

ORDINANCE NO. 457

AN ORDINANCE OF THE CITY OF HERCULES AMENDING TITLE 5, SANITATION AND HEALTH, OF THE HERCULES MUNICIPAL CODE BY ADDING CHAPTER 9 REQUIRING TESTING, INSPECTION, REPAIR AND REPLACEMENT OF BUILDING SEWER LATERALS AND INSTALLATION OF CLEANOUTS AND BACKWATER PROTECTION DEVICES

THE CITY COUNCIL OF THE CITY OF HERCULES DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 9, entitled “TESTING, INSPECTION, REPAIR AND REPLACEMENT OF BUILDING SEWERS AND SEWER LATERALS“ is hereby added to Title 5 of the Hercules Municipal Code, to read as follows:

**TITLE 5
Chapter 9**

**TESTING, INSPECTION, REPAIR AND REPLACEMENT
OF BUILDING SEWERS AND SEWER LATERALS**

Sec. 5-9.01 Purpose.

The purposes of this ordinance are (i) to provide for operation and maintenance of the City’s sewer system in a reliable and serviceable condition, (ii) to eliminate or minimize sewage overflows by eliminating or minimizing stoppages and reducing sources of infiltration and inflow into the City’s sewer system, (iii) to comply with applicable legal requirements pertaining to the City’s sewer system and (iv) 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 City Public Sewer Main.

Sec. 5-9.02 Definitions.

As used in this ordinance, the following words, phrases and terms shall have the following definitions:

(a) “Air Testing” or “Air Tested” shall mean and refer to 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 Ordinance if it does not hold 3.5 pounds per square inch of air pressure (psi-air) for at least 2 minutes with at least 2.5 psi-air remaining at end of the Air Test.

(b) “Backwater 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" shall mean and refer to 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 cleanout and Backwater Prevention Device shall be installed at the point of connection of the Building Drain to the Building Sewer Lateral..

(d) "Building Sewer Lateral" shall mean and refer to 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" shall mean and refer to the exterior component part of a structure built, erected, framed and designed for the housing, shelter, enclosure or support or persons, animals, or property of any kind.

(f) "Certificate of Compliance" shall mean and refer to a written certificate issued to a Property Owner by the City Engineer 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" shall mean and refer to any Building Sewer Lateral that displays leaks or defects upon the completion of Video 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) "Manufactured Connection" shall mean and refer to a commercially manufactured and available sewer "wye" or "tee" fitting of the proper size and material for the subject application.

(i) "Property Owner" shall mean and refer to any individual or entity owning property within the boundaries of the City that is connected to a City Public Sewer.

(j) "Public Sewer" shall mean and refer to the 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 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.

(k) "Video Inspection" shall mean and refer to a process whereby a camera is placed into, run through, photographs and electronically records the inside of a Building Drain, Building Sewer Lateral or Public Sewer for the purpose of detecting leaks or other obvious defects.

Sec. 5-9.03 Requirement for Backwater Prevention Device and Sewer Lateral Clean-out.

A clean-out and a Backwater Prevention Device conforming to City requirements shall be installed as close as possible to the beginning of the Building Sewer Lateral.

Sec. 5-9.04 Testing of New Building Sewer Lateral.

All new Building Sewers Laterals shall be tested by Air Testing or water method conforming to City requirements. The method used shall be at the discretion of the City. Testing shall be conducted throughout the full length of the Building Sewer Lateral.

Sec. 5-9.05 Testing of Existing Building Sewer Lateral.

(a) **General.** It shall be unlawful for any Property Owner to maintain a Building Sewer Lateral in a defective condition. As used in this ordinance, "defective condition" includes, but is not limited to: (a) displaced joints; (b) root intrusion; (c) substantial deterioration; (d) damaged or missing cleanout; (e) damaged or missing Backwater Prevention Device; (f) in a condition that will allow infiltration and inflow of extraneous water or exfiltration of sewage; (g) in a condition that materially increase the possibility of a blockage or overflow; (h) constructed without a proper permit or with materials not approved by the City; (i) lack of a Manufactured Connection to the City's sewer system; (j) otherwise in violation of City requirements; or (k) in such a condition that the tests required by this Chapter cannot be accomplished to the satisfaction of the City.

(b) **Conditions Requiring Cleaning and Inspection of Existing Building Sewer Lateral.** All existing Building Sewer Laterals, including but not limited to those serving residential, multiple residential, commercial and industrial properties connected to the City's Public Sewer be cleaned and inspected at the Property Owner's expense, when any of the following events occur:

(1) The installation of additional plumbing facilities that produce a major increase, in the judgment of the City, in sewage flow from the house, building, property or other structure served.

(2) 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.

(3) Upon repair or replacement of any portion of the Building Sewer Lateral.

(4) Upon the determination by the City that the cleaning, testing, repair or replacement is required for the protection of the public health, safety and welfare.

(5) 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 does not require testing if reassessment of property value is not required by the Contra Costa County Tax Assessor.

(6) In a probate or other testamentary proceeding or in the event of a transfer pursuant to the terms of a revocable living trust, joint tenancy termination or other similar instrument, within 180 days after the sale, transfer or conveyance of the house, building, property or other structure served.

(7) Upon request by the City at any time commencing upon the expiration of the fifth year after the effective date of this ordinance.

(c) Inspection Procedures for Existing Building Sewer/Sewer Lateral.

(1) All existing building sewers/sewer laterals shall be inspected by Video Inspection method in accordance with City requirements.

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

(3) All Video Inspections shall be witnessed by a representative of the City.

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

(5) The Video Inspection shall be conducted by a person and/or firm qualified to do such work and meeting the approval of the City.

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

Sec. 5-9.06 Mitigation of Failed Test or Inspection

When the City determines, in its discretion, that a Building Sewer Lateral is in a defective condition, 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.

Upon completion of repairs to or replacement of the Building Sewer Lateral, a Video Inspection shall be conducted to verify that the repairs or replacement have been properly completed.

Sec. 5-9.07 Repair or Replacement of Building Sewer Lateral upon Sale or Transfer of Property.

The repairs or replacement of a Building Sewer/Sewer Lateral that result from the testing required as a result of the sale or transfer of property in a non-probate transaction shall be completed prior to the close of escrow of the sale or, if there is no escrow, prior to recording the deed or other document transferring title. For properties sold or transferred in a probate or other testamentary proceeding, pursuant to the terms of a revocable living trust or similar instrument, or pursuant to the termination of a joint tenancy or similar proceeding, any repair or replacement of a Building Sewer Lateral shall be completed within 180 days after the probate sale or other transfer.

Sec. 5-9.08 Building Sewer Lateral Compliance and Issuance of Certificate of Compliance.

The City shall review the final submitted Video Inspection for compliance with this ordinance. 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 Hercules 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.

Sec. 5-9.09 Common Interest Developments.

The homeowners association of a Common Interest Development shall provide Video Inspection verification of all privately-owned Building Sewers laterals within the common interest areas at least once every ten (10) years for compliance with the duties and obligations imposed by the Hercules Municipal Code in relation to any Building Sewer Lateral located within a common area of the development. 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 Lateral established by the Hercules Municipal Code.

Sec. 5-9.10 Residential Rental Units

Not more than 180 days prior to the annual residential rental unit inspection required to be conducted within one year after the effective date of this ordinance pursuant to Title 9, Chapter 6 of the Hercules Municipal Code, the Property Owner or the Property Owner's designee shall have the Building Sewer Lateral Video Inspected in accordance with the procedures set forth in this

Chapter. All necessary replacements and repairs shall be completed prior to the issuance of a Residential Rental Unit Certificate of Compliance. Residential rental unit Building Sewer Laterals shall be re-inspected every ten (10) years after issuance of the Certificate of Compliance.

Sec. 5-9.11 Hardship Deferrals for Building Sewers and Sewer Laterals Repair or Replacement.

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 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 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, shall have no more than 180 days after the close of escrow or other transfer of the property to repair or replace the Building Sewer Lateral.

(a) 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 180 days after the close of escrow—not waived entirely. A copy of the notice shall be sent to both the Property Owner who is selling the property and to the purchaser of the property.

(c) In the event of a failure to comply with the this Ordinance 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 Ordinance 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 and other monetary exactions that may be awarded to, levied or assessed by any person, firm, corporation, company or public entity.

5-9.12 NOTICES TO CORRECT VIOLATIONS.

If the City Engineer 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 City Engineer shall give written notice to the Property Owner of any conditions that violate this Chapter. Such notice 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.

5-9.13 COORDINATION OF LATERAL REPAIRS WITH CITY UTILITY AND STREET IMPROVEMENT PROJECTS

Whenever the City plans a project to maintain, repair or replace a Public Sewer that involves excavation of a street, 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/replacement of Building Sewer Laterals needing replacement at the same time the City's project is performed. If a Building Sewer Lateral needs repair or replacement within five years after a public right of way is newly paved, 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.

5-9.14 REGULATIONS TO IMPLEMENT THIS CHAPTER.

The City may establish rules, regulations, guidelines and policies for implementing and enforcing this Chapter.

5-9.15 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 Hercules Municipal Code Title 4, Chapter 10 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 Backwater Prevention Device is not properly attached or properly functioning; any uncapped or improperly capped sewer clean-outs; sump pumps, down spouts or yard drains or other sources which discharge into the City's Public Sewer; and all other sources of

accidental, negligent or intended introduction of storm water run off or similar waters into the City's Public Sewer.

5-9.16 RIGHT OF ENTRY.

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

SECTION 2. Publication and Effective Date.

a. This Ordinance shall be published in accordance with applicable law, by one or more of the following methods:

1. Posting the entire Ordinance in at least three (3) public places in the City of Hercules, within fifteen (15) days after its passage and adoption; or

2. Publishing the entire Ordinance at least once in the West County Times, a newspaper of general circulation published in the County of Contra Costa and circulated in the City of Hercules, within fifteen (15) days after its passage and adoption; or

3. Publishing a summary of the Ordinance prepared by the City Attorney in the West County Times and posting a certified copy of the entire Ordinance in the office of the City Clerk at least five (5) days prior to the passage and adoption, and a second time within fifteen (15) days after its passage and adoption, along with the names of those City Councilmembers voting for and against the Ordinance.

b. This Ordinance shall go into effect thirty (30) days after the date of its passage and adoption.

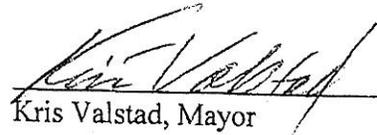
THE FOREGOING ORDINANCE was first read at a regular meeting of the Hercules City Council on the 23rd day of March, 2010, and was passed and adopted at a regular meeting of the Hercules City Council on the 13th day of April 2010, by the following vote of the Council:

AYES: Balico, Kuehne, McDonald, Ward, Valstad

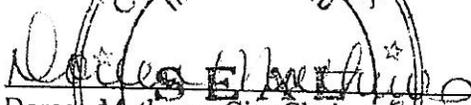
NOES: None

ABSENT: None

ABSTAIN: None


Kris Valstad, Mayor

ATTEST:


Doreen Mathews, City Clerk

