



CITY COUNCIL AGENDA REPORT

Meeting Date: October 21, 2021

From: Director of Public Works/City Engineer

Subject: Municipal Code Changes to Sewer System Chapter

Recommendation

Adopt Ordinance No. 667, waiving second reading, amending Chapter 13.04 of the Brisbane Municipal Code pertaining to "Sewer System."

Background

This ordinance was introduced at the regular City Council meeting held on October 7, 2021, and was passed unanimously with no requested changes.

Attachments

1. October 7, 2001 staff report, including Ordinance No. 667

Handwritten signature of Randy Breault in blue ink.

Randy Breault, Public Works Director

Handwritten signature of Clayton Holstine in blue ink.

Clay Holstine, City Manager



CITY COUNCIL AGENDA REPORT

Meeting Date: October 7, 2021

From: Director of Public Works/City Engineer

Subject: Municipal Code Changes to Sewer System Chapter

Community Goal/Result: Ecological Sustainability

Purpose

To introduce an ordinance that will update the municipal code chapter relating to joint sewer laterals; this action is consistent with the community's goals of making decisions based on stewardship of the environment, and reducing waste streams.

Recommendation

Introduce Ordinance No. 667, waiving first reading, amending Chapter 13.04 of the Brisbane Municipal Code pertaining to "Sewer System."

Background

Remnants of the city's pre and early incorporation days include the presence of joint sewer laterals serving one or more properties. Many of the shared laterals were placed without the recordation of an easement for the served properties. These laterals have been treated as pre-existing nonconforming conditions, and under certain circumstances are required to be upgraded to city standards.

There are two challenges with these pre-existing nonconforming laterals; first, is that when there is no agreement in place to allocate repair costs, there can be significant delays in fixing sanitary sewer overflows on private property while the parties connected to the lateral negotiate who should pay how much. The second challenge is that a new generation of owners are buying homes served by a joint lateral, and this information is not disclosed to them upon sale.

At present, public works staff is aware of 38 joint sewers without formal approval. These shared laterals serve 141 residences.

Discussion

The revisions proposed in Ordinance 667 are intended to make it less difficult for properties owner to obtain a shared sewer lateral agreement, and to make disclosure of a property connected to a shared lateral a requirement at the time of sale.

The major change to existing §13.04.430 is to allow the Director of Public Works, working in concert with the City Attorney, to approve a joint sewer lateral, rather than taking the matter

to Council. Over the last two decades, these agreements have been placed on Council’s Consent Calendar, and never removed for discussion. As these can be handled administratively, the most time efficient way to process them is to have staff complete that effort. An interesting note to this discussion is that the request for shared lateral agreements came up three (3) times during Council’s most recent summer break.

A second change to existing §13.04.430 is the addition of the word “generally” in front of “. . . subject to . . . terms and conditions” The reason for this change is that in some circumstances the desired conditions cannot be met. For example, many of these legacy shared laterals are placed in conditions where a ten-foot easement would not be possible, as the adjoining house would encroach into that easement. In past cases where this has occurred, the Public Works Director required the plans to specify a fusion-welded form of high-density polyethylene pipe to minimize the possibility for future maintenance.

The addition of new §13.04.431 simply requires sellers and their agents/brokers to notify buyers that the property’s sewer is served by a shared lateral. Any discussions on whether or not the lateral is to be formally approved by the city is left to the negotiating parties. Note that this disclosure is nearly identical to the required disclosure that a sewer lateral certificate program is available within the city (codified by Ordinance No. 591, 3/19/15 at §13.04.452 and §13.04.453)

Fiscal Impact

The staff time that will be utilized to draft the brochure required by the ordinance and to process requests for approval of shared sewer laterals can be accommodated with existing resources. No additional cost is envisioned because of the recommended action.

Measure of Success

An updated sewer system municipal code chapter, which expedites the processing of shared sewer lateral approvals, and which notifies buyers ahead of closing if the purchase property is served by a joint sewer.

