

PREFACE:

In 2008, an example bylaw “For the maintenance and repair of private sewer laterals” was developed to provide a reference for Metro Vancouver municipalities that demonstrates their legal authority for management of private sewer laterals. The example bylaw was developed by a BC lawyer (with West Coast Environmental Law) for the BC context, ensuring the provisions are within the authority of municipalities under the Community Charter. The key concepts for the bylaw were drawn from examples found in other jurisdictions, both in Canada and the US. Now (2015): Two example bylaws have been created for CRD municipalities that are modeled on the Metro Vancouver example.

The first bylaw (‘Basic elements’) contains the elements that are recommended be addressed in all municipalities. These elements provide clarity for the required maintenance standards expected of property owners, clarity about the authority of municipalities to inspect and require action to bring private laterals into compliance, and clarity about the penalties that may be imposed if they are not brought into compliance. These are important to clarify before embarking on programs that involve inspection of private laterals, such as smoke testing programs. Several municipalities in Canada have been updating their sewer bylaws in recent years to address these elements.

Here are the key elements of bylaw #1:

- *Required maintenance standards*
- *Authority for entry and testing by City*
- *Authority to require repair of a defect*
- *Requirement to get a permit for work*
- *Financial assistance and Monetary incentive (Note: Recommend removing these items in Part 5 from ‘Basic Elements’ bylaw)*
- *Offence and penalties for failure to comply*

Sample Bylaw on Private Sewer Laterals for CRD - ‘Basic Elements’

CITY OF _____

BYLAW NO. ____, 20__

FOR THE MAINTENANCE AND REPAIR OF PRIVATE SEWER LATERALS

WHEREAS the Council of _____ is authorized to provide laws and services for the benefit of the community, and to provide for responsible stewardship and management of the public assets of the community;

AND WHEREAS Council has regulatory authority over sewers and drains and deems it in the public interest to regulate the maintenance, operation and function of private sewer laterals within the sanitary sewer system;

AND WHEREAS such regulation supports and advances regional objectives to improve the integrity and efficient operation and function of the sewer system, and to reduce and prevent sewage overflows caused by inflow and infiltration,

NOW THEREFORE, the Council of ____, in open meeting assembled, enacts as follows:

PART 1

SHORT TITLE

1. This bylaw may be cited for all purposes as the Private Sewer Lateral Maintenance Bylaw No. ____, 20__.

DEFINITIONS

2. The following definitions apply for the purposes of the bylaw:

“Bylaw Enforcement Officer” means a person appointed by the Council as a Bylaw Enforcement Officer.

“Chief Building Inspector” means the Chief Building Inspector for the City and his/her authorized designate(s).

“Combined Sewer” means a sewer or portion thereof designed to function simultaneously as a storm sewer and as a sanitary sewer and its appurtenances.

“Council” means the Council of the _____ of _____.

“Director of Engineering” means the Director of Engineering for the _____ and any successor in title to that position and his/her authorized designate(s).

“Infiltration” means Non-Sanitary Water Flow that enters a sanitary sewer system from such means as, but not limited to, defective, cracked or faulty pipes, pipe joints, connections or manhole walls. Infiltration does not include, and is distinguished from, Inflow.

“Inflow” means Non-Sanitary Water Flow that enters a sanitary sewer system from connections that include, but are not limited to, roof leaders, surface, foundation or other drains, manhole covers, and cross connections with storm or combined sewers.

“Licensed Plumber” means a plumber who has received accreditation in that trade pursuant to the Interprovincial Standards (Red Seal) Program.

“Owner” means the registered owner of a real property estate in fee simple.

“Non-Sanitary Water Flow” means a flow of water that has not been polluted by Sanitary Waste, and includes but is not limited to rainwater, stormwater, groundwater, roof and parking lot runoff.

“Plumbing Fixture” means any toilet, urinal, wash basin, sink, bath tub, shower, or other plumbing apparatus on private property that connects to the Sanitary Sewer Main via a Private Sewer Lateral or Sewer Service Pipe.

