
City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. 83469 E.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR HIS DESIGNEE TO SIGN A STATEMENT OF ROLES AND RESPONSIBILITIES WITH THE EAST BAY MUNICIPAL UTILITY DISTRICT FOR IMPLEMENTATION OF THE EAST BAY REGIONAL PRIVATE SEWER LATERAL PROGRAM

WHEREAS, the U.S. Environmental Protection Agency (EPA) is requiring the City of Oakland and EBMUD to develop and implement a regional private sewer lateral certification program; and

WHEREAS, such regional private sewer lateral is required to address infiltration and inflow (I/I) into the entire private sewer lateral, upper building sewer lateral and lower building sewer lateral; and

WHEREAS, in February 2010 the East Bay Municipal Utility District (EBMUD) adopted a Regional Private Sewer Lateral (PSL) Ordinance to address infiltration and inflow (I/I) into upper building sewer laterals; and

WHEREAS, EBMUD's Regional Private Sewer Lateral Ordinance applies to the jurisdictions in the District's SD-1 wastewater service area including the City of Oakland; and

WHEREAS, the U.S. Environmental Protection Agency (EPA) is requiring the City of Oakland to extend the EBMUD PSL Ordinance to apply to lower building sewer laterals; and

WHEREAS, the City of Oakland and EBMUD are required to sign a Statement of Roles and Responsibilities for Implementation of the East Bay Regional Private Sewer Lateral Program; and

WHEREAS, a copy of said Statement of Roles and Responsibilities is attached as *Exhibit A*; now, therefore be it

RESOLVED: That the City Administrator or his designee is hereby authorized to sign said Statement of Roles and Responsibilities between the City and the East Bay Municipal Utility District for Implementation of the East Bay Regional Private Sewer Lateral Program.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 5 2011, 20

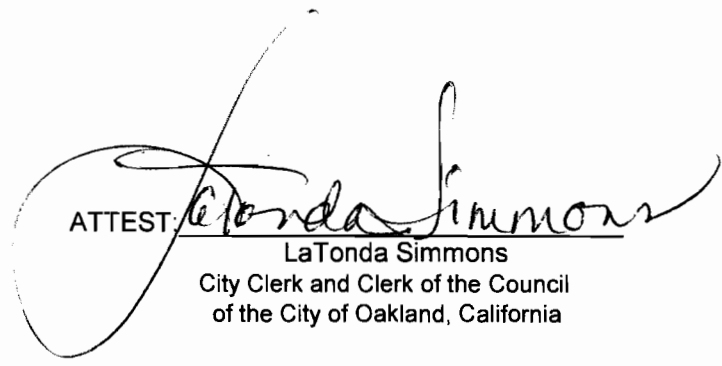
PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, ~~BRUNNER~~, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF, and
PRESIDENT REID - 7

NOES - 0

ABSENT - 0

ABSTENTION - Brunner - 1

ATTEST: 
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

**STATEMENT OF ROLES AND RESPONSIBILITIES
BETWEEN THE CITY OF OAKLAND (OAKLAND)
AND THE EAST BAY MUNICIPAL UTILITY DISTRICT (DISTRICT)
FOR IMPLEMENTATION OF
EAST BAY REGIONAL PRIVATE SEWER LATERAL PROGRAM**

DEFINITIONS

1. Compliance Certificate: A certificate issued by the DISTRICT indicating that the private sewer lateral complies with the DISTRICT's verification test requirements.
2. Enforcement: Punitive measures taken by DISTRICT to achieve compliance by those failing to satisfy the Regional Private Sewer Lateral (PSL) Ordinance requirements.
3. Outreach Materials: Information prepared by DISTRICT, and mutually agreed to by OAKLAND and DISTRICT, about the Regional PSL Program describing procedures, processes, and fees for distribution to property owners, real estate and escrow professionals, contractors and other interested parties.
4. Regional Private Sewer Lateral (PSL) Ordinance: East Bay Municipal Utility District Ordinance No. 311 Section VIII titled "Regulation of Upper Sewer Laterals" that sets forth requirements for upper laterals to be inspected and if necessary repaired or replaced when certain triggers are met by a property owner.
5. OAKLAND'S Municipal Code: City of Oakland's local municipal ordinances and regulations.
6. Regional Private Sewer Lateral (PSL) Program: The comprehensive management effort to implement the requirements of both the Regional PSL Ordinance and related portions of OAKLAND'S Municipal Code. The Regional PSL Program requires the testing of privately owned sewer laterals and where needed, repair or replacement of defective laterals by property owners who are:
 - selling their homes;
 - performing building remodel projects in excess of \$100,000; or
 - changing their water meter size.