Attachments

1. Ordinance No. 667
2. Red-line version comparing existing code section to proposed changes



Randy Breault, Public Works Director

Clay Holstine, City Manager

ORDINANCE NO. 667

**AN ORDINANCE OF THE CITY OF BRISBANE
AMENDING SECTION 13.04.430 AND ADDING SECTION 13.04.431
TO THE MUNICIPAL CODE PERTAINING TO JOINT SEWER LATERALS**

The City Council of the City of Brisbane hereby ordains as follows:

SECTION 1: Section 13.04.430 of Chapter 13.04 “Sewer System” of Title 13 of the Municipal Code is hereby amended to read as follows:

§13.04.430 Joint sewer lateral installation and maintenance.

The director may upon finding good cause therefor, grant approval for a joint sewer lateral (one that services two (2) or more properties); provided, that each property owner shall submit plans to the director for prior approval. Any approval granted by the director for a joint sewer lateral shall be in a form as approved by the City Attorney and shall be generally subject to the following terms and conditions:

- A. Installation and maintenance costs of the joint sewer lateral shall be shared equally by the parties thereto. Any person who subsequently connects to the joint sewer lateral shall share in the cost thereof on a pro rata basis.
- B. Original installation and repairs must be pursuant to code, and approval of the plumbing or building inspector is required.
- C. One owner may hire a licensed plumber to make emergency repairs without the consent of the other owners, in the event they are not available, and the cost of the emergency repairs shall be shared on a pro rata basis.
- D. No user shall interrupt the continuity of the service or cause to have interrupted the continuity of the service of the joint sewer lateral, in such a manner as to cause damage or inconvenience to the other users, other than for a reasonable time required for repair.
- E. In the event that the owner or users fail to act and the director and/or health officer determines that conditions in the joint sewer lateral are such as to be a hazard to health or safety, then the city may, pursuant to written notice, order the work done and divide the cost, as specified in subsection A of this section, on the tax bill if it is not compensated within fifteen (15) days from the time of billing by registered mail to each of the users last known address or that shown on the last equalized assessment roll.
- F. The owners and users of the joint sewer lateral shall assume all responsibility and liability in connection therewith and they shall hold the city harmless.

- G. The owners of the property on which the joint sewer lateral is located shall grant and have recorded an easement of not less than ten (10) feet in width for the maintenance and repair of the joint sewer lateral.

SECTION 2: Section 13.04.431 is hereby added to Chapter 13.04 “Sewer System” of Title 13 of the Municipal Code:

§13.04.431 Disclosure and joint sewer lateral agreement; when required.

A. All property owners whose property or properties are served by a joint sewer lateral and who have received approval for a joint sewer lateral under Section 13.04.430 shall enter into and record a joint sewer lateral agreement before the City will issue a final building permit when the property owner has undertaken work that:

1. Triggers the requirements of Chapter 15.10 of this code;
2. Is associated with a change in water service (e.g., change in meter size or the addition of a meter); or
3. Results in maintenance on the existing joint sewer lateral, whether routine or emergency.

B. Beginning January 1, 2022, except as provided in subsection C, any property owner intending to sell or transfer a fee interest in real property must disclose the requirements of this section 13.04.431 to each of the following:

1. The property owner’s real estate broker or agent, if any;
2. The person to whom the real property is intended to be sold or transferred;
3. The real estate broker or agent, if any, of the person to whom the real property is intended to be sold or transferred;
4. The escrow company or holder involved in the real property sale or transfer, if any.

C. Subsection B of this Section 13.04.431 shall not apply to:

1. Sales or transfers of individual units within a condominium as defined in Section 17.02.150 of this code;
2. Sales or transfers of less than a fee interest, e.g., a leasehold;
3. Sales or transfers to a fiduciary in the course of the administration of a decedent's estate, a guardianship or a conservatorship;
4. Transfers from one co-owner to one or more other co-owners;
5. Transfers to a revocable trust if the trust is for the benefit of the grantor(s);
6. Transfers made by a trustor to an intervivos trust;
7. Transfers between spouses or between registered domestic partners;

8. Transfers to a financial institution, trust deed holder, or trustee of a deed of trust, as part of foreclosure or similar process.

D. The director shall prepare a handout or other written material, to be made available to the public, describing the requirements of this Section. A person may satisfy the disclosure requirements of subsection B by providing a then current copy of the handout or other written material to those parties identified in subsection B.

