

ORDINANCE NO. 2012-02

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PINOLE
ADDING CHAPTER 13.20 "SANITARY SEWER LATERALS"
TO THE PINOLE MUNICIPAL CODE**

WHEREAS, the testing, repair, maintenance, renovation and timely replacement of private building sewer laterals connected to public sewers protects the public health, safety and welfare by preventing or mitigating potentially harmful discharges of untreated wastewater into the environment through leaky or unsound sewer laterals; and

WHEREAS, a comprehensive program that enforces routine maintenance of building sewer laterals fosters compliance with requirements of the Clean Water Act, 33 U.S.C. § 1251, et. seq., the U.S. Environmental Protection Agency ("EPA"), the State of California Water Resources Control Board ("SWRCB"), and the San Francisco Regional Water Quality Control Board ("SFRWQCB") by reducing both infiltration and inflow ("I&I") and sewer system spills and overflows ("SSOs"); and

WHEREAS, in May 2008, the City of Pinole prepared a Master Plan of its sanitary sewer collection system; and

WHEREAS, as part of that Master Plan, flow measurements were made during wet weather days, video inspections were completed and segments of the collection system were smoke tested all in an effort to address I&I; and

WHEREAS, the Master Plan determined that flows at the treatment plant increase by more than four times during wet weather events due to I&I; and

WHEREAS, the Master Plan identifies that the I&I comes from both private laterals, as well as the public sewer system; and

WHEREAS, the City of Pinole programs approximately \$350,000 per year to line the public sewer system to remove sources of I&I in the public portion of the collection system; and

WHEREAS, the Master Plan also concluded that smoke testing studies have revealed that a large number of private sewer laterals were found to be deficient; and

WHEREAS, the Master Plan has concluded that private sewer laterals contribute significantly the I&I problem; and

WHEREAS, the Master Plan recommended changes to the City's maintenance procedures, to increase the resources devoted to video inspections and recommended areas of focus for the City to reduce I&I; and

WHEREAS, some of the significant efforts the City has taken over the last four years to reduce I&I are as follows:

- In 2007, 158,000 feet of line was hydroflushed; 1,820 feet of line was rodded; and 25,033 feet of pipe was inspected by camera.
- In 2008, 11,500 feet of line was hydroflushed; 18,200 feet of line was inspected using cameras; 60,011 feet of line was smoke tested; 2,191 feet of pipe was relined; and 713 feet of piping was rerouted to reduce SSO occurrences.
- In 2009, 50,474 feet of line was hydroflushed; 23,342 of line was inspected using cameras; and 2,587 feet was relined.
- In 2010, 54,906 feet of line was hydroflushed; 1,165 feet of line was rodded; and 15,429 feet of line was inspected using cameras.
- In 2011, 21 perforated manhole lids were replaced with sealed manhole lids.
- In 2011, five manholes that showed signs of infiltration were sealed.

WHEREAS, the greater the amount of flow within the system, the greater the costs to the City. The City is charged for sanitary sewer services based on the flows it sends to the Pinole-Hercules Waste Water Treatment Plant (“WWTP”). This is one of the most expensive costs of operating the wastewater system. Additionally, when the flow into the WWTP exceeds treatment capacity, the WWTP uses its shallow water outfall instead of its routine deep water outfall. This activity can and has received fines from the SFRWQCB; and

WHEREAS, the sewer service fee billed to City residents pursuant to Chapter 13.05 of the Pinole Municipal Code is placed into the City’s Sewer Enterprise Fund, which pays WPCP costs; it is therefore it is in the interest of both City government and City residents to test, repair, maintain, renovate, and replace sewer building laterals.

NOW, THEREFORE, the City Council of the City of Pinole does ordain as follows:

Section 1. Municipal Code Amendment – Addition of Chapter 13.20 “Sanitary Sewer Laterals”.

