

# BOARD OF PORT COMMISSIONERS CITY OF OAKLAND

## ORDINANCE ADOPTING BY REFERENCE OAKLAND MUNICIPAL AND PLANNING CODES SECTIONS 13.08.590 THROUGH 13.08.620 AS MODIFIED HEREIN, REQUIRING PORT TENANTS TO COMPLY WITH SUCH PRIVATE SEWER LATERAL REGULATIONS, AND DIRECTING PORT STAFF TO PREPARE PLANS TO ASSESS AND REPAIR PORT- OWNED PRIVATE SEWER LATERALS

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**WHEREAS**, in 2009, the United States Environmental Protection Agency ("EPA") and the California State Water Resources Control Board, and the California Regional Water Quality Control Board, San Francisco Bay Region filed lawsuits against the East Bay Municipal Utility District ("EBMUD") and six satellite agencies, including the City of Oakland (the "City"), citing violations of the Clean Water Act and the California Water Code and requesting that defendants fix old, cracked sanitary sewer pipes (the "CWA Lawsuits"). Also in 2009, the EPA filed an Administrative Order against the City directing it to fix the sewer system, including adopting a private sewer lateral program (Docket No. CWA 309(a)-10-009) (the "EPA Administrative Order");

**WHEREAS**, many pipes in the City are in need of repair to prevent the infiltration of rainwater, which can overwhelm wastewater treatment facilities and lead to the release of partially treated wastewater into the Bay. In response to the CWA Lawsuits and EPA's Administrative Order, EBMUD and the City took several actions to address old sanitary sewer pipes, including phasing in a Regional Private Sewer Lateral ("PSL") Ordinance (the "East Bay Regional Private Sewer Lateral Program"). Under the program, affected property owners must obtain a certificate from EBMUD certifying that all of their PSLs are leak-free and have passed a verification test. Property owners may also choose to have their laterals tested and certified;

**WHEREAS** on February 9, 2010, EBMUD adopted Ordinance No. 353-10, which amended Ordinance No. 311 by adding Title VIII thereto, establishing the East Bay Regional Private Sewer Lateral Program and enacting regulations for the inspection, testing, repair, replacement, and ongoing maintenance of PSLs within the program area, including the City. EBMUD amended the EBMUD Regional PSL Program on July 23, 2013 (Ordinance No. 359-13), which deleted Title VIII and re-enacted its modified provisions as a new standalone ordinance, and amended Ordinance No. 359-13 again on October 28, 2014 (Ordinance No. 362-14) (Ordinance 359-13 and all existing and future

amendments thereto are collectively referred to herein as the "EBMUD Regional PSL Ordinance") ;

**WHEREAS**, the EBMUD Regional PSL Ordinance requires "property owners" to obtain a "compliance certificate" upon the happening of certain events including title transfer, construction or remodeling the permitted work cost of which exceeds \$100,000 or change in water services. Under the EBMUD Regional PSL Ordinance, a "property owner" includes "a person that owns a parcel of real property, or that person's representative including a tenant or contractor." A public entity, including the Port is not defined as a property owner for the purposes of the EBMUD Regional PSL Ordinance;

**WHEREAS**, the City has enacted Sections 13.08.590 through 13.08.620 to the Oakland Municipal and Planning Codes ("OMC") by adopting Ordinance No. 13026 and Ordinance No. 13080, respectively (and collectively referred to as the "City PSL Ordinance"), which adopted by reference the EBMUD Regional PSL Ordinance and directed the City's Building Official to enforce the provisions of the EBMUD Regional PSL Ordinance and other City ordinance requirements relating to sewer laterals;

**WHEREAS**, pursuant to Article VII, Section 706(4) of The Charter of the City of Oakland ("Charter"), the Board of Port Commissioners ("Board" or "Port") has been vested with the complete and exclusive power, and it shall be its duty on behalf of the City to have control and jurisdiction of the "Port Area" (as defined in the Charter), as it may be amended from time to time;