SECTION 3: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent City to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 4: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

* * * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2021, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Karen Cunningham, Mayor

ATTEST:

Ingrid Padilla, City Clerk

APPROVED AS TO FORM:



Thomas R. McMorrow, City Attorney

13.04.430 Joint sewer lateral installation and maintenance.

The ~~city council~~ director may, ~~by resolution,~~ upon finding good cause therefor, grant approval for a joint sewer lateral (one ~~that services two~~ used by two (2) or more ~~properties~~ persons); provided, that each ~~property owner applicant therefor~~ shall submit plans to the director for prior approval. Any approval granted by the ~~city council~~ director for a joint sewer lateral ~~is~~ shall be in a form as approved by the City Attorney and shall be generally subject to the following terms and conditions:

- A. Installation and maintenance costs of the joint sewer lateral shall be shared equally by the parties thereto. Any person who subsequently connects to the joint sewer lateral shall share in the cost thereof on a pro rata basis.
- B. Original installation and repairs must be pursuant to code, and approval of the plumbing or building inspector is required.
- C. One owner may hire a licensed plumber to make emergency repairs without the consent of the other owners, in the event they are not available, and the cost of the emergency repairs shall be shared on a pro rata basis.
- D. No user shall interrupt the continuity of the service or cause to have interrupted the continuity of the service of the joint sewer lateral, in such a manner as to cause damage or inconvenience to the other users, other than for a reasonable time required for repair.
- E. In the event that the owner or users fail to act and the director and/or health officer determines that conditions in the joint sewer lateral are such as to be a hazard to health or safety, then the city may, pursuant to written notice, order the work done and divide the cost, as specified in subsection A of this section, on the tax bill if it is not compensated within fifteen (15) days from the time of billing by registered mail to each of the users last known address or that shown on the last equalized assessment roll.
- F. The owners and users of the joint sewer lateral shall assume all responsibility and liability in connection therewith and they shall hold the city harmless.
- G. The owners of the property on which the joint sewer lateral is located shall grant and have recorded an easement of not less than ten (10) feet in width for the maintenance and repair of the joint sewer lateral.

13.04.431 Disclosure and joint sewer lateral agreement; when required.

A. All ~~property owners whose property or properties~~ ~~persons~~ are served by a joint sewer lateral and who have received approval for a joint sewer lateral under Section 13.04.430 shall enter into and record ~~possess or obtain~~ a joint sewer lateral agreement issued under Section 13.04.430 before the ~~City~~ will issue a final building permit when the ~~property owner person~~ has undertaken work that:

- 1. Triggers the requirements of Chapter 15.10 of this code; ~~or~~
- 2. Is associated with a change in water service (e.g., change in meter size or the addition of a meter); or

3. Results in ~~Is routine or emergency~~ maintenance on the existing joint sewer lateral, whether routine or emergency.

B .Beginning DATE TBD, except as provided in subsection C, any property owner~~person~~ intending to sell or transfer a fee interest in real property must disclose the requirements of this section 13.04.431 to each of the following, ~~except as provided in subsection C:~~

1. The property owner's~~person's~~ real estate broker or agent, if any;
2. The person to whom the real property is intended to be sold or transferred;
3. The real estate broker or agent, if any, of the person to whom the real property is intended to be sold or transferred;
4. The escrow company or holder involved in the real property sale or transfer, if any.

C. Subsection B of this Section 13.04.431 shall~~does~~ not apply to:

1. Sales or transfers of individual units within a condominium as defined in Section 17.02.150 of this code;
2. Sales or transfers of less than a fee interest, e.g., a leasehold;
3. Sales or transfers to a fiduciary in the course of the administration of a decedent's estate, a guardianship or a conservatorship;
4. Transfers from one co-owner to one or more other co-owners;
5. Transfers to a revocable trust if the trust is for the benefit of the grantor(s);
6. Transfers made by a trustor to an intervivos trust;
7. Transfers between spouses or between registered domestic partners;
8. Transfers to a financial institution, trust deed holder, or trustee of a deed of trust, as part of foreclosure or similar process.

D. The director shall prepare a handout or other written material, to be made available to the public, describing the requirements of this ~~S~~section. A person may satisfy the disclosure requirements of subsection B~~;~~ by providing a then current copy of the handout or other written material to those parties identified in subsection B.