




Office of the City Manager

ACTION CALENDAR
September 9, 2014

To: Honorable Mayor and Members of the City Council
 From:  Christine Daniel, City Manager
 Submitted by: Andrew Clough, Director, Public Works
 Subject: EPA Litigation Settlement and Amend BMC Chapter 17.24 Abatement of Nonconforming/Substandard Sewer Laterals on Private Property

RECOMMENDATION

Adopt first reading of an Ordinance amending Berkeley Municipal Code Chapter 17.24 Abatement of Nonconforming/Substandard Sewer Laterals on Private Property.

SUMMARY

This report provides information about litigation filed by the United States Environmental Protection Agency (EPA) against the City of Berkeley and other regional agencies concerning sanitary sewer discharges, and describes the various obligations imposed on the City by virtue of the settlement of that litigation. It also outlines amendments to Berkeley Municipal Code (BMC) Chapter 17.24 relating to Private Sewer Laterals that are required by the settlement. Approval of these amendments brings the City into compliance with the EPA mandate requiring implementation of a Private Sewer Lateral (PSL) Ordinance that is “no less stringent” than the East Bay Municipal Utility District (EBMUD) Regional Private Sewer Lateral Ordinance. Finally, the report describes a program designed to provide assistance to low-income residential property owners to comply with the BMC revisions for private sewer laterals.

FISCAL IMPACTS OF RECOMMENDATION

There is no immediate direct fiscal impact from adopting the amendments to the BMC. Costs associated with implementation of the required work are expected to be covered through inspection and permit fees, and sewer rates.

Over the longer term, the work required by the litigation settlement will require significant expenditures to improve the City’s infrastructure. This will be the subject of a forthcoming sewer rate study and proceedings under Proposition 218.

CURRENT SITUATION AND ITS EFFECTS

Sewage from cities in the East Bay is discharged – after treatment – into San Francisco Bay. The discharge of fully treated sewage is allowed by state and federal permits under the federal Clean Water Act and the state Porter-Cologne Act. In large storms, however, the sewer system is overloaded by infiltration and inflow of stormwater

through damaged sewer pipes and private sewer laterals. This results in discharges of partially treated sewage, which is not permitted. In addition, from time to time the sewer system experiences overflows from sanitary sewers due to damage or blockage, such as by tree roots or grease. These overflows are considered violations of the state and federal laws.

The City adopted BMC Chapter 17.24 for Abatement of Nonconforming/Substandard Sewer Laterals on Private Property in April 2006, and the City's Private Sewer Lateral (PSL) compliance program was initiated in October 2006. The original PSL Ordinance was revised in July 2011. The PSL Ordinance requires property owners to inspect, and if necessary, repair/replace their sewer laterals at the time of a sale and/or major remodel. In the last 7 years over 7,000 PSLs have been inspected and repaired or shown to be in compliance.

BACKGROUND

On March 11, 2014, in closed session, the Council authorized the City Manager to enter into a Consent Decree (CD) in *USA v. EBMUD* and *USA v. City of Alameda, et al.* (U.S. District Court, Northern District of California Consolidated Case Nos. C 09-00186-RS and C 09-05684-RS). Because the CD had not been signed by all other parties, Council was not taking final action to be reported out at the time. The CD has now been executed by all parties and lodged with the court. Accordingly, the following information is provided pursuant to BMC section 2.06.120.G.

1. The EPA Lawsuit and Consent Decree

The East Bay Municipal Utility District (EBMUD) provides water and sanitary sewer transmission and treatment for much of Alameda County and a small part of Contra Costa County.¹

All of these agencies have sanitary sewer systems that convey sewage from private property to large EBMUD interceptor pipes that take it to the waste water treatment plant (WWTP) near the Bay Bridge landing, which has a maximum capacity. When inflow exceeds that capacity, sewage is directed to one or more of 3 wet weather facilities (WWF): San Antonio Creek (near Oakland Airport); Oakport Plant (in Oakland); and Point Isabel (in Richmond). At the WWFs the sewage receives primary treatment and disinfection, but not full secondary treatment as at the WWTP, before it is released into the Bay.

Normally, there are no discharges from the WWFs. However, during large storms rain water enters the sewer system through flaws in both the Satellites' systems and PSLs².

¹ The agencies to which EBMUD provides sewage treatment are known as "Satellite" agencies. They are: Alameda, Albany, Berkeley, Emeryville, Oakland, Piedmont, and the Stege Sanitary District (which serves parts of El Cerrito and Kensington).

