of organization” to include detachment from a district, annexation to a district, and establishment of a subsidiary district, among other actions within LAFCo’s powers; and

WHEREAS, Section 56650 authorizes proceedings for a change of organization to be initiated by a Resolution of Application as adopted by a local agency; and

WHEREAS, on November 10, 2022, the City of East Palo Alto submitted a proposal application to establish the East Palo Alto Sanitary District as a subsidiary district of the City of East Palo Alto (the Proposal); and

WHEREAS, LAFCo provided notice of the Proposal to the subject district, the East Palo Alto Sanitary District, within 10 days of receiving the Proposal in accordance with Government Code Section 56861; and

WHEREAS, on July 12, 2023, East Palo Alto Sanitary District adopted a resolution of intention to file an alternative proposal and accordingly no action on the original Proposal was taken for 70 days; and

WHEREAS, on September 19, 2023, East Palo Alto Sanitary District submitted an alternative application to retain East Palo Alto Sanitary District’s current governance structure as an independent

special district, to amend its Sphere of Influence (SOI) to be coterminous with existing East Palo Alto Sanitary District boundaries, and to remove East Palo Alto Sanitary District 's territory from the SOI of the West Bay Sanitary District; and

WHEREAS, the Proposal and Alternative Application were routed to all subject, affected, and interested agencies, and no comments, concerns or objections were received other than from the East Palo Alto Sanitary District, City of East Palo Alto, City of Menlo Park and West Bay Sanitary District; and

WHEREAS, San Mateo County determined that the Proposal and the Alternative Application are not subject to a negotiated exchange per Revenue and Taxation Code Section 99(b)(1) as the boundaries and the service of the EPASD will not change with the formation of the subsidiary district; and

WHEREAS, a Certificate of Filing was issued for the Proposal on June 15, 2023 and a letter of completion for the Alternative Application was issued on October 25, 2023; and

WHEREAS, a public notice was published at least 21 days prior to the hearing as a 1/8th page display advertisement in the San Mateo County Times, The Almanac, and The Palo Alto Weekly because the total number of notices required to be mailed exceeded 1,000; and

WHEREAS, the Executive Officer has reviewed the Proposal and Alternative Application and prepared a report, including the recommendations thereon, at least five (5) days before the November 15, 2023 hearing, and the Proposal, Alternative Application and report have been presented to and considered by this Commission; and

WHEREAS, a public hearing by this Commission was held on the Proposal and Alternative Application on November 15, 2023, and at the hearing this Commission heard and received all oral and written protests, objections and evidence which were made, presented or filed, and all persons present were given an opportunity to hear and be heard with respect to the Proposal, Alternative Application and the Executive Officer's report and related matters; and

WHEREAS, the Proposal is categorically exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) under State CEQA Guidelines Section 15320 (Changes in Organization of Local Agencies);

NOW, THEREFORE, the Local Agency Formation Commission of the County of San Mateo approves LAFCo File No. 22-09 and **DOES HEREBY RESOLVE, DETERMINE AND ORDER** as follows:

Section 1. The East Palo Alto Sanitary District is established as a subsidiary district of the City of East Palo Alto.

Section 2. The boundaries of this district are the boundaries of the East Palo Alto Sanitary District as they exist on November 8, 2023, as shown in Exhibit “A” attached hereto and by this reference incorporated herein; no change in boundaries of the City of East Palo Alto or the East Palo Alto Sanitary District is involved.

Section 3. The Proposal is assigned the following distinctive short form designation: Establishment of the East Palo Alto Sanitary District as a subsidiary district of the City of East Palo Alto.

Section 4. This approval is subject to the terms and conditions included in this Resolution.

Section 5. The Executive Officer is directed to file a CEQA Notice of Exemption and to initiate protest proceedings in compliance with this resolution and State law (Part 4, commencing with Government Code Section 57000) and set the matter for consideration of the protest proceedings, providing notice of hearing pursuant to Government Code Sections 57025 and 57026.

NOW, THEREFORE, the Local Agency Formation Commission of the County of San Mateo makes the following findings in support of the actions taken by this Resolution.

Findings

Section 1. The action is categorically exempt from CEQA per CEQA Guidelines Section 15320 (Class 20) which provides for a categorical exemption for changes in organization of local agencies, including the establishment of a subsidiary district.

Section 2. The Proposal was considered and analyzed in accordance with the required factors listed in Government Code Section 56668. A complete analysis of the Government Code Section 56668 factors is provided in the staff report which is incorporated herein by this reference. The Proposal would not affect the existing Proposition 218 assessment or charges for services to the affected territory and these revenues are sufficient to provide adequate services, as existing assessments would remain enforced to fund services in the territories to which those assessments now apply. The actions are consistent with LAFCo’s 2022 Municipal Services Review (MSR) recommendation for the City of East Palo Alto and the East

Palo Alto Sanitary District. The Proposal would provide for more efficient operation and coordinated planning of sewer service, infrastructure and capacity to accommodate planned growth and improve transparency, accountability, environmental health to meet the current and future needs of all East Palo Alto Sanitary District ratepayers and customers. An Alternative Application submitted by East Palo Alto Sanitary District was considered as part of this hearing in accordance with Government Code Section 56863 but was not selected. A merger of the East Palo Alto Sanitary District into the city was also considered as part of this hearing in accordance with Government Code Section 56118 but was not selected.