Chapter 13.20 “Sanitary Sewer Laterals” is hereby added to the Pinole Municipal Code with the following language:

13.20.010 PURPOSE

The purposes of this Chapter are: (a) to provide for operation and maintenance of the City’s sewer system in a reliable and serviceable condition; (b) to eliminate or minimize sanitary sewer overflows by eliminating or minimizing stoppages and reducing sources of inflow and infiltration into the City’s sewer system; (c) to comply with applicable legal requirements pertaining to the City’s sewer system; (d) to protect the public health and safety by establishing and providing a mechanism for enforcing performance standards for private sewer laterals that

connect or are connected to a Public Sewer main; and (e) to comply with the goal of the City's Sewer System Management Plan which was adopted at the request of the State Water Resource Control Board, and to maintain all parts of the sewer system and reduce and prevent sanitary sewer overflows.

13.20.020 DEFINITIONS

As used in this Chapter, regardless of case, the following words, phrases and terms shall have the following definitions:

(a) *AIR TESTING* or *AIR TESTED*. A method whereby a Building Sewer Lateral is pressurized with air for the purpose of detecting leaks or defects in the pipe being tested. An Air Tested Building Sewer Lateral will be deemed defective for purposes of this Chapter if it does not hold three and one-half (3.5) pounds per square inch of air pressure (psi-air) for at least two (2) minutes with at least two and one-half (2.5) psi-air remaining at end of the Air Test.

(b) *BACKFLOW PREVENTION DEVICE*. Includes, but is not limited to, backwater overflow devices, backwater check valves, pressure relief devices, shutoff systems, and any other devices the City may approve for the purpose of preventing or minimizing the possibility that raw Sewage will back up into any structure or for any similar purpose.

(c) *BUILDING DRAIN*. That part of the lowest piping of a building drainage system which receives the discharge from soil, waste and other drainage pipes within the building or structure and conveys it to the Building Sewer Lateral. The point of connection of the Building Drain to the Building Sewer Lateral shall be within two (2) feet of the outside of the Building Wall. A clean-out and Backflow Prevention Device shall be installed at the point of connection of the Building Drain to the Building Sewer Lateral.

(d) *BUILDING SEWER LATERAL*. That part of a drainage system which extends from the end of the Building Drain and conveys discharge to a Public Sewer or other point of disposal. The Building Sewer Lateral shall terminate at the wye or other Manufactured Connection to the Public Sewer.

(e) *BUILDING WALL*. The exterior component part of a structure built, erected, framed and designed for the housing, shelter, enclosure or support of persons, animals, or property of any kind.

(f) *CERTIFICATE OF COMPLIANCE*. A written certificate issued to a Property Owner by the Public Works Director or his/her designee certifying that a Building Sewer Lateral is properly equipped, structurally sound and complies with all standards established by the City.

(g) *DEFECTIVE SEWER LATERAL*. Any Building Sewer Lateral that displays leaks or defects upon the completion of inspection or that is deemed by the City, in its discretion, to be defective upon completion of Air Testing or any other testing method required by the City.

(h) *INSPECTION*. A process whereby both a video camera and/or smoke are placed into and run through the inside of a Building Drain, Building Sewer Lateral or Public Sewer for the purpose of detecting leaks or other obvious defects.

(i) *MANUFACTURED CONNECTION.* A commercially manufactured and available sewer “wye” or “tee” fitting of the proper size and material for the subject application.

(j) *PROPERTY OWNER.* Any individual or entity owning property within the boundaries of the City that is connected to a Public Sewer.

(k) *PUBLIC SEWER.* The sanitary sewers owned or maintained by the City lying within the limits of the public streets, roads, easements, reserves, non-exclusive easements or other public rights-of-way serving or intended to serve two (2) or more separate properties, persons, or parcels. That portion of the Building Sewer Lateral which may lie within any public street or right-of-way is not a Public Sewer in the City.

(l) *SEWAGE.* Any liquid or solid waste.

(m) *SMOKE TESTING.* A method through which smoke is forced through the sewer lateral waste and/or drain pipes under a slight pressure to find leaks and/or discover evidence of a Defective Sewer Lateral.

