

ORDINANCE NO. 6,914–N.S.

ADDING CHAPTER 17.24 TO THE BERKELEY MUNICIPAL CODE REGULATING
SEWER LATERALS ON PRIVATE PROPERTY

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

Section 1. That Berkeley Municipal Code Chapter 17.24 is added to read as follows:

Chapter 17.24

**ABATEMENT OF NONCONFORMING/SUBSTANDARD SEWER
LATERALS ON PRIVATE PROPERTY**

Sections:

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17.24.020	Definitions.
17.24.030	Standards for Maintenance of Private Sewer Laterals.
17.24.040	Cleanouts Required.
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17.24.010 Purpose and Findings.

A. The purpose of this chapter is to codify requirements for the testing, repair, replacement, and ongoing maintenance of the privately owned sewer laterals within the City of Berkeley.

B. The requirements of this chapter are intended to comply with requirements of the U.S. Environmental Protection Agency (The Clean Water Act (CWA) Section 301(a)), the State of California Water Resources Control Board (California Water Code Section 13243), and the Regional Water Quality Control Board, San Francisco Bay Region (Order No. R2-2004-0010, NPDES Permit No. CA 0038466), for reducing infiltration and inflow in the City of Berkeley sanitary sewer collection system. To this end, this chapter requires that all private sewer laterals be maintained by their owners in accordance with the standards set forth in this chapter.

C. In 1986, the State Regional Water Quality Control Board (SRWQCB), San Francisco Bay Region, in its enforcement of the 1972 Federal Clean Water Quality Act, and the requirement to control sewage overflows, issued a cease and desist order to the East Bay Municipal Utility District (EBMUD),

the City of Berkeley and other East Bay Communities (Order No. 86-17, reissued with Order No. 93-134).

D. In an effort to solve the problem of sewage overflows in compliance with the cease and desist order, the affected jurisdictions jointly developed a compliance plan. The plan used a broad based Sewer System Evaluation Study completed in 1985 by CDM Jordan/Montgomery. The CDM Jordan/Montgomery study found that a significant component of infiltration and inflow (I/I) is infiltration, consisting of groundwater or runoff from rainfall that passes through the soil into defects in the sewer pipes and associated structures.

E. In addition, City staff has observed that there exists in the City numerous non-conforming storm water inflow connections into sewer laterals, such as downspouts and storm drains on private property.

F. The City's evaluation estimates that as much as 40-50% of the I/I peak flows during heavy wet weather events are from private laterals and non-conforming storm drain connections on private property.

G. Infiltration and non-sanitary sewer connections (inflows) are major sources of the I/I that occurs during the rainy season. Evidence supporting this conclusion includes leakage test data, internal inspection by television, smoke test results, conditions documented by "archaeological" type excavations, and direct flow measurements.

H. The CDM Jordan/Montgomery study recommended that the affected jurisdictions update and enforce their sewer ordinances as required to implement the program's recommendations, including an ordinance requiring testing and repair of the privately owned portion of sewer laterals as a condition on the sale of property; and to require all property owners to disconnect nonconforming storm water connections and correct defective sewers identified through smoke testing.

I. In order to meet the Regional Water Quality Control Board and Cease and Desist Order requirements for comprehensive rehabilitation and I/I reduction, it is necessary to address the issues of private lateral repair or replacement, and disconnection of non-sanitary sewer connections to the sanitary sewer system, as set forth in this chapter.

17.24.020 Definitions.

The following terms apply to this chapter and are the same as, or supplement the definitions found in the Berkeley Plumbing Code, Berkeley Municipal Code Chapter 19.36:

A. "Sewer Lateral Certificate" is a certificate issued by the City Engineer indicating that the lateral is in "Satisfactory Condition" as defined herein.

B. "Main line", "Sewer Main", or "Main Sewer" is a common sewer directly controlled by the City of Berkeley.

C. "Lateral", "Building Sewer", or "Lateral Sewer Line" is that part of the horizontal piping of a drainage system which extends from the end of the building drain to the main sewer and conveys the discharge of the building drain to the main sewer.

D. "Private Sewer Lateral" or "Upper Lateral" is the portion of a building sewer from the building drain to a City cleanout, usually located near the curb line. When a building sewer connects to a rear yard sewer main, the entire building sewer or lateral, including the connection to the main sewer, shall be considered a private sewer lateral.

E. "Lower Lateral" or "Lower Lateral Sewer line" is the portion of a building sewer that is located in the public right-of-way or easement and extends from a City cleanout to the main sewer.

F. "Cleanout" is a pipe fitting and associated piping connected to a building sewer or lateral sewer line that provides access to the line for purposes of routine flushing, rodding, cleaning and other maintenance and diagnostic purposes.

G. "Two-Way City Cleanout" or "City Cleanout" is a cleanout at or near the property line or street curb line that is maintained by the City which allows flushing, rodding, cleaning and other maintenance and diagnostic procedures in the sewer lateral.