“Private Sewer Lateral” means the underground pipe or any works on private property connecting an existing building or proposed building on private property to the Sewer Service Pipe at the property line.

“Sanitary Sewer Main” means publicly owned sewer pipe that is located on public property and to which a Private Sewer Lateral is directly connected or connected via a Sewer Service Pipe.

“Sanitary Waste” means waste and waste water from plumbing fixtures on residential and non-residential property.

“Sewer Service Pipe” means publicly owned pipe and fittings connecting a property, at or near the private property line, to the Sanitary Sewer Main.

APPLICATION

3. This bylaw applies to all properties that receive water or wastewater service from the _____ of _____.

NOTICE

4. For the purposes of this bylaw, any notice delivered to an Owner by mail is deemed to be received on the same day of the week, in the calendar week following mailing, as the day of the week on which the document was mailed or, if that day is a Saturday or holiday, on the next day that is not a Saturday or holiday.

PART 2

REQUIRED MAINTENANCE STANDARD

5. An Owner of real property containing a Private Sewer Lateral shall at the Owner’s expense maintain the Private Sewer Lateral to the following required maintenance standard:
 - (a) the Private Sewer Lateral shall be clear of all obstructions (including roots, grease deposits, debris and other solids) which may impede the flow or obstruct the transmission of waste;
 - (b) the Private Sewer Lateral shall be free of any structural defects (including cracks, breaks, openings, rodent holes or missing portions), which may allow the introduction of extraneous flow or debris into the sanitary sewer system or allow the discharge of sewage onto the property, and the lateral shall be uniform and without sags; and
 - (c) the Private Sewer Lateral shall not be connected to any source of Non-Sanitary Water Flow and shall not discharge Non-Sanitary Water Flows into a Sanitary Sewer Main.
6. The City is responsible for maintaining the Sewer Service Pipe at the City’s expense. If flushing or rodding of a Private Sewer Lateral is required to remove an obstruction caused solely by a structural defect in the Sewer Service Pipe, the City shall be solely responsible for the cost of removing the obstruction.

UNAUTHORIZED DISCHARGES OR CONNECTIONS

7. No person shall discharge or permit to be discharged anything other than Sanitary Waste into the public sewer.

ENTRY AND TESTING BY CITY

8. The Director of Engineering, Chief Building Inspector or a Bylaw Enforcement Officer may at reasonable times and on giving reasonable notice to the Owner, enter upon any property or premises for the purposes of ascertaining whether the regulations of this bylaw are being observed.
9. The Director of Engineering is directed, where any dwelling is occupied, to obtain the consent of the occupant or provide written notice 24 hours in advance of entry upon the occupied dwelling pursuant to section 8.
10. The Director of Engineering may periodically perform tests or inspections of a Private Sewer Lateral to confirm the integrity and proper function of the sanitary sewer system or whether the Private Sewer Later is being maintained to the required maintenance standard set out in section 5 of this Bylaw. Testing and inspection methodology may include smoke testing, dyed water testing, air testing, hydraulic testing, closed circuit television inspection, and other testing or inspection techniques approved by the Director of Engineering.
11. It is an offence under this bylaw to hinder or obstruct entry, tests or inspections by the Director of Engineering.

PART 3

REQUIRED REPAIR OF DEFECT

12. The Director of Engineering may provide the Owner with written notice of a defect identified in a Private Sewer Lateral as a result of testing or inspection conducted by the City.
13. Subject to section 14, an Owner in receipt of a written notice of a defect shall within 120 days of receipt of the notice repair the defect as necessary to meet the required maintenance standard described in Part 2.
14. If the identified defect is such that sewage is exposed on the property or there is a potential health hazard, an Owner must:
 - (a) Stop the discharge immediately;
 - (b) Remediate the site not later than 24 hours after the Owner has notice of the exposed sewage; and
 - (c) Within 14 days of receipt of the notice repair the defect as necessary to meet the required maintenance standard described in Part 2.