13.20.030 REQUIREMENT FOR BACKFLOW PREVENTION DEVICE

(a) *New Buildings.* All new Building Sewer Laterals, including sewer lateral replacements, shall be equipped with a clean-out riser and be fitted with a Backflow Prevention Device of type and materials as approved by the City.

(b) *Existing Buildings.* All existing buildings shall be equipped with a clean-out riser. Any existing building in which the elevation of the lowest floor is less than twelve (12) inches above the rim elevation of the nearest upstream manhole or junction structure in the reach of a City main sewer into which a Building Sewer Lateral connects, shall also be protected from backflow of Sewage by installing a Backflow Prevention Device of a type and in the manner prescribed by the City.

(c) *All Buildings.* Any such Backflow Prevention Device shall be installed by the Property Owner of the property on which the building is constructed, and shall be located on the lateral between the building and the property line, preferably at the location of the clean-out. The Backflow Prevention Device, if below grade, shall be enclosed in a suitable concrete utility box with removable cover and shall be readily accessible for Inspection and maintenance. The installation of any such Backflow Prevention Device shall be at the sole cost and expense of the Property Owner. The maintenance of the Backflow Prevention Device shall be the sole obligation of the Property Owner or the Property Owner’s successor in interest. The City shall be under no obligation to ascertain that the Backflow Prevention Device continues in operating condition.

13.20.040 UNLAWFUL TO MAINTAIN DEFECTIVE SEWER LATERAL OR IMPROPERLY CONNECTED SEWER LATERAL

It shall be unlawful for any Property Owner to maintain a Building Sewer Lateral in a defective condition. As used in this Chapter, “defective condition” includes, but is not limited to: (1) displaced joints, leaks or breaks; (2) root intrusion; (3) substantial deterioration; (4) damaged,

uncapped or missing sewer clean-out; (5) damaged or missing Backflow Prevention Device; (6) in a condition that will allow infiltration and inflow of extraneous water, including, but not limited to rain, storm water or groundwater, or which allows exfiltration of Sewage; (7) in a condition that materially increases the possibility of a blockage or overflow; (8) constructed without a proper permit or with materials not approved by the City; (9) lack of a Manufactured Connection to the City's sewer system; (10) otherwise in violation of City requirements; or (11) in such a condition that the tests required by this Chapter cannot be accomplished to the satisfaction of the City.

All sewer laterals or sewer clean-outs which contain sump pumps, down spouts or yard drains that discharge into the Public Sewer, and all other sources of accidental, negligent or intended introduction of storm runoff or similar waters into the Public Sewer are hereby declared unlawful and are a public nuisance, and shall be abated by the Property Owner, who is hereby required to remove or correct such improper sewer connections.

13.20.050 EVENTS TRIGGERING THE REQUIREMENT TO UNDERGO SEWER LATERAL CLEANING AND INSPECTION

(a) Except as provided in subsection (b) of this Section and as provided in Section 13.20.060 (Common Interest Developments), all Building Sewer Laterals for those new or existing buildings including but not limited to those serving residential, multiple residential, commercial and industrial properties that are connected to the Public Sewer, shall be cleaned and inspected as required in this Chapter and at the Property Owner's expense when any of the following events occur:

- (1) The application for a certificate of occupancy for a new building.
- (2) The installation of additional plumbing facilities that produce a major increase (in the sole judgment of the City) in Sewage flow from the house, building, property or other structure served.
- (3) A change of use of the house, building, property or other structure served from residential to business, commercial, or other non-residential use; or from non-residential, non-restaurant, non-commercial, non-industrial to restaurant, commercial or industrial uses.
- (4) Upon repair or replacement of any portion of a Building Sewer Lateral.
- (5) Upon determination by the City that the cleaning, testing, repair or replacement is required for the protection of the public health, safety and welfare.
- (6) Prior to the close of escrow upon a sale or other transfer of the house, building, property or other structure served or, if there is no escrow, prior to recording a deed or other document transferring title to the house, building, property or other structure served. A transfer of ownership between family members or into a revocable or irrevocable living trust does not require testing if reassessment of property value is not required by the Contra Costa County Tax Assessor.