H. "Private Cleanout" is a cleanout located on the private sewer line.

I. "Satisfactory Condition" is a condition indicated by fulfilling either:

1. Final inspection and approval of a City Building or Plumbing Permit that specifically calls for replacement of the private lateral and disconnection of any area or roof water collection system, including approved redirection of any storm water connections, completed within the previous 20 years; or

2. Approval by the City Engineer of a tape video record of Closed Circuit Television (CCTV) inspection of the private lateral or by a contractor approved by the City Engineer to accomplish such inspection.

J. "Non-sanitary Sewer Connections" is any facility that directly or indirectly conveys storm water, surface water, roof runoff, intercepted groundwater or subsurface drainage into sanitary sewers, including, but not limited to, down spouts, yard drains or other sources of storm water or other run-off.

K. "Structure" is any structure or building as defined in the Berkeley Plumbing Code that is provided with public sewer service by the City of Berkeley.

L. "City Engineer" is the City Engineer or his or her designee.

17.24.030 Standards for Maintenance of Private Sewer Laterals.

A. The standards for maintenance of private laterals are as follows:

1. The private lateral shall be kept free from roots, grease deposits, and other solids, which may impede the flow or obstruct the transmission of waste;

2. All joints shall be tight and all pipes shall be sound;

3. The private lateral shall be free of any structural defects such as cracks, breaks, openings, rodent holes or missing portions, and the grade shall be uniform without sags or offsets;

4. The private lateral shall have cleanouts in accordance with Section 17.24.040. All cleanouts shall be securely sealed with a proper cap at all times; and

5. All non-sanitary sewer connections shall be disconnected and such connections shall be rerouted in accordance with the Berkeley Building and Plumbing Codes and other applicable standards.

B. These standards shall apply to existing private sewer laterals only pursuant to Sections 17.24.050 or 17.24.080 through 17.24.120, or when a person performs any work on a private sewer lateral, in which case such work shall comply with the requirements for repairs and maintenance of private laterals established by the City Engineer and the California Plumbing Code as adopted by the City of Berkeley.

17.24.040 Cleanouts Required.

A. Each sewer lateral shall have a standard two-way cleanout located in the City right-of-way or easement. Such cleanouts shall be installed by the property owner after obtaining all applicable permits from the City.

B. Each private lateral shall also have a privately maintained cleanout within 30 inches of the building or as specified by the California Plumbing Code as adopted by the City of Berkeley, whichever is more restrictive. Such cleanouts shall be installed by the property owner consistent with the California Plumbing Code as adopted by the City of Berkeley, after obtaining all applicable permits from the City.

C. Installation of cleanouts under this section may be undertaken at any time with applicable permits, but shall not be required until testing and/or inspection is required pursuant to Sections 17.24.050, or 17.24.080 through 17.24.120.

17.24.050 Public Nuisance Conditions.

A. A private lateral constitutes a public nuisance when either of the following conditions exists:

1. The piping and fittings have leaks or breaks, or it is otherwise subject to exfiltration or leakage of sewage; or

2. The piping and fittings provide connections other than those permitted by this chapter and the California Plumbing Code as adopted by the City of Berkeley, or is otherwise subject to inflow and infiltration, whether accidentally, negligently, or intentionally.

B. A cleanout constitutes a public nuisance if it:

1. Is uncapped or improperly capped;

2. Has leaks or breaks or is otherwise subject to exfiltration or leakage of sewage; or

3. Has non-sanitary sewer connections or is otherwise subject to inflow and infiltration, whether accidentally, negligently or intentionally.

17.24.060 Determination of Public Nuisance by City Engineer – Appeal.

A. The City Engineer may require the inspection and/or testing of any private lateral, and may determine and declare that a private lateral or cleanout is a public nuisance as defined in this chapter. Testing and inspection and repairs shall be conducted as set forth in regulations adopted by the City Engineer.

B. If the City Engineer determines and declares that a private lateral or cleanout is a public nuisance, the City Engineer may issue a written notice ordering the property owner to make whatever repairs the City Engineer reasonably deems necessary, within a reasonable period of time that shall be specified in the notice.

C. Determinations under this section may be appealed as set forth in Chapter 1.24.

17.24.070 Correction or Abatement.

A. Owners shall obtain all required plumbing and sewer permits prior to making such repairs, and shall retain the inspection card(s), signed and approved by City inspector(s), as proof of completion of work.

B. Upon approval of such repairs and payment of the required fee, the City Engineer shall issue a Sewer Lateral Certificate.

C. In the event a property does not comply with a final notice and order under Section 17.24.060, the City may abate the public nuisances as set forth in Chapter 1.24.

D. The City may recover any costs incurred in abating a public nuisance under this chapter, as set forth in Chapter 1.24.

17.24.080 Inspection at Time of Sale.

A. Prior to the sale of property that contains any structure with a building sewer line that was installed more than 20 years prior to the sale of the property, the owner shall have the building sewer line tested for infiltration and inflow.