PART 4

SEWER LATERAL WORK – PERMIT REQUIREMENT

15. If a notice of defect delivered by the Director of Engineering reveals a defect in a Private Sewer Lateral, an Owner shall at his/her own expense repair or replace the Private Sewer Lateral as necessary to meet the required maintenance standard described in Part 2.
16. An Owner shall first obtain from the City Engineering or Building Department a permit to conduct the repair or replacement work.

PART 5

FINANCIAL ASSISTANCE [***N.B. to provide this kind of assistance (lending money) the municipality would need to comply with the notice requirements of the Community Charter, section 24*]

[*** optional – council may opt to include a financial assistance component in this bylaw*]

17. The City is hereby authorized to establish a Private Sewer Lateral financial assistance program in the nature of a no-interest loan program, to assist Owners with the costs of repairing or replacing a defective Private Sewer Lateral.
18. Loans will not be granted unless the Owner signs an agreement that includes the Owner's agreement:
 - (a) To repay the loan plus the lien registration costs in full, by way of five equal annual installments collected as property taxes;
 - (b) That the loan principal will be secured by a lien registered against the property's title in the Land Title Office;
 - (c) That upon any Change in Ownership of the property, the full balance of the loan will become immediately due and payable to the City and if unpaid, due and collectable as property taxes in arrears.
19. An Owner may apply for assistance from the program by filing an application with the Director of Engineering in the form prescribed by the Director of Engineering.
20. Eligibility for financial assistance will be determined by the Director of Engineering on the basis of financial inability to pay for required repairs.
21. If an Owner complies with the application requirements, the __ Director of Engineering may authorize the Owner to receive financial assistance under the program.

MONETARY INCENTIVE FOR VOLUNTARY INSPECTION AND REPAIRS

[*** optional – council may opt to include a rebate component in this bylaw*]

22. The City is authorized to offer to Owners a monetary incentive as provided in this Part to encourage eligible Owners to voluntarily comply with the required maintenance standard for Private Sewer

Laterals, and to help to offset the cost of inspection and repairs (“Monetary Incentive”). The Monetary Incentive is not available in respect of work performed after ____, 20__.

23. The City is not required to offer or continue the Monetary Incentive, except as authorized by Council. This incentive is subject to the budgetary limitations as may be established by Council from time to time.
24. Council may grant a Monetary Incentive under this Part only in respect of properties that meet all of the following criteria:
 - (a) The Private Sewer Lateral was installed more than 20 years prior to the date of the application for the Monetary Incentive;
 - (b) The property is not subject to any of the requirements set out in Parts 3 and 4 of this bylaw;
 - (c) The property is a residential use property and contains three or fewer residential units.
 - (d) The Owner has voluntarily repaired a defective Private Sewer Lateral not more than 60 days before the date of the application.
25. Monetary Incentives granted to reimburse Owners under this Part will be limited to a maximum amount of \$____ Canadian or __ per cent of the Eligible Repair Costs, whichever is less.
26. Eligible Repair Costs are defined for the purposes of this Part as:
 - (a) the costs of Private Sewer Lateral inspection and testing,
 - (b) costs for pipe or other pipe repair material, and/or
 - (c) costs of excavation or burial of pipe in the soil.
 - (d) All other costs, including but not limited to landscape repairs, sidewalk repairs, driveway repairs, the cost of the Owner’s own labour or other incidental costs are ineligible.
27. An Owner must apply for a Monetary Incentive within 60 days of completing the repairs on the defective Private Sewer Lateral. To apply, an Owner must submit to the Director of Engineering:
 - (a) an application in the form prescribed by the Director of Engineering;
 - (b) a copy of a Licenced Plumber’s invoice, detailing the work performed on the property and listing the cost of the work; and
 - (c) a copy of the permit from the City Engineering or Building Department for the repair or replacement work.