(7) In a probate or other testamentary proceeding or in the event of a transfer pursuant to the terms of a joint tenancy termination, tenants in common termination, or other similar instrument, within one hundred eighty (180) days after the sale, transfer or conveyance of the house, building, property or other structure served.

(b) The following are exceptions to the sewer lateral cleaning and Inspection requirements provided in subsection (a) of this Section:

(1) those buildings that were built within ten (10) years or less of the enactment of this Chapter; or

(2) buildings that have a Building Sewer Lateral that was replaced within ten (10) years of the triggering event provided in subsection (a) of this Section.

13.20.060 COMMON INTEREST DEVELOPMENTS – 10 YEAR INSPECTION REQUIREMENT

The homeowners' association of a common interest development in which several individually-owned units share common sewer laterals shall provide the City with inspection verification of all privately owned Building Sewer Laterals within the common interest areas at least once every ten (10) years for compliance with the duties and obligations imposed by this Chapter. If no homeowners' association exists, then the individual unit owners, both jointly and individually, shall be liable for the duties and obligations with respect to Building Sewer Laterals as established by the Pinole Municipal Code.

13.20.070 INSPECTION PROCEDURES AND CRITERIA

(a) Inspection Procedures.

(1) The Inspection shall be conducted by a licensed contractor qualified to provide video inspections. The contractor must have both a City of Pinole Business License and a State of California Contractor's License. The Department of Public Works will maintain a list of contractors on file at City Hall.

(2) All Building Sewer Laterals shall be inspected by video.

(3) The Property Owner shall submit a video recording of the Building Sewer Lateral Inspection to the Department of Public Works for review along with the designated Inspection fee. At the beginning of such video, the qualified contractor shall state the address of the property and take a photograph of the home that the Property Owner shall submit to the Department of Public Works with the video.

(4) The Property Owner or an agent for the Property Owner shall notify the City of the time and date of the Inspection at least seven (7) calendar days prior to the Inspection.

(5) Prior to testing, the Building Sewer Lateral shall be thoroughly cleaned.

(6) An Inspection shall be valid for a period of six (6) months from the date of the Inspection. If a Property Owner fails to obtain a Certificate of Compliance within six (6) months after obtaining an Inspection, the Department of Public Works may, in its discretion, require the Property Owner to obtain another Inspection before issuing a Certificate of Compliance.

(b) Inspection Criteria. A property complies with the provisions of this Section if the Inspection verifies all of the following conditions as approved by the Director of Public Works:

(1) The Building Sewer Lateral is free of roots, grease deposits, and other solids which may impede or obstruct the transmission of Sewage.

(2) There are no improper or illegal connections to the Building Sewer Lateral such as sump pumps, down spouts or area drainage facilities.

(3) All joints in the Building Sewer Lateral are tight and sound to prevent the exfiltration of Sewage and the infiltration of groundwater, storm water and/or rain water.

(4) The Building Sewer Lateral is free of structural defects, cracks, breaks, or missing portions and the grade is reasonably uniform without major sags or offsets.

(5) The Building Sewer Lateral is equipped with at least one (1) clean-out located within five (5) feet of the building footprint and with a Backflow Prevention Device as required by Section 13.20.030.

(6) None of the other defective conditions referred to in Section 13.20.040 exist on the property.

13.20.080 MITIGATION OF FAILED TEST OR INSPECTION

(a) Notice and Repair. When the Director of Public Works determines, in his or her discretion, that a Building Sewer Lateral is in a defective condition, the City shall provide a written notice of violation that meets the criteria in Section 13.20.140. The Property Owner shall cause all repairs necessary to bring the Building Sewer Lateral into compliance. All costs of repair or replacement of the Building Sewer Lateral shall be borne by the Property Owner.

(b) Additional Inspection. Upon completion of repairs to or replacement of the Building Sewer Lateral, the Property Owner shall have another Inspection conducted in order to verify that the repairs or replacement have been properly completed, pursuant to Section 13.20.070.

