

ORDINANCE NO. 7,200–N.S.

REPEALING AND REENACTING CHAPTER 17.24 OF THE BERKELEY MUNICIPAL CODE REGULATING PRIVATE SEWER LATERALS AND AMENDING SECTION 17.16.010 CONCERNING INSTALLATION OF SEWER LATERALS

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

Section 1. That the Berkeley Municipal Code Chapter 17.24 be repealed and reenacted to read as follows:

**Chapter 17.24
ABATEMENT OF NONCONFORMING/SUBSTANDARD SEWER LATERALS ON
PRIVATE PROPERTY**

Sections:

- 17.24.010 Purpose and findings.**
- 17.24.020 Definitions.**
- 17.24.030 Standards for maintenance of private sewer laterals.**
- 17.24.040 Cleanouts required.**
- 17.24.050 Public nuisance conditions.**
- 17.24.060 Determination of public nuisance by City Engineer--Appeal.**
- 17.24.070 Correction or abatement.**
- 17.24.080 Inspection at time of sale.**
- 17.24.090 Inspection at time of major remodels.**
- 17.24.100 Disclosure Required--Remedies.**
- 17.24.110 Reserved.**
- 17.24.120 Inspection and repair--Requirements.**
- 17.24.130 Sewer Lateral Certificates of Compliance.**
- 17.24.140 Exceptions.**
- 17.24.150 Reserved.**
- 17.24.160 Fees.**
- 17.24.170 Violation--Penalty.**
- 17.24.180 Remedies.**
- 17.24.190 Severability.**

17.24.010 Purpose and findings.

A. The purpose of this Chapter is to reduce infiltration and inflow into the sanitary sewer system operated by the City of Berkeley by requiring inspection, testing, repair, replacement, and ongoing maintenance of privately owned sewer laterals within the City of Berkeley, in compliance with SFRWQCB Order R2-2009 and NPDES Permit No. CA0038466, USEPA Administrative Order in docket no. CWA 309(a)-10-007, and the Stipulated Order in United States of America, et al. v. City of Alameda, et al. (N.D. Cal. Case No...CV 09-05684 RS). 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. Such maintenance shall include, when necessary, the repair or replacement of the sewer laterals.

B. In 1986, the Regional Water Quality Control Board, San Francisco Bay Region (SFRWQCB), 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).

C. 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.

D. In addition, there exist in the City numerous storm water inflow connections into Private Sewer Laterals, such as downspouts and storm drains (Non-Sanitary Sewer Connections) on private property.

E. 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 Sewer Laterals and storm drain connections on private property.

F. Infiltration and Non-Sanitary Sewer Connections are major sources of the I/I that occur during the rainy season. Evidence supporting this conclusion includes leakage test data, internal inspection by television, smoke test results, conditions documented by excavations, and direct flow measurements.

G. 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 Private Sewer Laterals as a condition on the sale of property or significant remodeling, and requiring all property owners to eliminate Non-Sanitary Sewer Connections and correct defective sewers.

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. "Building Drain" is that part of the lowest piping of a drainage system that receives sanitary sewage from inside a building and conveys it to the Lateral beginning 30 inches outside the building.

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

C. "Cleanout" is a pipe fitting and associated piping connected to a Lateral that provides access to the lateral for purposes of inspection, and maintenance.

1. "Private Cleanout" is a Cleanout located on the Private Sewer Lateral.

2. "City Cleanout" is a Cleanout at or near the property line or street curb line that is maintained by the City, which complies with current City of Berkeley standards.

D. "Infiltration" is groundwater, runoff from rainfall or any other source that passes through the soil into a Lateral through defects in the sewer pipes and associated structures, and water from Non-Sanitary Sewer Connections.

E. "Inflow" is runoff from rainfall that enters the Lateral through Non-Sanitary Sewer Connections.

F. "Infiltration and Inflow (I/I)" is the combination of inflow and infiltration.

G. "Lateral" is that part of the 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.

H. "Lower Lateral" is the portion of a Lateral that is located in the public right-of-way and extends from a City Cleanout to the Main Sewer.