**WHEREAS**, pursuant to Article VII, Section 706(27) of the Charter, the Board has been vested with the complete and exclusive power, and it shall be its duty on behalf of the City to adopt and enforce such ordinances, orders, regulations and practices as are necessary for the proper administration, management and government of the Port and its facilities; and

**WHEREAS**, the intent of this ordinance is to: 1) confirm the applicability and enforceability of the City PSL Ordinance, and the EBMUD Regional PSL Ordinance incorporated therein, within the Port Area and on Port-owned property within the City of Oakland as set forth in this ordinance, and 2) to establish a "Local Ordinance Requirement" as defined in the EBMUD Regional PSL Ordinance establishing that Port tenants shall be "property owners" for the purposes of complying with the City PSL Ordinance, and the EBMUD Regional PSL Ordinance incorporated therein, with certain exceptions as outlined herein; now, therefore,

**BE IT ORDAINED** by the Board of Port Commissioners of the City of Oakland as follows:

**Section 1.** In acting upon this matter, the Board has exercised its independent judgment based on substantial evidence in the record and adopts and relies upon the facts, data, analysis, and findings set forth in the Agenda Report and in related agenda materials and in testimony

received.

**Section 2.** The Board hereby finds and determines as follows:

- A. Keeping Port owned sewer lines free from the infiltration and inflow ("I/I") of storm water and ground water reduces sewer overflows from Port property into surface waters like the San Francisco Bay, which pose a threat to public health, safety and the environment, and to reduce I/I into Port owned sewer lines, the Board finds it necessary and prudent to adopt this ordinance; and
- B. The proposal to adopt the City PSL Ordinance, and the EBMUD Regional PSL Ordinance incorporated therein, as modified herein and to apply it to the Port Area and all Port owned property in the City of Oakland was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA") and the Port CEQA Guidelines. The proposal is categorically exempt from CEQA pursuant to Section 15308 of the Port CEQA Guidelines in that the proposal constitutes a regulatory action taken to assure the maintenance, restoration, enhancement, or protection of the environment. Accordingly, the Board hereby finds and determines that the proposal will not have a significant effect on the environment and is therefore exempt from the provisions of CEQA.
- C. The Port has the authority as a property owner acting in its proprietary capacity to regulate certain uses and activities on Port property; and
- D. Charter Section 706(3) requires the Port to "take charge of, control, and supervise ... all the water front properties, and lands adjacent thereto, ... which are now or may hereafter be owned or possessed by the City, and the purpose of this ordinance is consistent with the Port's authority under the Charter Section 706(27) to adopt ordinances and regulations necessary for the proper administration and management of Port facilities.
- E. "Property Owners", as defined in Section 3(A)(3) below, shall be expressly required to obtain a Compliance Certificate from EBMUD as specified in the City PSL Ordinance, and the EBMUD Regional PSL Ordinance incorporated therein, as modified herein.

**Section 3.** The Board hereby adopts by reference Oakland Municipal and Planning Codes Sections 13.08.590 through 13.08.620 (Chapter 13.08 of Title 13) and declares those provisions, in particular the EBMUD Regional PSL Ordinance incorporated therein, to be enforceable within the Port, subject to the following additions and modifications:

**A.** For the purpose of this ordinance, the following definitions and clarifications are hereby added:

1. "Leasehold Property" means the property contained within the boundaries of any property lease, assignment agreement, license and concession agreement, temporary rental agreement, contract or any other tenancy or occupancy agreement between the Port and a tenant (such agreement referred to herein as a "Lease" for purposes of this ordinance) for a property located in the Port Area or on Port property in the City of Oakland, which may include more than one Assessor's Parcel Number or less than a full Assessor's Parcel Number.
2. The term "Parcel" as used in the EBMUD Regional PSL Ordinance means, for purposes of implementing this ordinance, the Leasehold Property.
3. "Property Owner". In addition to the persons and entities included within the EBMUD Regional PSL Ordinance definition of 'property owner', a 'property owner' also includes any person or party using or occupying any lands or other real property owned by the Port pursuant to any Lease as defined above."

**B.** Within the Port Area and on Port-owned property within the City of Oakland, Property Owners, as defined above, shall be responsible for inspecting building sewers, obtaining all required permits, performing all necessary building sewer repair or replacement, scheduling inspections with EBMUD, passing a verification test witnessed by EBMUD, obtaining and filing with the City a compliance certificate from EBMUD as set forth in the EBMUD Regional PSL Ordinance for the entire building sewer (upper building sewer lateral and lower building

sewer lateral) when one or more of the triggering events in OMC Sections 13.08.600 A, B, or C occurs, except as modified below for Leasehold Properties with sanitary sewers totaling greater than 1000 feet in length.

C. The first sentence of OMC Section 13.08.600 is hereby amended to add the following text at the beginning of the sentence: "Unless otherwise excepted under Sections F and H below,".

D. Subsection "E" of OMC Section 13.08.600 is amended to read as follows:

"Properties with Sanitary Sewers Totaling Greater than 1000 Feet in Length. Within one year of occurrence of any event specified in Subsection A, B or C of this section [OMC Section 13.08.600], Property Owners of real property or Leasehold Property that contains sanitary sewers totaling greater than 1000 feet in length shall submit for EBMUD approval, a condition assessment plan with a schedule to perform testing to assess the condition of all of the sewer laterals on the property to determine compliance with the EBMUD Regional PSL Ordinance. Within 6 years of triggering compliance requirements, such Property Owners shall complete all condition assessment testing and submit a corrective action work plan for EBMUD approval with a copy to the Port's Director of Engineering.

E. Subsection "H" (Port Exemption) is hereby added to OMC Section 13.08.600 to read as follows:

**"(H) Port Exception:**

1. A Property Owner may be excepted by written agreement between said Property Owner and the Port by which a party other than the Property Owner, expressly assumes the responsibility for compliance with the City PSL Ordinance, and the EBMUD Regional PSL Ordinance incorporated therein".

**Section 4.** The Board hereby finds and directs that:

A. The Port is not a "Property Owner" for the purposes of the EBMUD Regional PSL Ordinance, the City PSL Ordinance or this ordinance. Nonetheless, the Port is committed to participating and furthering the goals of the East

Bay Regional Private Sewer Lateral Program.

- B. Notwithstanding the finding in Section 4.A above, the Port will voluntarily proceed where feasible to assess the condition of all Port owned sewer lines on all properties owned by the Port ("Port Controlled Property"), except those sewer lines that are within a Leasehold Property and serve only one tenant. The purpose of such assessment will be to determine whether such Port owned sewer lines comply with standards set forth in Section 5 of the EBMUD Regional PSL Ordinance and OMC Section 13.08.610 (collectively, "Compliance Standards"), which for purposes of this ordinance, will apply to all sewer lines assessed by the Port and not, for the avoidance of doubt, only to private sewer laterals. To this end, the Board directs Port staff to prepare a "condition assessment plan" for Board approval as soon as feasible, but no later than June 30, 2019. The condition assessment plan will include a schedule for the performance of testing to assess the condition of all Port owned sewer lines on Port Controlled Property.
- C. Once the Port has implemented the condition assessment plan, the Board directs Port staff to prepare a "corrective action work plan" for Board approval which shall describe the type, quantity and schedule of work needed to bring all Port-owned sewer lines on Port Controlled Property into compliance with the Compliance Standards. Port staff shall present such corrective action work plan to the Board no later than June 30, 2023.
- D. After the Board approves the corrective action work plan, the Port shall complete the work described in the approved corrective action work plan, subject to budget appropriations adopted by the Board as part of the Port's capital improvement program or other available sources of funding.

**Section 5.** The requirements of this ordinance are Local Ordinance Requirements within the meaning of the EBMUD Regional PSL Ordinance. This ordinance is neither intended nor shall it be construed, to alter, or diminish the powers and responsibilities of the Board under the Charter or the Port's practice in the carrying out of its powers and responsibilities.

**Section 6.** This ordinance shall be effective thirty (30) days after the adoption of this ordinance by the Board.

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President

Attest:

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Secretary

Approved as to form and legality:

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Port Attorney

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