Section 3. That the portions of the territory of the East Palo Alto Sanitary District that are included within the boundaries of the City of East Palo Alto meet both of the following requirements:

(1) The City of East Palo Alto represents 70 percent or more of the area of land within the district. The City of East Palo Alto's incorporated territory comprises approximately 94 percent of the territory within East Palo Alto Sanitary District's boundaries.

(2) The portions of the East Palo Alto Sanitary District that are included within the boundaries of the City of East Palo Alto contain 70 percent or more of the number of registered voters who reside within the district as shown on the voters' register in the office of the county clerk or registrar of voters. The City of East Palo Alto's incorporated territory comprises approximately 90 percent of the territory within East Palo Alto Sanitary District's boundaries as of November 8, 2023.

Terms and Conditions

1. To the extent permitted by law, the City of East Palo Alto agrees to defend, indemnify, hold harmless, and release the San Mateo LAFCo, its agents, Commissioners, Executive Officer, attorneys, and employees from any claim, action, proceeding brought against any of them, the purpose of which is to attack, set aside, void, or annul the approval of this application or adoption of the environmental document which accompanies it. This indemnification obligation shall include, but not be limited to, damages, costs, and expenses, including attorney fees.

2. The establishment of East Palo Alto Sanitary District as a subsidiary district of the City of East Palo Alto is conditioned upon an executed agreement for the operation and maintenance of the sewer system with a private or public agency. Evidence of the executed agreement shall be provided to LAFCo staff.

3. Provided the thresholds for a landowner protest and registered voter protest are not met, the Executive Officer shall immediately, following the protest hearing and evidence of compliance with Condition #2, record a Certificate of Completion with the County Clerk-Recorder Office.

4. The effective date of the subsidiary district will be the first day of the next month after the conclusion of the protest hearing if the thresholds for a landowner protest and registered voter protest are not met. If the thresholds for a landowner protest and registered voter protest are met, an election will be held, and if the result of the vote confirms the establishment of a subsidiary district, the effective date of the subsidiary district will be the first day of the next month after certification of the election results.

5. On and after the effective date of an order establishing the East Palo Alto Sanitary District as a subsidiary district of the City of East Palo Alto, the East Palo Alto City Council shall be designated as, and empowered to act as, ex officio the Board of Directors of the East Palo Alto Sanitary District. The East Palo Alto Sanitary District shall continue in existence with all of the powers, rights, duties, obligations, and functions provided for by the principal act, except for any provisions relating to the selection or removal of the members of the board of directors of the district (Government Code Section 57534).

6. Within 90 days of the issuance of the Certificate of Completion, the City of East Palo Alto, acting as the future Board of Directors of the East Palo Alto Sanitary District, shall submit a plan to LAFCo for the establishment of an advisory committee to the subsidiary district. The committee shall advise the Board of Directors of the East Palo Alto Sanitary District concerning administration, legal, operational, maintenance, and financial matters. The plan for the establishment of the advisory committee shall include at least one reserved seat for a resident of the City of Menlo Park portion of the East Palo Alto Sanitary District service area. Prior to submittal of the plan to LAFCo, the City of East Palo Alto shall work with the City of Menlo Park regarding the potential composition of the advisory committee. Evidence of correspondence between the two cities shall be submitted to LAFCo staff.

7. From the date of approval of this Resolution through the effective date of its establishment as a subsidiary district, pursuant to Government Code Section 56885.5(v), East Palo Alto Sanitary District may not take any of the following actions:

- a) Approving any increase in compensation or benefits for members of the governing board, its officers, or the executive officer of the agency.
- b) Unless it declares that an emergency situation exists as defined in Government Code Section 54956.5, appropriating, encumbering, expending, or otherwise obligating, any revenue of the agency beyond that provided in the current budget.

Regularly passed and adopted this 15th day of November, 2023.

Ayes and in favor of said resolution:

Commissioners: Harvey Rarback
Kati Martin
Tygarjas Bigstyc
Virginia Chang-Kiraly
Warren Slocum
Ann Draper, Chair

Noes and against said resolution:

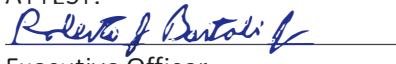
Commissioners Absent:

Ray Mueller



Chair
Local Agency Formation Commission
County of San Mateo
State of California

ATTEST:



Executive Officer
Local Agency Formation Commission

Date: 11/15/2023

I certify that this is a true and correct copy of the resolution above set forth.

Date:

Clerk to the Commission
Local Agency Formation Commission