



Office of the City Manager

ACTION CALENDAR  
December 11, 2012

To: Honorable Mayor and Members of the City Council  
From:  Christine Daniel, City Manager  
Submitted by: Andrew Clough, Director, Public Works  
Subject: Amending BMC Section 17.04.030: Sewer Service Charges

RECOMMENDATION

Adopt first reading of an Ordinance amending Berkeley Municipal Code Section 17.04.030 to include administrative expenses of the Private Sewer Lateral (PSL) Program.

FISCAL IMPACTS OF RECOMMENDATION

At the commencement of the Private Sewer Lateral (PSL) Program in FY 2007, a separate Private Sewer Lateral Fund (Fund 832) was established to account for related revenue and program expenses. The permit fees have never been sufficient to fully cover all of the administrative program costs, producing an operating deficit. As a result of this ongoing shortfall, the fund has accumulated a deficit of approximately \$320,000. This amendment will allow a transfer from the Sewer Fund to the PSL Fund to clear the existing deficit and cover approximately \$85,000 of annual Program costs beginning in FY 2014. The 1-time transfer of Sewer funds to clear the PSL deficit will be requested for approval in the second amendment to the appropriations ordinance in the spring of 2013.

CURRENT SITUATION AND ITS EFFECTS

The City's PSL Program (BMC Chapter 17.24) requires property owners to inspect, and sometimes make improvements to their private sewer laterals when certain triggering events occur. The City currently charges property owners subject to these requirements a fee of \$150 to implement this Program. The PSL Program was originally intended to be fully self-supporting from its own certificate fees established at the outset of the Program in fiscal year 2007. The \$150 fee has proved to be insufficient to fully fund the Program, incurring an annual operating deficit of approximately \$85,000. As a result of this operating shortfall, the fund has accumulated a fund deficit of \$320,000.

Recently mandated activities in the PSL Program have expanded due to new regulatory requirements imposed by the Environmental Protection Agency (EPA), which are currently reflected in a Stipulated Order (SO) and are expected to be included in a Consent Decree (CD). The new requirements will add additional program costs, increasing the current \$85,000 annual shortfall and growing the fund deficit further.

BMC Chapter 17.04 is being amended to allow the use of Sewer Fees to support the administration and implementation of the Private Sewer Lateral Program. The PSL Program serves the same goals and fulfills the same obligations of the overall Sanitary Sewer Program, as it pertains to the compliance with federal and state regulations governing discharges from the sewer collection system in its entirety.

### BACKGROUND

Inflow and infiltration (I/I) from private sewer laterals have a large adverse effect on the performance of the overall sewage collection system in Berkeley and other communities, as well as the East Bay Municipal Utility District (EBMUD), which collects and treats the City's effluent. The purpose of the PSL Program is to require property owners, over time, to make improvements to their private sewer laterals to reduce I/I.

BMC Section 17.04.030 authorizes the collection of Sewer Service charges from the users of the City's sanitary sewers. This proposed ordinance would amend BMC Section 17.04.030 to allow these Sewer Service charges to be used to support the administration and implementation of the PSL Program, which started up in 2007. The sewer fees paid by rate-payers would be used to administer the PSL Program and facilitate the private financing of the repairs, but would not be used to fund any actual private improvements.

### RATIONALE FOR RECOMMENDATION

After Berkeley began its PSL Program, EPA mandated that EBMUD establish a regional PSL Program to capture the other communities in the District that did not yet have a program. The regional fee was set at \$150, matching Berkeley's. Although Berkeley's costs have increased, it is judged that the timing is not appropriate to raise our fee higher than the regional fee at this time.

Another impact has been properties sold without complying with the PSL ordinance at time of sale (during escrow). As a result, staff has incurred added workload and cost in going after noncompliant properties for enforcement of the lateral testing and necessary repair/replacement at a later date. This also results in a considerable delay in fee receipts by the City.

### ALTERNATIVE ACTIONS CONSIDERED

As stated above, raising the PSL certificate fee was considered, but determined to be a less desirable alternative.

### CONTACT PERSON

Jeffrey Egeberg, Manager of Engineering, Public Works, 981-6400

Attachments:

1: Ordinance

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 17.04 SEWER SERVICE CHARGES TO INCLUDE CERTAIN NON-CONSTRUCTION COSTS OF THE PRIVATE SEWER LATERAL PROGRAM

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 17.04.030 is amended to read as follows:

**17.04.030 Sanitary sewer operation, maintenance and replacement fund.**

A. General. All costs of operation, maintenance, rehabilitation and improvement of the City's sanitary sewers shall be paid by the users of the City's sanitary sewers. General funds shall not be used for this purpose. Revenues collected from the users of the City's sanitary sewers shall be reserved for this single purpose and shall not be expended for any other purpose. Interest earned on the Sanitary Sewer Operation, Maintenance and Replacement Fund and all its accounts shall remain in the fund and its accounts.

B. Fund and accounts established. All revenues collected from the charges as herein set forth shall be placed in the Sanitary Sewer Operation, Maintenance and Replacement Fund and the fund shall have two accounts which are hereby established as follows:

Operation and Maintenance Account; Sewer Rehabilitation, Replacement and Relief Sewer Account. All revenues collected shall be allocated among the two accounts in accordance with the percentage of the budgeted amounts contained in the official approved budget for the fiscal year in which the revenue is collected. The amounts so deposited in each account shall be reserved for expenditures appropriate to that account, as described in the paragraphs which follow, except that loans may be made against one or more accounts to supplement funds deposited in another account to meet the needs of a particular project approved by the City Council.

1. Operation and Maintenance Account. All expenditures budgeted and required for the normal, routine operation and maintenance and incidental repair and improvement of the sanitary sewers shall be from this account. The following line budget items shall be included, as a minimum, in each annual budget for this account:

- a. Personnel services.
- b. Supplies and services.
- c. Marina maintenance and utilities (pump stations).
- d. Sewer system studies and minor rehabilitation.

e. Sewer maintenance equipment. All maintenance equipment expenditures shall be paid from this fund. Example expenditures include purchase of maintenance equipment, purchase of manhole castings, covers, and other materials required for sewer system maintenance and contracts for the design and construction of the same.

f. All activities required to fulfill the requirements of the Stipulated Order in USDC Case No. C-09-05684 RS, filed September 6, 2011, and any succeeding consent decree, including, but not limited to:

1) Private Sewer Lateral Program (excluding any improvements on private property);

2) Smoke Testing (Inflow) Program; and

3) Fat, Oil and Grease (FOG) Program.

2. Sewer Rehabilitation, Replacement and Relief Sewer Account. All expenditures for the design and rehabilitation, repair, sealing or construction of improvements to sanitary sewers requiring replacement or rehabilitation because of structural failure, excessive infiltration/inflow, or other defects, shall be paid from this account. All expenditures for the design and construction of relief or enlarged sewers required to convey peak flows from infiltration/inflow shall be paid from this account.

#### Section 2. Posting

Copies of this Bill shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King, Jr. Way. Within fifteen days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.