13.20.090 REPAIR OF BUILDING SEWER LATERAL – EXTENSION OF TIME FOR PROBATE PROCEEDINGS

(a) Probate and Testamentary Proceedings. For properties sold or transferred in a probate or other testamentary proceeding, pursuant to the termination of a joint tenancy or similar proceeding, any repair or replacement of a Building Sewer Lateral shall be completed within ninety (90) days after the probate sale or other transfer. If repair or replacement does not

occur within ninety (90) days after probate sale or transfer, the requirement to comply with this Chapter becomes an obligation of the new Property Owner. The Public Works Director may provide additional extensions of time in writing.

13.20.100 RIGHT OF ENTRY

As a condition of receipt of City sewer services and use of the Public Sewer, the Public Works Director, or his or her designee, may enter, conduct an Inspection, collect wastewater samples, and test any Building Sewer Lateral, building, structure, or premise to secure compliance or prevent a violation of this Chapter. Unless there is an emergency threatening the public health, safety or welfare, the Public Works Director shall provide at least three (3) business days' notice to the Property Owner and/or tenant of intent to enter upon property. The Public Works Director may also request that a Property Owner provide all written records of Inspection, maintenance, repair and replacement at the time of Inspection of the Building Sewer Lateral or within ten (10) or more business days after receipt of the request.

13.20.110 BUILDING SEWER LATERAL COMPLIANCE AND ISSUANCE OF CERTIFICATE OF COMPLIANCE

The City shall review the final submitted Inspection for compliance with this Chapter. When all conditions are met to the satisfaction of the City, the Building Sewer Lateral shall be certified as complying with the provisions of the Pinole Municipal Code. The City shall thereupon issue a Certificate of Compliance to the Property Owner, noting that the Building Sewer Lateral serving the property is properly equipped, structurally sound and meets the requirements of the City. Once a Certificate of Compliance is issued, the Building Sewer Lateral for which the Certificate of Compliance is issued shall not require testing for a period of ten (10) years from the date of issuance of the Certificate of Compliance unless the City has reason to believe the Building Sewer Lateral is in a defective condition. The Certificate of Compliance shall not imply a warranty or guarantee of any kind.

13.20.120 HARDSHIP DEFERRALS FOR REPAIR OR REPLACEMENT

(a) In the event that the Property Owner establishes to the satisfaction of the City that repair or replacement of a Building Sewer Lateral before the close of escrow in a non-probate sale will result in undue hardship inconsistent with the purpose or intent of this Chapter, a written request for hardship status may be submitted to the Public Works Director. The Public Works Director shall make a hardship finding only if the requesting Property Owner presents written facts that clearly demonstrate (in the Public Works Director's sole discretion) that the Property Owner's payment for and completion of a Building Sewer Lateral repair or replacement at the required time would result in an undue hardship. If hardship status is granted, the Property Owner who is selling the property, or the purchaser of such property may request the City to defer the Building Sewer Lateral repair up to one hundred and eighty (180) days.

(b) For purposes of this section, "undue hardship" shall be defined as (1) the severe illness or incapacitation of the Property Owner; (2) the immediate transfer or removal of the Property Owner from the state, thereby making the hiring of a contractor to repair or replace the Building Sewer Lateral impractical or overly burdensome; or (3) any physical or financial

situation that would render compliance with the time limits for the repair or replacement of Building Sewer Lateral extraordinarily difficult or impractical. The Property Owner shall bear the burden of submitting documentation and proving the existence of such a bona fide hardship to the satisfaction of the Public Works Director.

(b) Any Property Owner to whom a hardship finding is granted shall be given written notice of the finding. Said notice shall inform the Property Owner that the Building Sewer Lateral repair or replacement requirement is only deferred up to one hundred eighty (180) days. A copy of the notice shall be sent to both the Property Owner and, if applicable, the purchaser of the property.