I. "Main Sewer" or "Sewer Main" is a sanitary sewer line directly controlled by the City of Berkeley and located in the public right of way or City easement that collects flows from more than one sewer Lateral.

J. "Non-Sanitary Sewer Connection" 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 "Private Sewer Lateral" ("PSL") shall have one of the following meanings, depending on the circumstances:

1. In cases where a Lateral connects a Building Drain to a Sewer Main located in a street on which the building site has frontage, the PSL is the portion of the Lateral from the Building Drain to a City Cleanout if one exists, or the location where the City Cleanout is required to be.

2. In cases where a Lateral connects to a Yard Sewer Main, the PSL is the entire Lateral, including the connection to the Yard Sewer Main.

3. In all other cases, the City Engineer shall determine the extent of the PSL based on the applicable circumstances, in a manner that best accomplishes the purposes of this Chapter.

L "Satisfactory Condition" is a condition of a Private Sewer Lateral that is indicated by:

1. Final inspection and approval of a City Building or Plumbing Permit for replacement of the Private Sewer Lateral and disconnection of any Non-Sanitary Sewer Connections, and, if necessary redirection of any storm water connections in a manner approved by the City Engineer, within the previous 20 years; or

2. Approval by the City Engineer of a video record of Closed Circuit Television (CCTV) inspection of the Private Sewer Lateral or by another testing or inspection method approved by the City Engineer.

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

N. "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.

O. "Transfer" is any transaction, whether or not for consideration, in which any land is conveyed from one person or entity to another. "Transfer" does not include:

1. Any conveyance from one or more co-owners of property into or from a revocable trust or *inter vivos*, if the trust is for the benefit of the grantor or grantors and the proportional ownership is not changed;

2. Any conveyance made to a spouse or a registered domestic partner in order to create a joint tenancy or tenancy in common; or

3. Any conveyance between spouses or registered domestic partners resulting from a decree of dissolution of marriage or domestic partnership, or a decree of legal

separation or from a property settlement agreement incidental to a decree.

P. "Yard Sewer Main" is a Sewer Main that is subject to the City's control and maintenance but that is not located in a public right-of-way.

17.24.030 Standards for maintenance of Private Sewer Laterals.

It shall be the responsibility of private property owners to perform all required maintenance, repairs and replacements of PSLs in accordance with this Chapter and any other City standards. Standards for maintenance of the PSL are set forth below.

A. PSLs shall meet the following standards.

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

2. PSLs shall not exhibit any signs of infiltration.

3. PSLs shall not exhibit any signs of exfiltration or leakage.

4. PSL pipe joints shall be tight and all PSL pipes 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.

5. All Non-Sanitary Sewer Connections shall be disconnected, from the PSL and such connections shall be rerouted in accordance with the Berkeley Building and Plumbing Codes and other applicable standards.

6. All cleanouts shall be securely sealed with proper caps or approved overflow device at all times.

B. PSLs shall be brought into compliance with these standards:

1. When required to do so by Sections 17.24.050 or 17.24.080 through 17.24.120;

2. When a person performs any work on a PSL; and

3. When non-compliance with these standards comes to the attention of the City Engineer.

C. All work on PSLs shall be consistent with Section 17.24.120.A.

17.24.040 Cleanouts required.

A. Each Lateral shall have a standard City Cleanout located in the City right-of-way or easement, and such Cleanouts shall be installed by the property owners at their expense after obtaining all required permits, except that if a private lateral connects directly to a manhole in a street or in an easement, the manhole shall be considered the City cleanout, and the entire lateral is private and its maintenance is the property owner's responsibility.

B. Each PSL shall also have a Private Cleanout within 30 inches of the building or as specified by the Berkeley Plumbing Code, whichever is more restrictive. Such Cleanouts shall be installed by the property owners at their expense consistent with the Berkeley Plumbing Code, after obtaining all required permits.

C. Installation of Cleanouts under this Section may be undertaken at any time, 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 PSL constitutes a public nuisance if it:

1. Does not fully comply with Section 17.24.030; or

2. Is subject to excessive I/I as determined by the City Engineer or his or her designee.

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.
3. Has Non-Sanitary Sewer Connections
4. Is subject to entry of I/I for any reason.

17.24.060 Determination of public nuisance by City Engineer--Appeal.

A. The City Engineer may require the inspection and/or testing of any PSL or Cleanout, and may determine that a PSL or Cleanout is a public nuisance as defined in this Chapter.

B. If the City Engineer determines and declares that a PSL or Cleanout is a public nuisance, the City Engineer shall 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. Inspection, testing and repairs shall be conducted consistent with Section 17.24.120.A.

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 any repairs whether required by the City Engineer or for any other reason, 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 of Compliance.

C. In the event a property does not comply with a notice and order under Section 17.24.060, the City may abate the public nuisance 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 any transfer of property that contains any structure with a Lateral, the owner shall have the PSL(s) for all property associated with the parcel number for that property inspected or tested, unless he or she presents satisfactory proof to the City Engineer that the City has issued a Sewer Lateral Certificate of Compliance for that PSL within the immediately preceding 7 years. Alternatively, the owner may replace the PSL without prior inspection or testing.

B. All required repair or replacement work shall be completed and a Sewer Lateral Certificate of Compliance obtained prior to transfer of title. Alternatively, the City Engineer may permit funds in an amount he or she determines to be sufficient to complete the work, to be retained in deposit with the City, subject to the condition that the required work be completed within six months and that the transferor and transferee execute and deliver to the City Engineer a completed Right of Entry authorizing the City or its agent to enter on the property and complete the repairs if they are not completed within six months after close of escrow, as well as any other conditions he or she deems appropriate. In the event the work is not completed within six months of the close of

escrow, the funds shall be forfeited and transferred to the City, which may enter onto the property and complete the repairs. Any additional cost of repairs shall be billed to the current owner and in the event of nonpayment, shall become a lien on the property and may be imposed pursuant to Chapter 1.24.

C. Except as otherwise provided or as allowed by the City Engineer, the owner of the property, including both the seller and the buyer, is responsible for compliance with this Chapter. The seller of any real property shall be responsible for disclosing to prospective purchasers the requirements of this Chapter and the compliance status of the real property in question. Upon transfer of ownership, the buyer will be responsible for the compliance with this Chapter, regardless of any disclosure or failure to disclose.

17.24.090 Inspection at time of major remodels.

A. Whenever a person applies for a building and/or plumbing permit for a construction valuation that exceeds \$50,000 in 2005 dollars, adjusted every year for inflation, the property owner shall have the PSL for the parcel number inspected or tested, unless he or she presents satisfactory proof to the City Engineer that the PSL is less than 20 years old or has been repaired within the prior 7 years pursuant to a permit issued by the City. Alternatively, the owner may replace the entire PSL without prior inspection or testing

B. In order to ensure compliance with this Section, the property owner or agent shall obtain a Sewer Lateral Certificate of Compliance prior to issuance of the building permit for the remodel.

C. The City of Berkeley Building Official is authorized and directed to implement this Section.

17.24.100 Disclosure required--Remedies.

A. At the earliest possible opportunity prior to the sale of any property, each real estate broker or agent representing each owner of such property, or each owner of all or part of such property shall provide the buyer(s) with a legible copy of the Private Sewer Lateral Information Statement as shall be prepared, and modified from time to time, by the City Engineer. Such statement shall contain basic information concerning the requirements of this Chapter and the seller's and buyer's obligation under it.

B. Failure to comply with the requirement of this Section of this Chapter is hereby declared to be a public nuisance.

C. In addition to any other remedies which may be available to any person at law or equity, any person who is injured by any violation of, or failure to comply with, this Section shall be entitled to sue for, and recover from any violator of this Section, all damages proximately resulting from such violation in a court of appropriate jurisdiction, in addition to injunctive and other appropriate relief.

D. The remedies provided by this Section are in addition to any other remedies to which the City may be entitled.

17.24.110 Reserved.

17.24.120 Inspection and repair – Requirements.

A. All testing and inspection procedures shall be in accordance with City approved testing and inspection procedures, including State of California Standard Specifications,

the California Plumbing Code as adopted by the City of Berkeley ("Berkeley Plumbing Code"), the California Building Code as adopted by the City of Berkeley ("Berkeley Building Code"), the Green Book Standard Specifications for Public Works Construction, or other procedure or standard reviewed and approved by the City Engineer.

B. Testing and Inspections shall be performed by a qualified licensed plumbing or sanitation contractor, unless the owner presents satisfactory proof to the City Engineer that the Private Sewer Lateral is less than 20 years old or has been repaired pursuant to a Permit issued by the City within the prior 7 years.

C. In the event that inspection is conducted using CCTV, the City Engineer may reject any video inspection, and order a new inspection, if the video recording of the inspection is not of sufficient quality to adequately assess the condition of the Lateral to the City Engineer's satisfaction.

D. All repair or replacement work identified by the inspection or testing as necessary to prevent I/I must be completed and approved by the City Engineer.

E. If Non-Sanitary Sewer Connections to the Private Sewer Lateral are found, the property owner shall disconnect them, and shall contain, disperse on site, or redirect, storm water run-off, as required by the City Engineer.

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

G. The City Engineer, at his or her discretion, may require a CCTV inspection following completion of repairs or replacement as proof of compliance.

H. Failure to comply with an order issued under this Chapter shall be deemed a violation of this Chapter, and the condition of the Private Sewer Lateral or Cleanout in such cases shall be deemed, and is hereby declared, a public nuisance.

17.24.130 Sewer Lateral Certificates of Compliance.

A. Upon submittal of documentation verifying that a property owner has complied with this Chapter, and payment of any required fee, the City Engineer shall issue a Sewer Lateral Certificate of Compliance.

B. A Sewer Lateral Certificate of Compliance shall be effective for the following periods of time:

1. A period of 7 years after:

a. Acceptance of an inspection or test performed under this Chapter if no repairs were required;

b. Inspection and approval by the City of repairs to a PSL or connections thereto;

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

2. A period of 20 years after inspection or test and approval by the City of a complete replacement of a PSL.

17.24.140 Exceptions.

The City Engineer may extend the time to conduct any repairs or other work under Section 17.24.120, if he or she makes a written determination that compliance is infeasible and stating the reasons for that determination. In such cases, the owner shall record a Notice of Limitation on the affected property using a form approved by the City, which states the deadline by which any repairs or other work shall be completed. Such notice may be removed only upon consent of the City.

17.24.150 Reserved.

17.24.160 Fees.

The City Council shall establish fees by resolution for administration of this Chapter.

17.24.170 Violation--Penalty.

Any violation of any provision of this Chapter shall be deemed a public nuisance and 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. Violations of this Chapter may also be cited pursuant to Chapter 1.28.

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. That Berkeley Municipal Code Section 17.16.010 is amended to read as follows:

17.16.010 Sanitary sewer connection required.

A. Every house and building shall have an independent connection with a sanitary sewer, if such sanitary sewer exists in the street or alley upon which the property abuts.

B. Notwithstanding subdivision A, not more than two buildings located on a single lot under one ownership may be connected to the same building sewer, provided that if the lot is divided such that each building is on a separate lot, an independent sanitary connection shall be provided for lot. No two owners of adjacent lots fronting on the same street shall be permitted to join in the use of the same sanitary sewer lateral.

C. This Section shall not require new connections solely on the basis that a single building is converted to condominium ownership

Section 3. Posting. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 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.

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At a regular meeting of the Council of the City of Berkeley held on July 12, 2011, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.

At a regular meeting of the Council of the City of Berkeley held on July 19, 2011, this Ordinance was adopted by the following vote:

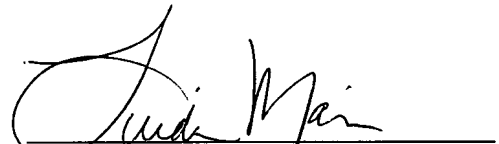
Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.

ATTEST:


Deanna Despain, CMC, City Clerk


Linda Maio, Mayor pro tempore

Date signed: 20 July 11