² PSLs are the pipes that convey sewage from buildings to the City's system. Generally, PSLs extend from buildings to the curb, where they connect to cleanouts and "lower laterals", which connect to sewer

This additional water can amount to several times normal flow, overloading the WWTP inflow and resulting in discharges from the WWFs.

In addition, from time to time the Satellite agencies experience sanitary sewer overflows (SSO) – isolated overflows from sanitary sewers due to damage or blockage, such as by tree roots or grease.

In 2009 EPA and the State and Regional Water Quality Control Boards (collectively the Plaintiffs) sued EBMUD and the Satellite agencies for violation of the Clean Water Act based on: 1) discharges from the WWFs; and 2) SSOs.

All parties agreed that a stipulated settlement would be preferable to litigation. In 2011 the Satellite agencies entered into a stipulated order (SO) under which they were required to take various specified actions, leading to further negotiations and entry of a final CD in 2014. Technical discussions among all parties started after the SO was entered, and settlement negotiations started in January 2013. All parties have now agreed to a comprehensive 22-year Consent Decree that resolves all of the issues in the litigation.

The philosophy behind the CD is that by proper asset management – maintaining, repairing and rehabilitating their sanitary sewer systems – the defendants will be able to reduce the amount of water that flows to the WWTP during storms, so there will be no discharges from the WWFs. To a great extent, proper asset management will also reduce SSOs, although all parties understand that a goal of no SSOs is not realistic. Accordingly, the CD specifies in detail the specific work that each defendant must perform on an annual basis over the next 22 years, the annual reporting that each agency must do to demonstrate that it has performed the required work, and stipulated penalties for failing to do the work or the reporting. In effect, the CD defines the City's sanitary sewer program for the next 22 years.

Due to the length of the CD, the parties agreed on two mid-course check-ins, at 8 and 16 years. At each check-in the defendants will conduct flow monitoring and analysis to determine whether they are on track to meet the goal of no discharges from the WWFs. If they are not, they must identify what they are going to do to meet that goal and commit to doing so. In reality, the defendants will be monitoring their progress annually, and anticipate that if it appears they are not on track they will take the necessary steps before the mid-course check-in.

The CD specifies significant (sometimes daily) penalties for not doing the required work and for not submitting the required annual reports and other data. It is therefore critical that adequate funds are raised and allocated to sanitary sewer work, and that projects are delivered efficiently and on schedule.

mains. The City is responsible for sewer mains and lower laterals, but property owners are responsible for PSLs.

2. PSL Ordinance Amendments

Approximately 50% of the excess water during storms that causes discharges from the WWFs, and which the CD requires the City to eliminate, comes from PSLs. Accordingly, the CD requires the City to adopt a number of amendments to its PSL Ordinance (first adopted in 2006 and revised in 2011) to improve its effectiveness.

Both the SO and CD require the satellite agencies to either participate in EBMUD's regional PSL program or adopt a "no less stringent" local PSL Ordinance. Since the City had already adopted its own PSL Ordinance, it elected to revise that ordinance to be "no less stringent" than EBMUD's. EPA has approved the proposed amendments recommended to Council as "no less stringent."

Changes to the PSL Ordinance include revisions and additions to definitions, and clarification of triggering events and procedures for required testing and issuance of Sewer Lateral Certificates of Compliance (SLC). Highlights of these revisions are:

17.24.010 Purpose and findings: References new requirements mandated by the negotiated CD between EPA, EBMUD, and the satellite agencies.

17.24.020 Definitions: Key new definitions were added, and selected existing definitions revised, including but not limited to: Public Entities, Transfer, and Verification Test. These bring the ordinance into conformance with the EPA's "no less stringent" requirement.

17.24.040 Cleanouts required: Specifies that installation of Cleanouts may be undertaken at any time, but shall not be required until Verification Testing is required pursuant to the Ordinance.

17.24.060 Determination of public nuisance by City Engineer – Appeal: The City Engineer may require Verification Testing (instead of inspection) of any PSL or Cleanout.

17.24.080 Verification Testing at time of transfer: Requires Verification Testing of the PSL (or proof of SLC issued within past 7 years) prior to completing transfer of property. Alternatively, the owner may replace the PSL without prior Verification Testing. Also provides options and specifies requirements for granting of a time extension for completion of verification testing or repair.

When a Transfer involves a unit in a multi-unit structure served by a single lateral or shared laterals, such as a condominium or other common interest development, the homeowners' association or other designated responsible party for this type of multi-unit structure shall determine if the lateral(s) is (are) in compliance and perform any necessary repair or replacement work to achieve compliance.

17.24.090 Verification testing at time of building permits with sufficient valuation: Requires verification testing and issuance of a SLC prior to issuance of a building permit for a construction valuation exceeding \$60,000 dollars.

17.24.100 Properties with greater than 1,000 feet of laterals: Requires owners of properties with Laterals that have a cumulative length greater than 1000 feet (including Public Entities) to Verification Test the entire lateral system by January 1, 2016, and submit a plan for bringing the Lateral into Satisfactory Condition no later than December 31, 2019. After the work is completed, re-certification of the sewer lateral shall occur at twenty (20) year intervals,

17.24.120 Verification Testing and repair – Requirements: Requires verification testing (rather than inspection) in accordance with approved testing procedures.

17.24.130 Sewer Lateral Certificates of Compliance: Clarifies requirement for an SLC to require verification testing rather than inspection.

17.24.150 Public Entities: Requires that public entities (other than the State of California and U.S. government) obtain a SLC or demonstrate compliance with the Ordinance by January 1, 2024. The City will notify all such public entities of this requirement.

3. Active PSL Enforcement and Loan Program

While the PSL Ordinance Amendments will ensure that the City meets its minimum obligations under the Consent Decree with respect to repair and replacement of PSLs, it is to the City's benefit to maximize the repair and replacement of defective PSLs to the greatest extent possible without placing undue burden on property owners. Therefore, it is in the City's interest to actively identify potentially defective PSLs that may contribute excessive infiltration and inflow to the sanitary sewer system, require that they be corrected, and offer financial assistance to property owners for whom such work may represent an undue burden. The City is therefore committed to implementing an Active PSL Enforcement and Loan Program that will accomplish these objectives.

The Enforcement and Loan Program the City will conduct is expected to involve a combination of field investigation methods, including smoke testing and video inspection of PSLs in specific areas that are known to contribute high rates of infiltration and inflow. If a PSL is found to be defective through these investigations, then the property owner would be required to repair or replace the PSL and pass a Verification Test. Financial assistance for income-qualified property owners would be provided in the form of loans that would be due upon sale or transfer of the property. There is an existing Housing loan program for low-income senior or disabled property owners, which has assisted two qualified home owners with PSLs; however, this program will not work for the anticipated level of the active PSL program. Public Works staff will develop a loan program, administered by Public Works and financed through sewer fees, to assist qualified low-income property owners to meet the requirements of the PSL program.

ENVIRONMENTAL SUSTAINABILITY

Amendment of BMC Chapter 17.24 relating to Private Sewer Laterals will help reduce wastewater discharges into San Francisco Bay, thereby benefiting the environment of the entire Bay Area, including Berkeley and other Bay Area residents. The larger

strategy of the CD is to properly maintain existing infrastructure, rather than invest in new assets (such as storage or additional treatment capacity) that will eventually be unnecessary.

RATIONALE FOR RECOMMENDATION

Amendments to the City's existing PSL regulations are required by the Consent Decree, and will provide significant environmental benefits.

ALTERNATIVE ACTIONS CONSIDERED

The City of Berkeley is legally required to either implement the EBMUD Regional PSL Ordinance or maintain its own ordinance on a "no less stringent" basis.

CONTACT PERSON

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Attachment:

1: Ordinance

Link:

1: Consent Decree: *USA v. EBMUD* and *USA v. City of Alameda, et al.* (U.S. District Court, Northern District of California Consolidated Case Nos. C 09-00186-RS and C 09-05684-RS): www.justice.gov/enrd/ConsentDecrees/East_Bay_Consent_Decree.PDF

ORDINANCE - N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 17.24 RELATING TO PRIVATE SEWER LATERALS

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

Section 1. That Chapter 17.24 of the Berkeley Municipal Code is amended to read as follows:

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

Sections:

<u>17.24.010</u>	Purpose and findings.
<u>17.24.020</u>	Definitions.
<u>17.24.030</u>	Standards for maintenance of Private Sewer Laterals.
<u>17.24.040</u>	Cleanouts required.
<u>17.24.050</u>	Public nuisance conditions.
<u>17.24.060</u>	Determination of public nuisance by City Engineer--Appeal.
<u>17.24.070</u>	Correction or abatement.
<u>17.24.080</u>	Inspection Verification Testing at time of sale.
<u>17.24.090</u>	Inspection Verification Testing at time of building permits with sufficient construction valuation major remodels.
<u>17.24.100</u>	Properties with greater than 1,000 feet of Laterals.
	Disclosure required--Remedies.
<u>17.27.110</u>	Disclosure required--Remedies. Reserved.
<u>17.24.120</u>	Verification Testing Inspection and repair--Requirements.
<u>17.24.130</u>	Sewer Lateral Certificates of Compliance.
<u>17.24.140</u>	Exceptions.
<u>17.24.150</u>	Reserved Public Entities.
<u>17.24.160</u>	Fees.
<u>17.24.110</u>	Violation--Penalty.
<u>17.24.180</u>	Remedies.
<u>17.24.190</u>	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 [Consent Decree 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 stormwater 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 stormwater, surface water, roof runoff, intercepted groundwater or subsurface drainage into sanitary sewers, including, but not limited to, downspouts, yard drains or other sources of stormwater 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. "Public Entity" or "Public Entities" is: (1) any city or county; (2) any special district or agency of the state formed pursuant to general law or special act for the local or regional performance of governmental or proprietary functions within limited boundaries; (3) any agency or entity created pursuant to the Joint Exercise of Powers Act (Cal. Gov. Code § 6500, et seq.); (4) a school district or a community college district; (5) the University of California; (6) the California State University; (7) an air pollution control district or an air quality maintenance district; (8) a housing authority; and (9) any other entity with the capacity to own real property created by any of the above. "Public Entity" or "Public Entities" does not include the State of California government or the United States government or any agency, board, or commission thereof.

M. "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 stormwater connections in a manner approved by the City Engineer, within the previous 20 years; or
2. Approval by the City Engineer of the results of a Verification Test a video record of Closed Circuit Television (CCTV) inspection of the Private Sewer

Lateral confirming that it is in compliance with the standards set forth in this Chapter or by another testing or inspection method approved by the City Engineer.

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

NO. "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.

OP. "Transfer" is any transaction, whether or not for consideration, in which any real property, including condominiums as defined in Civil Code section 1351(f), land is transferred or conveyed from one person or entity to another. The term "Transfer" shall be construed broadly to achieve the purposes of this Chapter, subject to the following specific exclusions, which shall be narrowly construed does not include:

1. Any transfer or conveyance from one or more co-owners of property into or from a revocable trust or inter vivos trust, if the trust is for the benefit of the grantor or grantors and the proportional ownership is not changed; however any transfer by a trustee or other fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust shall be considered a transfer;
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.

PQ. "Verification Test" is a test witnessed by the City's authorized representative(s) to verify that a PSL complies with the requirements set forth in this Chapter. The City Engineer shall maintain written procedures for Verification Testing, which shall be made available upon request.

R. "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 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 devices 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 [Verification](#) ~~†~~ [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~~ [Verification](#) ~~†~~ [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. [Verification](#) ~~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 Verification Testing~~ at time of ~~Transfersale~~.

A. Prior to ~~completing any~~ transfer of property ~~on which that contains any structure with~~ a Lateral ~~exists~~, the owner shall have the PSL(s) for all property associated with the parcel number for that property ~~inspected or~~ Verification Tested, ~~and shall submit the results of the Verification Testing to the City Engineer,~~ unless ~~the owner he or she~~ presents satisfactory proof to the City Engineer that the ~~City that the property~~ has a currently valid issued a Sewer Lateral Certificate of Compliance for that PSL ~~within the immediately preceding 7 years~~. Alternatively, the owner may replace the entire PSL without prior ~~inspection or~~ Verification Testing.

B 1. All required repair or replacement work shall be completed and a Sewer Lateral Certificate of Compliance obtained prior to transfer of title.

Alternatively, t

2. The City Engineer may grant a six month extension if the Transferor and Transferee agree to either of the following options.

a. Option 1. The Transferor or Transferee shall deposit ~~permit~~ funds with the City in an amount the City Engineer ~~he or she~~ determines to be sufficient to complete any Verification testing and/or repairthe work; or

b. Option 2. The Transferee shall submit a signed contract with a licensed plumbing contractor to have any Verification Testing and/or repair required by the City Engineer completed within six months after close of escrow.