(c) In the event of a failure to comply with this Chapter within the allotted time, the City may bring an enforcement action and exercise any other remedy provided by the Municipal Code and/or applicable law against the Property Owner and any other responsible party. In addition thereto, any Property Owner who fails to fully comply with this Chapter shall be responsible for all damages that arise from or relate to such failure. For purposes of this Section, “damages” include all compensatory damages, fines, penalties, assessments, attorneys fees, costs and other monetary exactions that may be awarded to, levied or assessed by any person, firm, corporation, company or public entity.

13.20.130 NOTICES TO CORRECT VIOLATIONS

If the Public Works Director receives notice that a Building Sewer Lateral does not or may not meet the standards set forth in this Chapter and the Property Owner does not agree in writing to perform the repairs or replacements necessary to bring the Building Sewer Lateral into compliance, then the Public Works Director shall give written notice of violation to the Property Owner of any conditions that violate this Chapter. Such notice shall be provided using first class U.S. mail and shall specify the repair or replacement necessary to correct the condition and the time in which to make the correction, and shall advise the Property Owner of the enforcement provisions of this Chapter. If the repairs are not completed within the time allowed by the City, or if the City determines that the property may be transferred before the required testing or repairs can be completed, the City shall record a notice of violation in the official records of Contra Costa County specifying the nature of the violation and the action needed to correct it. The notice shall only be rescinded when the Building Sewer Lateral serving such property has been repaired or replaced to the satisfaction of the City. Recording a notice of violation is in addition to all other remedies available to the City.

13.20.140 COORDINATION OF LATERAL REPAIRS WITH CITY UTILITY AND STREET IMPROVEMENT PROJECTS

(a) If a Building Sewer Lateral otherwise needs repair or replacement, the Property Owner repairing or replacing the Building Sewer Lateral shall comply with all requirements of this Chapter and any other requirements imposed by the City to repair or replace the paving on the public right-of-way. The City may require (at the sole discretion of the City) that a certified paving contractor complete the necessary paving.

(b) Whenever the City plans a project to maintain, repair or replace a Public Sewer that involves excavation of a street or a street improvement project, the City shall notify all Property Owners whose Building Sewer Laterals connect to that Public Sewer main where the project is to be performed. The City shall work with interested Property Owners to develop a comprehensive program for repair or replacement of Building Sewer Laterals needing replacement at the same time the City's project is performed.

13.20.150 REGULATIONS TO IMPLEMENT THIS CHAPTER

The City Manager or his or her designee is authorized to and shall establish rules, regulations, guidelines and policies for implementing and enforcing this Chapter.

13.20.160 NUISANCE

Any Building Sewer Lateral or appurtenance thereto that is in violation of this Chapter is hereby declared to be unlawful and a public nuisance and subject to abatement pursuant to Chapters 1.12 and 8.24 of the Pinole Municipal Code, and as currently in effect or as hereafter amended. Such nuisance conditions include, but are not limited to, any Defective Sewer Lateral, any Building Sewer Lateral with or sewer clean-outs which contain leaks or breaks; any Building Sewer Lateral to which a clean-out and a Backflow Prevention Device is not properly attached or properly functioning; any uncapped or improperly capped sewer clean-outs; sump pumps, downspouts, area or yard drains, or other sources which discharge into the Public Sewer; and all other sources of accidental, negligent or intended introduction of storm water run-off or similar waters into the Public Sewer.

Section 2. Severability.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of this ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council of the City of Pinole hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 3. California Environmental Quality Act ("CEQA").

This ordinance is not a "project" within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in a direct or reasonably foreseeable indirect physical change in the environment.

Section 4. Effective Date.

In accordance with California Government Code section 36937, this ordinance shall take effect and be in force on the thirty-first day after adoption.

Section 5. Publication.

Within fifteen days after the passage of this ordinance the City Clerk shall cause this ordinance or a summary thereof to be published or to be posted in at least three public places in the City of Pinole in accordance with the requirements of California Government Code section 36933.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the Pinole City Council on the 17th day of January, 2012, by the following vote:

AYES	Banuelos, Green, Long, Murray, Swearingen
NOES	None
ABSTAIN	None
ABSENT	None

PASSED AND ADOPTED on this 20th day of November, 2012, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN: