

Private Lateral and Backflow Prevention Programs for CSRMA Agencies

3/23/2012

USE NOTE TO PUBLIC AGENCY: *The intent of this document is to provide sample language for possible private lateral and backflow prevention ordinances. These programs can be appropriate and useful where agencies have knowledge of private systems that are either in need of repair or have contributed to public system failures (through unauthorized releases of grease, oil, roots or other obstructions into the public system).*

The goal is to assist agencies in addressing with their customers the point of transition between ownership and control of, and responsibility for, the public and private portions of systems; and to define potential triggers for requirements of inspection of private laterals and/or for installation of a Backflow Prevention Device.

Sewer agencies can reduce liabilities by communicating to their customers their responsibilities for maintenance and operations of private sewer laterals. Further, the Tort Claims Act defines agency liability for dangerous conditions of public property as based upon whether an agency "owns or controls" property. Further, inverse condemnation liability depends upon whether an agency's "public work" or "public improvement" as deliberately designed or constructed proximately caused the loss. So, defining ownership and control of parts of a connected system is an important consideration.

Numerous provisions of California law provide authorization to public agencies operating sewer systems to adopt ordinances and regulations related to the use of sanitary sewer services and facilities (for example, see Water Code Section 31105, and consult the underlying statutory authority for your agency). It is important to review the language of your program carefully with your agency's legal counsel to prevent conflicts/contradictions and to act consistently with your agency legal authority.

The following is a menu of language that may assist public agencies in issuing guidance or preparing ordinances for system compliance, depending on the needs of the agency. CSRMA's research has shown that there are widely divergent opinions on many of the issues presented, so "options" are included reflecting language used by some agencies or suggested by agency counsel; your agency should exercise its judgment in adopting language deemed suitable.

*The first section is a set of definitions, to define the relation between public sewer systems, and private sewer disposal systems or private building sewers and laterals. Member agency attorneys suggested alternate language, so **TWO SETS of definitions** are included, each aimed at the same purpose. Either set would be appropriate, and the choice is essentially editorial preference. The important consideration is establishing **where** the boundary is placed between public and private ownership. In the remainder of this document, the terms used in "set I" of the definitions is used, so if you choose "set II" note that the defined terms are slightly different, and would need to be replaced globally in the rest of the document. Note that "set I" includes in the definition of "public sewer" the concept that private laterals will be deemed private even if they lie within an agency easement.*

Definitions - I

Building wastewater pipelines – The building wastewater pipelines are those black or grey water pipes installed within the walls of a building or structure that connect to the building drain. Building wastewater pipelines may include interior sump systems, grease traps or other appurtenances.

Building drain – The building drain is that part of the lowest wastewater piping which receives the discharge from drain pipes inside the walls of a building or structure and conveys it to the private lateral (generally connecting within 2' of the building wall).

Private sewer disposal system – The pipelines and points of connection of a building drain to a grease interceptor, an individual sewage disposal system (septic system), holding tank or other private point of disposal unaffiliated with the public sewer comprises a private sewer disposal system.

Private lateral(s) -- shall mean that part of the generally horizontal piping of a drainage system which extends from the end of the building drain and which receives the wastewater discharge from the structure and conveys it to a public sewer or other on-site individual sewage disposal system (septic system). The Private lateral begins at Building Drain and extends to and including the wye or point of connection with the public sewer. Private laterals may include privately owned pipelines, sump systems, interceptors or other appurtenances within private streets or private property common areas that are not dedicated to or owned by the [entity]. Private laterals may also begin at the building drain and extend to a private sewer disposal system.

Public sewer – A public sewer is the sewer collection system owned by the [entity] lying within limits of public streets, roads, easements, reserves, non-exclusive easements or other public rights of way. That portion of the private lateral that may lie within any public street or right of way **is/is not (Choose option reflecting your jurisdiction's ownership/responsibility circumstances)** a public sewer owned by [entity]. Public sewer facilities owned and maintained by the [entity], including facilities designed and constructed by [entity] and facilities that have been dedicated and accepted by the [entity]. Private Sewer Facilities constructed for dedication to the [entity] do not become public sewers until they have been accepted by the [entity].