B. All required repair or replacement work shall be completed prior to transfer of title. Alternatively, funds may be retained in escrow, or a bond may be posted, sufficient to complete the work within six months thereafter, if permitted by, and subject to any conditions required by, the City Engineer. Except as otherwise provided in this chapter or by the City Engineer, the owner of the property is responsible for compliance with this section.

C. The seller of any real property shall be responsible for disclosing to prospective purchasers that the requirements of this chapter and the compliance status of the real property in question.

17.24.090 Inspection at Time of Major Remodel.

A. Whenever a person applies for a building and/or plumbing permit for a construction valuation that exceeds either \$100,000, or \$50,000 when involving two or more plumbing fixtures, in 2005 dollars, adjusted every year for inflation as shown in the Master Fee Schedule, the property owner shall have the building sewer line tested for infiltration and inflow, unless he or she presents satisfactory proof to the City Engineer that the private lateral sewer line is less than 20 years old or has been repaired but not completely replaced within the last 10 years.

B. In order to ensure compliance with this section, the property owner shall obtain a Sewer Lateral Certificate prior to approval of a building permit application for that work.

C. The City of Berkeley Building Official is hereby authorized to implement this section.

17.24.100 Reserved.

17.24.110 Reserved.

17.24.120 Inspection and Repair – Requirements.

A. All testing and inspection procedures shall be in accordance with standard procedures, or reviewed and approved by the City Engineer.

B. CCTV inspections shall be performed by a qualified licensed plumbing contractor or utility evaluation service, unless the owner presents satisfactory proof to the City Engineer that the private lateral is less than 20 years old or has been repaired but not completely replaced within the last 10 years.

C. All repair or replacement work identified by the testing procedure as necessary to prevent infiltration and inflow must be completed and approved by the City Engineer.

D. If non-sewer connections to the private lateral sewer line are found, the property owner will be required to disconnect them and contain, disperse on site, or redirect, storm water run-off within six months, as required by the City Engineer, unless granted an exception under Section 17.24.140.

E. The property owner shall submit a copy of the inspection card, signed and approved by a City inspector, as proof of compliance.

F. Failure to comply with an order issued under this section shall be deemed a violation of this chapter, and the condition of the private lateral sewer line in such cases shall be deemed, and is hereby declared, a public nuisance.

17.24.130 Sewer Lateral Certificates.

A. All properties governed by this chapter are required to obtain Sewer Lateral Certificates. Sewer Lateral Certificates shall be issued by the City Engineer upon sufficient proof that a property owner has complied with this chapter, and upon payment of any required fee.

B. Sewer Lateral Certificates shall be effective for the following periods of time:

1. A period of 10 years after:

a. Acceptance of a test performed under this chapter if no repairs were required;

b. Inspection and approval by the City of completed alterations (partial repairs) to a lateral or connections to a lateral;

c. Inspection and approval by the City of completed repairs to a lateral or cleanout ordered by the City Engineer.

2. A period of 20 years after inspection and approval by the City of replacement of the private lateral.

17.24.140 Exceptions.

The City Engineer may waive inspections under Sections 17.24.080 through 17.24.90, and/or repairs under Section 17.24.120, if he or she determines that compliance is infeasible.

17.24.150 Reserved.

17.24.160 Fees.

The City Council may establish fees by resolution for administration of this chapter.

17.24.170 Violation – Penalty.

Any violation of any provisions of this chapter shall be deemed a misdemeanor but may be cited and prosecuted, in the discretion of the enforcing officer, as an infraction, and shall be punishable as set forth in Chapter 1.20 of this Code.

17.24.180 Remedies.

The remedies specified in this chapter are cumulative.

17.24.190 Severability.

If any article, section, subsection, paragraph, sentence, clause or phrase of this chapter for any reason shall be held to be invalid or unconstitutional, the decision shall not affect the remaining portions of this chapter. The Council of the City of Berkeley hereby declares that it would have passed this chapter and each article, section, subsection, paragraph, sentence, clause or phrase which is a part thereof, irrespective of the fact that anyone or more articles, sections, subsections, paragraphs, sentences, clauses or phrases are declared to be invalid or unconstitutional.

Section 2. This ordinance shall be effective July 1, 2006.

Section 3. Copies of this Ordinance 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 15 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.

At a regular meeting of the Council of the City of Berkeley held on April 18, 2006, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Councilmembers Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, Wozniak and Mayor Bates.

Noes: None.

Absent: None.

At a regular meeting of the Council of the City of Berkeley held on April 25, 2006, this Ordinance was adopted by the following vote:

Ayes: Councilmembers Capitelli, Maio, Moore, Olds, Wozniak and Mayor Bates.

Noes: None.

Absent: Councilmember Anderson.

ATTEST:

Sara T. Cox
Sara T. Cox, City Clerk

Tom Bates
Tom Bates, Mayor

In effect: May 25, 2006.