PART 6

FAILURE TO COMPLY – OFFENCE AND PENALTIES

28. The Director of Engineering, the Chief Building Inspector, and Bylaw Enforcement Officers are authorized to enforce the provisions of this bylaw.
29. On becoming aware of an Owner's non-compliance with this bylaw, an authorized enforcement officer may deliver a Notice of Non-Compliance to the Owner advising him/her of the failure to comply and the obligation to comply with the bylaw.
30. An Owner shall comply with the bylaw within 30 days of issuance of a Notice of Non-Compliance, or be liable to enforcement action.
31. A person who violates or contravenes a provision of this bylaw or who consents, allows or permits any act or thing that violates or contravenes a provision of this bylaw, or who neglects or refrains from doing anything required to be done by this bylaw, commits an offence and is liable to a fine not exceeding \$10,000 or imprisonment for 6 months, or both
32. Each day that a violation occurs or continues constitutes a separate offence.
33. Nothing in this bylaw shall limit the City from pursuing any and all bylaw enforcement or remedial authority available to it pursuant to the *Local Government Act* or *Community Charter*. Without limiting that authority, such authority includes the right of the City to pursue any or all of the following enforcement or remedial measures:
 - (a) Following non-compliance with the bylaw and on providing the Owner with 30 days written notice, the City may discontinue the service of water supply to the property [***N.B. The municipality would need to modify the terms of its water service to include the need to comply with this bylaw – see section 18 of the Community Charter*];
 - (b) A civil proceeding in the BC Supreme Court;
 - (c) Reimbursement for the costs of municipal action pursuant to section 17 of the *Community Charter*. Costs incurred by the City to effect repairs required to bring a defaulting Owner's Private Sewer Lateral into compliance with the bylaw will be a debt of the Owner owed to the City [***optional** and will bear interest at the prime rate of the Bank of Canada plus 2 per cent*]. This debt will be due and payable 30 days after the date on which the expenses were incurred and if unpaid on the due date will be deemed taxes in arrears and may be so entered on the tax roll by the collector. Debts due may be recovered as a lien against the property.
34. Nothing in this bylaw shall be interpreted as relieving a person discharging waste from complying with federal, provincial and local government enactments governing the discharge of waste into sewers.

35. Any financial assistance or monetary incentive provided to an Owner by the City, or any repair and/or replacement of a defaulting Owner's Private Sewer Lateral by the City pursuant to section 17 of the *Community Charter*, are at the sole risk and cost of the Owner only. The City assumes no liability for providing financial assistance or a monetary incentive, or for effecting repair or replacement work and shall be immune from any claim by the Owner or any other person that as a result of providing the financial assistance or monetary incentive or effecting the repair or replacement, the City:

- (a) holds any interest in the Private Sewer Lateral,
- (b) bears any liability whatsoever in respect of the Private Sewer Lateral or arising from the work that was effected or financially assisted by the City, or
- (c) has any continuing duty to effect or finance maintenance or repairs to the Private Sewer Lateral.

PART 7

MUNICIPAL REPORTING AND REVIEW

36. The Director of Engineering shall gather data and deliver to Council an annual report summarizing the actions that have resulted from the adoption of the bylaw, assessing the effectiveness of those actions, and making recommendations on any other priority actions needed to address Private Sewer Lateral maintenance.

SEVERABILITY

37. In the event any provision, or part thereof, of this bylaw is found by a court of competent jurisdiction to be invalid, such provision or part thereof shall be determined to be severed and such decision shall not affect the validity of the remaining provisions of this bylaw, which shall remain in full force and effect.

READ A FIRST TIME this ___ day of _____, 20__.

READ A SECOND TIME this ___ day of _____, 20__.

READ A THIRD TIME this ___ day of _____, 20__.

ADOPTED by the Council this ___ day of _____, 20__.

MAYOR

CITY CLERK