7. Verification Test: A test consisting of a low pressure air or water exfiltration test conducted on a private sewer lateral to ensure that the lateral is free of leaks.
8. Waiver Process: OAKLAND'S process to enable a property owner to receive a waiver for performing work on the lower lateral under certain approved conditions.
9. Exemption Certificate: A certificate issued by the DISTRICT when the property owner provides appropriate evidence, such as a valid building permit, showing that the sewer lateral was replaced in total less than 10 years ago. When an Exemption Certificate is issued the property owner does not have to obtain a Compliance Certificate.

OUTREACH

1. DISTRICT agrees to produce and provide to OAKLAND (with replenishments as needed) outreach materials for the Regional PSL Program. DISTRICT agrees to maintain
 - a. A website for the Regional PSL Program with appropriate referrals to OAKLAND'S web pages; and
 - b. A Phone number and contact person where the public can get answers to questions about the program.
2. OAKLAND agrees to make available outreach materials, prepared by the DISTRICT for the Regional PSL Program at City Hall, Oakland's Permit Center and other locations as needed.
3. OAKLAND and DISTRICT shall assist each other in outreach activities, as needed.

PERMITTING AND INSPECTION

1. OAKLAND continues to be the permitting agency for all sewer lateral work in accordance with OAKLAND'S Municipal Code.
2. OAKLAND agrees to expeditiously issue sewer and encroachment permits for sewer lateral work that must be performed for the Regional PSL Program.
3. DISTRICT agrees to expeditiously schedule sewer lateral verification tests and issue Compliance Certificates when a sewer lateral passes such tests.
4. OAKLAND shall continue to perform construction and materials inspection for all sewer lateral work.

5. DISTRICT shall witness the verification test for the entire sewer lateral, consisting of the upper lateral and lower lateral and document compliance or non-compliance.

CERTIFICATES AND WAIVERS

1. DISTRICT shall issue a single Compliance Certificate valid for an entire sewer lateral that passes the verification test. The DISTRICT will not issue a Compliance Certificate in the event either an upper lateral or a lower lateral does not pass a verification test on a property, unless the upper lateral passes and a waiver from OAKLAND for the lower lateral work is granted.

If OAKLAND wishes to issue a waiver, OAKLAND shall:

- a) fill out the DISTRICT provided waiver form (Attachment A),
 - b) return the waiver form to the property owner, and
 - c) direct the property owner to return the waiver form to the DISTRICT.
2. OAKLAND shall not complete a final inspection to finalize a project for remodeling projects in excess of \$100,000 until the property owner produces a Compliance Certificate or Exemption Certificate for sewer lateral work required by the Regional PSL Program.
 3. OAKLAND shall make available information to property owners about the benefits of obtaining a Regional PSL Program Compliance Certificate even where compliance is not mandated by the Regional PSL Program.

DATA SHARING and ANNUAL REPORTING

1. DISTRICT will prepare annual report as required by the regulatory agencies.
2. DISTRICT will develop and maintain a regional database of records for the Regional PSL Program and will share data, as reasonably requested, in a timely fashion.
3. As required by its Stipulated Order, beginning July 1, 2012, OAKLAND shall “submit to EBMUD [i.e., DISTRICT], in either electronic or hard copy format as the City [i.e., OAKLAND] chooses, a monthly log of all remodel permits for jobs greater than \$100,000 where a final inspection has been completed to finalize the project;” the monthly log shall include the parcel number and address of each job where the final inspection was completed the prior month.
4. OAKLAND shall provide to DISTRICT a copy of its GIS based maps showing sub-basins in which sewers have been rehabilitated from calendar year 2000 to 2010. If property owners seeking Exemption Certificates ask OAKLAND for copies of historic sewer permits, OAKLAND shall utilize its best efforts to expeditiously provide copies of such permits, if available.

5. DISTRICT and OAKLAND agree to identify key staff contacts involved with the Regional PSL Program.

ENFORCEMENT

1. Enforcement actions for work to be performed on upper private sewer laterals under the Regional PSL Ordinance shall be the sole responsibility of the DISTRICT.
2. Enforcement actions for work not completed in accordance with OAKLAND'S Municipal Code shall be the sole responsibility of OAKLAND.

MODIFICATIONS

DISTRICT and OAKLAND may modify this Statement by written agreement at any time. Each party agrees to meet and confer in good faith upon request of the other party for a modification.

INSURANCE

The Parties to this Statement shall maintain during the life of the Statement Workers' Compensation, Commercial General and Automobile Liability Insurance or comparable self insurance.

TERM

This Statement may not be terminated prior to June 30, 2014, unless either (1) OAKLAND obtains EPA approval of a no-less-stringent application for an OAKLAND PSL ordinance or (2) the parties mutually agree to terminate. Thereafter, this Statement may be terminated by either (1) mutual agreement of the parties or (2) six months' written notice from the terminating party to the other party.

ADVICE OF COUNSEL:

Each of the signators to this Statement affirms and acknowledges that it has read and fully appreciates and understands the words, terms, conditions and provisions of this Statement applicable to such signator, is fully and entirely satisfied with the same, has had the opportunity to be represented by legal counsel of its choice in the negotiation, preparation and execution of this Statement, has had the opportunity to confer with its counsel prior to the execution of this Statement, and has executed this Statement voluntarily and of its own free will and act.

The signators specifically agree that any rule of construction, to the effect that ambiguities are to be resolved against the drafting party, shall not apply to the interpretation of this Statement.

ENTIRE STATEMENT

This Statement represents the entire understanding of DISTRICT and OAKLAND as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Statement may only be modified by amendment in writing signed by each party.

SEVERABILITY

Should any part, term, or provision of this Statement be decided or declared by the Courts to be, or otherwise found to be, illegal or in conflict with any laws of the State of California or the United States, or otherwise be rendered unenforceable, or ineffectual, the validity of the remaining parts, terms, portions or provisions shall be deemed severable and shall not be affected thereby, providing such remaining parts, terms, portions or provisions can be construed in substance to constitute the Statement that the Parties to this Statement intended to enter into in the first instance.

AUTHORITY TO EXECUTE STATEMENT

Each of the signators to this Statement warrant to each of the other signators that it has obtained the necessary consent and authority to execute this Statement and to make this Statement binding upon itself.

COUNTERPARTS

This Statement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto each herewith subscribe to the same in duplicate.

EAST BAY MUNICIPAL UTILITY DISTRICT

By: _____
General Manager

Date: _____

CITY OF OAKLAND

By: _____
City Administrator

Date: _____

Regional Private Sewer Lateral Program

PRIVATE SEWER LOWER LATERAL WAIVER

Parcel Address:

Street Address	City
Parcel Number: _____ - _____ - _____ - _____	

Expiration: _____

Special Instructions:

Submit a copy of this document to EBMUD as evidence that compliance with the Regional Private Sewer Lateral Program lower lateral requirements have been waived. Retain a copy of this waiver for your records for any future parcel sale, re-model greater than \$100,000, or change of water meter size.

Waiver Number: _____

Issue Date: _____

Reason for Waiver (check one):

Paving Moratorium

Other – describe: _____

Issued by:

City, Department, Employee Name and Title

Signature: _____