Definitions - II

Building sewer. -- Private Sewer Facilities that convey wastewater from the premises of a Customer to the Public Sewer System.

Private Sewer Facilities. -- Sewer facilities that are privately constructed and not dedicated and accepted as a Public Sewer Facility by the District. Private Sewer Facilities generally include sewer facilities within a privately owned building, service laterals, private pump stations, grease interceptors, and all other facilities located between the sewer customer and the connection to the collection line, including the integral wye fitting that connects the lateral to a collection line. Sewer facilities intended for dedication to the District are Private Sewer Facilities until such time as they are accepted by the District

Public Sewer Facilities or Public Sewer System. -- Sewer facilities owned and maintained by the District, including facilities designed and constructed by the District and facilities that have been dedicated and accepted by the District. Private Sewer Facilities constructed for dedication to the District do not become Public Sewer Facilities until they have been accepted by the District.

Service lateral or lateral. -- Sewer pipeline from the plumbing of a building to a collection line, including portions that extend across public rights-of-way and the Saddle, wye or other physical connection to the collection line. Service laterals are privately owned and maintained.

Design, Construction and Maintenance of *Private Sewer Disposal Systems*

The design, construction and maintenance of *building drains, private laterals* and *private sewer disposal systems*, which are not connected to the *public sewer*, are governed by the ordinances, rules and regulations of the **(Agency choose one)**:

- [entity]'s jurisdiction, county and the state.
- cities within the [entity]'s jurisdiction, county and the state.

Design and Construction of *Building Drains and Private Laterals Connecting to the Public Sewer*

Construction of *building drains* and *private laterals* that connect to the *public sewer*, including any portion lying within or under a public road, shall be in accordance with the ordinances, rules and regulations of the **(Agency choose one)**:

- [entity]'s jurisdiction, county and the state.
- cities within the [entity]'s jurisdiction and the county.

[The following language is to cover the encroachment permit requirements of another jurisdiction necessary to make a street entry cut]

Construction of *private laterals* or any portion of a wastewater pipeline to be dedicated and become a part of the *public sewer*, which are planned for location under a public street shall be in accordance with the ordinances, rules and regulations of the **(Agency choose one)**:

- [entity]'s jurisdiction, county and the state.
- cities within the [entity]'s jurisdiction and the county.

No Person shall connect a drain line, wastewater pipeline, *building drain*, *private lateral* or *private sewer disposal system* to any *public sewer* without the submission of required plans, reviewed and accepted by [entity] whether by permit, license or otherwise, including the payment of applicable fees and connection charges; and unless the location and method of construction have been approved by the [Agency] Engineer or representative.

USE NOTE -- there was some question among the reviewers of this document whether a unilateral hold harmless/indemnity provision would be enforced by the courts in the face of a challenge on public policy grounds, in the event of a claim. This issue is similar to the issue of "sidewalk ordinances" in which cities deem property owners responsible for the repair of adjacent sidewalks (the practice has been questioned but not overruled by the courts). CSRMA recommends that member agencies consider adopting the proposed hold harmless/indemnity language, but this is ultimately a decision each member agency must make. In this draft we have underlined the sections that relate to disavowal of liability for damages or assignment of damage liability to the homeowner to call attention to the issue.

The first two paragraphs below may appear to repeat information several paragraphs later under "Maintenance and Operation", but the initial two paragraphs refer to cost while the later paragraphs deal with "responsibility" implying a further affirmative duty to maintain and repair. These can be combined if the agency wishes.

At the end of this section are a number of enforcement options, since the language currently used between agencies varies widely; we have included a series of examples. On these issues there has been a wide divergence of approaches by agencies: whether a duty of inspection should be imposed on property owners; if so, when the inspection obligation should be triggered; how the requirements would be enforced; whether providing a notice of compliance should be an option; and whether and when backflow prevention devices should be required.

It is beyond the scope of this review to try to resolve these issues of policy; instead the purpose is to provide options for member agencies to assist them in deciding on their own policies.

Installation and Maintenance Costs; System Responsibility

All costs and expenses incident to the installation, connection, repair, maintenance, renovation, replacement, disconnection, reconnection or relocation of a *private sewer disposal system, building drain* or *private lateral*, including cleanouts, backflow protection devices, pumps or other appurtenances (collectively “installation and maintenance”), shall be borne by the property owner and person causing the connection to be made, including but not limited to the costs of application, plan submittal, plan check, connection fees or any other fee or charge of [entity] related to the installation.

In no event shall [entity] be responsible by reason of approval of plans, issuances of licenses or permits, or allowance of connection to the public system for any harm, cost, loss or damage which may be occasioned by the installation or maintenance of the building drain or private lateral and the same shall be borne by the property owner or the person causing the connection to be made.

Cleanouts

In proximity to the *building drain* or at a point along the *private lateral* a cleanout should be provided either at the time of building construction or in the event of a plumbing system remodeling. Generally, acceptable cleanouts are installed within five (5) feet of the building foundation. All cleanouts shall conform to applicable local plumbing Codes and the [entity]’s Standard Specifications.

Plumbing Too Low

In all buildings in which there are plumbing fixtures at an elevation too low to permit drainage by gravity from the fixtures to the public sewer, the wastewater from the building shall be lifted and discharged to the *private lateral* by pumps or other appropriate appurtenances which shall be the responsibility of the property owner.

Private pump stations are disfavored design options that are only allowed where there is a showing of unusual circumstances, such as technical infeasibility or significant hardship. The District Engineer must also find that they will not pose an unacceptable risk to the public sewer system. Supplemental permit conditions for privately owned pump stations shall require a formal agreement between Owner and [Agency].

Separate Laterals

Each newly constructed separate building (and/or significant remodeling of a separate structure), shall be connected to the [entity]’s *public sewer* with a separate *private lateral*.

[In some areas agencies may consider exceptions based on age of communities and infrastructure limitations. Consider each exception separately.]

Exceptions, upon [agency] approval may include:

1. Multiple Existing Buildings Under Common Ownership. One or more existing buildings located on property owned by the same Person may be serviced by the same *private lateral* if the [entity] determines that it is unlikely that ownership of the property can or will be divided in the future. However, if for any reason the ownership of the property is subsequently divided, each

building under separate ownership shall be provided with a separate *private lateral*, and thereafter it shall be unlawful for any Person to continue to use or maintain a common *private lateral*. The cost to install the separate *private laterals* shall be the responsibility of the property owner whose property it serves.

2. Residential Occupancies With Common Walls. Existing single family residential units with common walls, condominiums, stock cooperatives, community apartments or other similar improvements which entitle owners of interests therein to occupy independent ownership interests and make joint use of utility and other services which may be provided by facilities owned in common may, upon issuance of a Permit by the [entity] authorizing such common use, be permitted to continue the use of a common *private lateral*.

3. Common Interest Developments. The homeowners association of a Common Interest Development shall, along with the Owner, be jointly and severally liable for duties and obligations imposed by this Chapter of the [entity] Ordinance Code in relation to any *private 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 *private laterals* established by the Common Interest Development.

4. Hardships. Private multi-unit sewer laterals are disfavored design options that are only allowed where there is a showing of unusual circumstances, such as technical infeasibility or significant hardship. The District Engineer must also find that they will not pose an unacceptable risk to the public sewer system.

[Optional supplemental permit requirement]

Supplemental Sewer Service permit. Multi-unit sewer laterals require a Supplemental Sewer Service permit. Supplemental permit conditions for private multi-unit sewer service laterals shall require a formal agreement between Owner and [agency]. The agreement(s) shall be recorded by Owner against, and shall be an obligation running with the property. The agreement(s) shall include requirements for Owner and all future owners of all, or any portion of, the property to be solely liable and responsible for compliance with the [agency] Standard Specifications regarding design, construction, operation, maintenance, repair, and replacement of the privately owned sewer facilities. Owner shall comply with the [agency] Standard Specifications and shall submit such design packages to [agency] for review, approval, and for record purposes. [Agency] shall have no obligation whatsoever to design, construct, operate, maintain, repair, or replace any aspect of privately owned sewer facilities. Each such agreement will be subject to the requirements, review, and approval of [agency].

Maintenance and Operation of *Private Sewer Disposal Systems* and *Private Laterals*

It is the responsibility of the property owner to maintain the *private lateral* up to and including its connection to the public sewer.

The operation and condition of *private laterals*, their cleanouts and any other wastewater facilities required to serve a connector's building, shall be the responsibility of the property owner, who shall keep them in good operating condition at all times and shall undertake all necessary repairs, including replacement of dilapidated and worn out components, at the property owner's expense and at no cost to the [entity]. All repairs to and replacements of *private laterals* or other *private sewer disposal systems* shall be performed in accordance with the [entity]'s Standard Specifications.

Property owners shall maintain a *private lateral* in a manner that prevents sanitary sewer overflows and sewer spills. Failure of a property owner(s) to abate any condition that is causing sanitary sewer overflow within <indicate number> business days of receiving a notice from the [entity] is hereby declared to [be a violation of entity ordinances and regulations] or [optional: a public nuisance] and may be subject to abatement or other remedies [entity] may have.

[Optional; EBMUD has an Ordinance specifying what discharges are permitted and prohibited generally. (To find it on the web, search "EBMUD Ordinance 311".) See EBMUD Ordinance No. 311, Title II, Sections 1, 2, and 3. These may be suitable for consideration and inclusion, but were left out of this draft because the topics are already covered in other regulations or statutes. See also Title VI, Enforcement and Penalties, which includes issuance of cease and desist orders, recovery of costs, termination of service, and appeal procedures, together with civil and criminal enforcement penalties.]

[Optional; passing on RWQCB penalties] Property owners responsible for the cause of a sanitary sewer overflow shall reimburse the [entity] for any civil penalty imposed on the entity the by Regional Water Quality Control Board as the result of such overflow. To secure such payment the [entity] shall have a nuisance abatement lien pursuant to the California Government Code. Prior to recordation of the lien the [entity] shall provide written notice to the owner of record of the subject property, based on the last equalized assessment roll or supplemental roll, whichever is more current.

[Optional; agency right of entry; may be simply a restatement of existing rights under easements, but may be worth specifying nevertheless] It shall be a condition of continuing use and connection to the *public sewer* that the owner of a *private lateral* allow the inspection and verification of the condition of the *private lateral* (from the point of the exterior *building drain* or cleanout to the *public sewer* connection) and / or monitoring of the constituents of the wastewater discharge entering the *public sewer* in the event that the [entity] has a reasonable belief that the manner of connection to the *public sewer*, the wastewater flow from the private property, or the condition of the private lateral is such that the *public sewer* will be damaged, rendered inoperable, or caused to spill because of the private property condition or use.

[Optional; alternate section re agency entry to repair and replace; in practice, the agency may wish to seek a court injunction first, except in emergencies] Should a property owner fail to comply with any of the owner's responsibilities identified above, after written notice from the [entity], the [entity] may undertake the testing and/or repair, replacement or upgrade work and the [entity]'s agents, employees and contractors may enter into the owner's property for such purpose.

[Optional; passing back repair costs done to abate nuisance - this procedure may be different for different types of agencies or beyond the authority of some agencies – cities have a broader abatement reach than some districts] The owner shall promptly reimburse the [entity] for its costs incurred in undertaking such work and to secure such payment the [entity] shall have a nuisance abatement lien pursuant to Section 38773.1 of the California Government Code. Prior to recordation of the lien the [entity] shall provide written notice to the owner of record of the subject property, based on the last equalized assessment roll of supplemental roll, whichever is more current.

[Optional; states generally that owner is responsible for cost.] In the event that the *private lateral* or any portion within a public street, road, or easement to and including the point of connection to the *public sewer* of [entity]'s has become damaged or deteriorated such that its proper operation requires replacement or repair, then the same shall be conducted at the cost and expense of the property owner(s).

[Optional; video inspection] As a condition of continuing use of the public sewer, the [entity] may require that any private lateral be video inspected at the expense of the property owner, if there are reasonable grounds to suspect that the private lateral is damaged, has root intrusion, has contributed to a sanitary sewer overflow or sewer spill, or has other structural defects.

Responsibility for Costs of Repair of *Public Sewer* damage

Any property owner served by the [entity] Sewer Collection System shall be responsible and liable for all costs involved in the repair of all damages to the [entity] *public sewer* system caused by the property owner or the property owner's tenants or agents. **[Optional]** That person shall defend, indemnify, and hold [agency] harmless from any cost, liability, loss or damage that may be incurred or occasioned by the installation or maintenance of the *building drain* or *private lateral*.

It shall be unlawful for any owner of the house, building, or property connected to a [entity] *public sewer* to maintain a *building drain* or *private lateral* in a condition that prevents or impedes the cleaning or inspection of the *public sewer*.

Testing New Sewer Laterals

All new *private laterals* shall be inspected in accordance with the requirements of [agency] . The method of testing shall be at the discretion of the [entity].

[Optional] The test section shall be through the full length of the *private lateral* from the connection to the *public sewer* to the cleanout location adjacent to the building footprint. The air or water test of new private laterals shall conform to the testing requirements of the [agency's] Standard Specifications.

Testing Existing Sewer Laterals Conditions Requiring Cleaning and Inspection

As a condition of continuing use, the [entity] may require that a *private lateral*, including those serving residential, multiple residential and commercial properties, connected to a [entity] *public sewer* shall be cleaned and inspected, at the property owner's expense, when any of the following conditions occur or at the following times:

1. The installation of additional plumbing facilities that produce a material increase, in the judgment of the [entity], in sewage flow from the house, building or property served;

2. A change of use of the house, building or property served from residential to business, commercial, or non-residential; or from non-residential/non-restaurant/non-industrial to restaurant or industrial uses such as carwashes, cleaners and laundries;
3. Upon repair or replacement of a significant portion of the *private lateral*;
4. Upon a determination of the [entity] that the cleaning, testing or repair is required for the protection of the public health, safety and welfare; or
5. **[Optional; testing upon transfer of property; if used, see also “Testing Failure Mitigation” below for remedy and hardship extension.]** Upon sale or transfer of the property. For property sold or transferred in probate, any repair or replacement shall be completed within 180 days after probate sale or transfer. In a non-probate transaction, any repair or replacement shall be completed prior to the close of escrow or, in the case of demonstrated undue hardship, by such later date as agreed to by [entity] in writing, but in no event later than 180 days following close of escrow. A transfer of ownership between family members does not require testing, if there is no reassessment of property value by the County.

[Optional] Inspection Criteria for Existing Private Laterals

The owner or an agent of the owner of a house, building, or property connected to the [entity]'s *public sewer* shall notify the [entity] twenty-four (24) hours prior to inspection so that the [entity] has the opportunity to witness the inspection.

All *private laterals* shall be tested by television video inspection method in accordance with the applicable provisions of the [entity]'s Standard Specifications. When cleaning and inspecting of an existing *private lateral* is required, the *private lateral* shall first be cleaned, and then tested via an internal video inspection for the full length of the *private lateral* from the *building sewer* to the *public sewer*. The internal video inspection shall be completed by a person and/or firm qualified by experience to perform the work. Video recordings of the inspection shall be submitted to the [entity] for verification of the condition of the *private lateral*. A video recording that is not picked up within thirty (30) days after submission to the [entity] shall become the property of the [entity] and may be disposed of by the [entity].

A *private lateral* will comply with the provisions of this Section if video inspection verifies all of the following conditions as approved by the [entity]:

1. The *private lateral* is free of roots, grease deposits, and other solids that may impede or obstruct the transmission of sewage.
2. There are no non-sanitary connections to the *private lateral* such as roof or yard drainage facilities.
3. All joints in the *private lateral* are watertight and sound to prevent the exfiltration of sewage and the infiltration of groundwater.
4. The *private lateral* is free of structural defects, cracks, breaks, or missing portions and the grade shall be reasonably uniform without major sags or offsets.
5. The *private lateral* is equipped with at least one (1) cleanout located within five (5) feet of the building footprint which shall be securely sealed with a proper cap and shall further be equipped with a backflow protection device, if required.

A video inspection shall be valid for a period of six months from the date of the video.

[In the alternative to the last sentence, see the certificate of compliance procedure below.]

Lateral Compliance and Issuance of Certificate of Compliance

[Agency] shall review the final submitted video for compliance with the conditions contained in the Inspection Criteria above. When the conditions are met, as verified by the visual findings of the video inspection as approved by [Agency], the *private lateral* shall be certified as complying with the provisions of these regulations. [Agency] shall then issue a Certificate of Compliance to the property owner, and will not require testing for a ten (10) year period from the date of issuance unless [Agency] has reason to believe the lateral may have become defective since issuance of the Certificate.

[Use note – this is a simplified form; a detailed treatment of this topic is contained in Title VIII of EBMUD’s Ordinance No. 311. That form requires a certificate of compliance upon any transfer of property; remodeling including a sewer lateral or involving work exceeding \$100,000; increase or decrease of water meters; within 10 years for common interest developments; or within 10 years for owners of laterals more than 1000 feet in length. Obviously this issue raises concerns about staffing costs and whether the agency is, in effect, assuming additional responsibility or liability by certifying the results of an inspection. The Certificate itself should expressly state that the agency makes no warranty re the future condition or performance of the lateral.]

Testing Failure Mitigation

In the event that inspection indicates that a *private lateral* is insufficient to provide service to the property free from unauthorized discharges to the *public sewer* or is in danger of continuing spills, then as a condition of continuing use of the *public sewer* system, the property owner shall cause the necessary repairs or line replacement to be made to bring the *private lateral* into compliance with the requirements of [entity]. The costs of repair or replacement of the *private lateral* shall be borne by the property owner.

[Option, may include deadline, perhaps 30 days, or such date as specified by Agency in light of the condition.]

Backflow Protective Device

Purpose for Requiring Installation of Backflow Prevention Devices

When blockages or stoppages occur in sanitary sewers, there exists the potential for adverse public and private health impacts, bodily injuries and damage to property resulting from sewage overflow and backflooding on public and private property. It is the purpose of this Ordinance to protect the health, safety and welfare of residents of the [entity] and to minimize the possibility of damage to property or injury to persons by requiring the proper installation and maintenance of backwater overflow prevention devices pursuant to the directives and standards of the [entity].

Responsibility for Backflow Prevention Devices

In this Ordinance, the term “*backflow prevention device*” includes, but is not limited to, backwater overflow devices and backwater check valves, pressure relief devices and shutoff systems, and any other devices the [entity] 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. All *backflow prevention devices* shall comply with standards acceptable to the [entity] and shall be maintained and repaired by the property owner to provide for their uninterrupted function for the purpose for which they were designed.

Option One – the paragraph below was taken from a member District’s ordinance. It applies to all properties. While this approach will provide property owners the greatest amount of protection from sewer backups, it is unknown if it would withstand legal challenge. Additionally, be advised this approach, without agency financial assistance, is likely to impose a monetary burden on customers:

All property owners shall install, repair and maintain a *backflow prevention device* on any *private lateral* that is connected to, or is intended for connection to, the [entity]’s *public sewer* system.

The installation of any such *backflow protective device* shall be at the sole cost and expense of the property owner. The maintenance of the *backflow protective device* shall be the sole obligation of the owner or the owner’s successor in interest. The [entity] shall be under no obligation to ascertain that the backflow protective device continues in operating condition.

Option Two [conditional requirement with options for conditions triggering BPD requirement, applies only to new construction of buildings or laterals, or significant remodels, or where damage has occurred]:

All new *private laterals* including replacements shall be equipped with a cleanout riser. All new *private laterals* shall also be fitted with a *backflow prevention device* of type and materials as approved by the [entity], and shall be located on the *private lateral* between the building and the property line, preferably at the location of the cleanout, in the manner prescribed by the [entity]. The *backflow protective 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.

Additionally, a *Backflow Prevention Device* shall be required when any of the following conditions exist:

1. All new building *private laterals* and *private lateral* replacements;
2. On remodels where plumbing fixtures are added to the property, and/or more than twenty-five percent of the structure area is being remodeled;
3. When property has been damaged by the blockage of the [entity]'s *Public Sewer* or the *private lateral*.

[Note, in the absence of an Ordinance, the Uniform Plumbing Code, as adopted locally, will apply. The issues raised in this policy are (1) whether the Agency should adopt a “higher” standard than in the UPC and (2) whether the Agency should require upgrading to the most current UPC or Ordinance standard, upon the occurrence of certain conditions. Current California UPC section 710.1 provides that a BPD is required where “a fixture is installed on a floor level that is lower than the next upstream manhole cover of the public or private sewer” and “fixtures on floor levels above such elevation shall not discharge through the backwater valve.” In the unpublished case of *Burns v. City of Los Altos* (2006) 2006 WL 244909, the Court of Appeal described a prior version of the UPC section as requiring “a backwater valve when the flood level rim was lower than the curb or property line.” In that case, the City had adopted its own ordinance that “required the installation of a backflow device on every sewer lateral serving an individual building. The device also had to be installed in existing sewers if the lowest drain opening in the building was less than two feet above the rim of the nearest upstream manhole.” Similarly, in the unpublished case of *Starks v. Los Angeles* (2008) 2008 WL 570775, the court described the City’s ordinance as amended (from a potentially more confusing prior ordinance) to call for a BPD “whenever the flood-level rim of a fixture is below the nearest upstream maintenance hole.”]

A *backflow prevention device* will also be required whenever the [entity] Manager determines, in the Manager’s discretion, and based upon specific site conditions, that the purpose of this Section will best be served by the installation of such a device.

The installation of any such *backflow protection device* shall be at the sole cost and expense of the property owner. The maintenance of the *backflow protection device* shall be the sole obligation of the owner or the owner’s successor in interest. The [entity] shall be under no obligation to ascertain that the *backflow protection device* continues in operating condition.

Maintenance Requirements

All *backflow protection devices* shall fully comply with all [entity] requirements and shall be maintained by the property owner to provide for their continuing function as designed. All *backflow protection devices* shall be accessible at all times and shall be free from any obstructions, including, but not limited to, rocks, soil, vegetation, debris, grass, trees, bushes, plants, landscaping, concrete, asphalt or other ground coverings or any other materials or substances that may impair the proper function of or unobstructed accessibility to the devices.

[Optionally, consider adding inspection requirements and the requirement that a licensed plumber be used for this purpose.]

Elevation Requirements

All *backflow protection devices* shall be installed at an elevation that protects the property upon which it is installed and other property in its vicinity from damage. The property owner shall either confirm that the *backflow protection device* is properly installed and placed at the proper elevation, or obtain

competent assistance from a duly licensed plumber or contractor to confirm its proper elevation. If any subsequent modification of the property results in the *backflow protection device* being at an improper elevation, the property owner shall adjust the *backflow protection device* to the proper elevation. The property owner shall be responsible for any damage to property or injury to person that is sustained as a result of the improper installation or location of a *backflow protection device*.

Failure to Follow Backflow Protection Device Requirements

Any property owner whose property has no *backflow protection device* as required by this Ordinance or other law or regulation, or which has a defective or improperly installed *backflow protection device*, or which has a *backflow protection device* that does not comply in all respects with the requirements of this Ordinance or with any standards adopted or utilized by the [entity] shall be responsible for all damage that results from the lack of such a device, or the failure of the defective or improperly installed or noncompliant device to prevent or minimize such damage. The [entity] will not be liable for damage resulting from sewer overflows when a *backflow protection device* has not been installed or maintained as required by this Ordinance.