3. Under both Option 1 and Option 2, ~~to be retained in deposit with the City, subject to the condition that the required work be completed within six months and that the t~~Transferor and ~~t~~Transferee must execute and deliver to the City Engineer a binding agreement in a form acceptable to the City: (a) authorizing a completed Right of Entry authorizing the City or its agent to enter on the property and complete any Verification Testing and/or repairs the City Engineer deems appropriatethe repairs if such Verification Testing and/or repairs is they are not completed within six months after close of escrow; (b) containing, as well as any other conditions the City Engineer he or she deems appropriate, including but not limited to provisions holding the City harmless for any damage that may occur as a result of undertaking and completing any Verification Testing and/or repairs; (c) ~~In providing that the event the work is not completed within six months of the close of escrow, any~~

~~the funds deposited with the City under Option 1 shall be forfeited and transferred to the City upon commencement of the Verification Testing and/or repair by the City or its agent; (d) providing that, which may enter onto the property and complete the repairs. Any additional cost of Verification Testing and/or repair that is not covered by a forfeited deposit 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; (e) waiving any rights under state or local law to appeal the amount or imposition of a lien under Chapter 1.24 or other applicable authority; and (f) providing for the refund of any forfeited amount that is not required to complete the Verification Testing and/or repair.~~

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.

D. When a Transfer involves a unit in a multi-unit structure served by a single Lateral or shared Laterals, such as a condominium or other common interest development, the homeowners' association or other designated responsible party for this type of multi-unit structure shall determine if the Lateral(s) is (are) in compliance with this Chapter perform any necessary repair or replacement work to achieve compliance.

17.24.090 Inspection Verification Testing at time of building permits with sufficient valuation major remodels.

A. Whenever a person applies for a building and/or plumbing permit for a construction valuation that exceeds ~~\$60,000~~ \$50,000, in 2005 dollars, adjusted every year for inflation, the property owner shall have the PSL for the parcel number ~~inspected or Verification Tested~~ and shall submit the results of the Verification Testing to the City Engineer, unless ~~the owner he or she~~ presents satisfactory proof to the City Engineer that the property has a currently valid Sewer Lateral Certificate of Compliance for that PSL 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 Verification 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 construction, except as set forth in subdivision (C) remodel.

C. The City of Berkeley Building Official is authorized and directed to implement this Section, and may extend the time to conduct any Verification Testing or repair or replacement under this Section if the PSL replacement is an integral part of the construction project, in which case such repair or replacement and Verification Testing shall be completed prior to final inspection.

17.24.100 Properties with greater than 1000 feet of Laterals.

Owners of properties with Laterals that have a cumulative length greater than 1000 feet shall, including Public Entities, no later than January 1, 2016, Verification Test the entire Lateral system, and submit for approval by the City Engineer a plan for repairing any public nuisance conditions under Section 17.24.050 and bringing the Lateral into Satisfactory Condition no later than December 31, 2019. After the work is completed, re-certification of the sewer lateral shall occur at twenty (20) year intervals,

17.24.1100 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.

17.24.120 Verification Testing Inspection and repair--Requirements.

A. All Verification 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. Verification 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 property has a currently valid Sewer Lateral Certificate of Compliance for that PSL. ~~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 Verification Test inspection or testing as necessary to prevent I/I must be completed and approved by the City Engineer.

ED. 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, stormwater run-off, as required by the City Engineer.

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

GF. The City Engineer, at his or her discretion, may require a [CCTV-Verification Testing inspection](#) following completion of repairs or replacement as proof of compliance.

HJ. 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 a [Verification n inspection or t](#)est performed under this Chapter if no repairs were required;
 - b. [Verification Testing 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 [Verification inspection or t](#)est 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 [Public Entities Reserved.](#)

[A. No later than January 1, 2024, and periodically thereafter at intervals consistent with Section 17.24.130, every Public Entity shall obtain a Sewer Lateral Certificate or otherwise demonstrate to the City that its Private Sewer Laterals are in compliance with this Chapter. The City will notify all Public Entities in Berkeley of this requirement.](#)

[B. This Chapter applies to Public Entities only to the extent permitted by law. As to the United States government, the State of California and agencies, boards, and commissions thereof, and other Public Entities that are not legally required to comply with this Chapter, this Chapter nevertheless:](#)

1. [embodies the appropriate practices and standards that those entities should observe, in order to comply with the requirements of the Clean Water Act and the Porter-Cologne Act; and](#)
2. [represents the City of Berkeley's request that they do so.](#)

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 any one or more articles, Sections, subsections, paragraphs, sentences, clauses or phrases are declared to be invalid or unconstitutional.

Section 2. 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 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.