ORDINANCE NO. 3579 C.S.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY

REPEAL AND REPLACE MONTEREY CITY CODE, CHAPTER 30, ARTICLE 1, SECTIONS 1, 1.5 AND 1.7 TO UPDATE THE CITY’S REGULATIONS FOR SEWER SYSTEM AND CREATE A MANDATORY SEWER LATERAL INSPECTION AND REPAIR PROGRAM

THE COUNCIL OF THE CITY OF MONTEREY DOES ORDAIN, as follows:

SECTION 1:

WHEREAS, the City of Monterey General Plan contains policies to maintain the City’s sewer system.

Public Facilities Element Goal k: Continue cooperation with the Monterey Regional Water Pollution Control Agency to maintain an environmentally compliant closed system (system that complies with environmental regulations) that ultimately allows partial reuse of wastewater.

Public Facilities Element Policy k.2: Continue inspections of the sewer pipe system to prioritize maintenance needs.

WHEREAS, the City’s Municipal Code Chapter 30 establishes regulations for the City’s sewers and sewage disposal, and connection to the City sewer system;

WHEREAS, the proposed ordinance updates the City’s regulations for the sewer system and creates a private lateral inspection and repair program to maintain an environmentally compliant closed sewage collection system;

WHEREAS, one goal of the proposed ordinance is to further reduce the potential for sewer spills caused by and/or from private sewer laterals connected to the City sewer system;

WHEREAS, in August 2015 the City received a Notice to Sue by California River Watch regarding the number and volume of sewer spills on regulatory record for the City sanitary sewer collection system;

WHEREAS, as part of the Settlement Agreement between the City and California River Watch, the City is required to present an ordinance to the City Council proposing a Private Lateral Inspection/Repair Program that includes the following triggers:

a. Transfer of ownership of residential property if no inspection/replacement of the sewer lateral occurred within ten years prior to the transfer;

b. The occurrence of two or more known Private Lateral Sewer Discharges caused by a private sewer lateral within two years;

c. A change of use of a structure that requires a building permit;

d. Upon issuance of a building permit with a valuation of fifty thousand dollars or more that increases the number of bedrooms over the prior total number of bedrooms.
WHEREAS, the proposed Ordinance contains the elements required by the Settlement Agreement;

WHEREAS, the City of Monterey Planning Office determined the project is exempt from the California Environmental Quality Act (CEQA) Guidelines (Article 19, Section 15302, Class 2) because the project proposes regulations to repair existing utility systems (sewer system) and involves negligible or no expansion of capacity. The private sewer laterals will be located on the same site as the existing utility and will have substantially the same purpose and capacity as the infrastructure being replaced. Furthermore, the project does not qualify for any of the exceptions to the categorical exemptions found at CEQA Guidelines Section 15300.2.

Exception a - Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located -a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies. The proposed ordinance establishes requirements for inspection and repair of existing utility lines. The environment is not particularly sensitive because the subject sites already contain utility systems. Specific sites are unknown at this time and no impact is known.

Exception b - Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant. The proposed ordinance establishes requirements for inspection and repair of existing utility lines and. Repairs will occur as needed and fix existing laterals. Specific sites are unknown at this time and no impact is known. No cumulative impact is anticipated.

Exception c - Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. The proposed ordinance establishes requirements for inspection and repair of existing utility lines and. Specific sites are unknown at this time and no impact is known. No significant effect due to unusual circumstance is anticipated.

Exception d - Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified Environmental Impact Report (EIR). The proposed ordinance establishes requirements for inspection and repair of existing utility lines. Specific sites are unknown at this time and no impact is known. Existing sewer lines are buried underground and no impact to scenic highways is anticipated.

Exception e - Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code. The proposed ordinance establishes requirements for inspection and repair of existing utility lines. Repairs will occur as needed and fix existing laterals. Specific sites are unknown at this time and will need to be individually evaluated as proposed.

Exception f - Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource. The proposed ordinance establishes requirements for inspection and repair of existing utility lines.
Repairs will occur as needed and fix existing laterals. Specific sites are unknown at this time and will need to be individually evaluated as proposed.

NOW THEREFORE, the Monterey City Council declares as follows:

SECTION 2: Monterey City Code, Chapter 30, Article 1, Sections 1, 1.5, and 1.7 are hereby repealed in their entirety and replaced as follows:

ARTICLE 1. IN GENERAL

Sec. 30-1. Definitions.

a) "Building drain" means the lowest horizontal piping of a wastewater drainage system that receives the discharge from pipes inside the walls of the building, and conveys it to the sanitary sewer lateral, which begins two feet outside the inner face of the building wall.

b) "Private sanitary sewer collection system" means any sanitary sewer pipe originating or located at least partially on private property collecting wastewater from more than one sanitary sewer lateral, including but not limited to: apartment buildings, business complexes, mobile home parks, condominiums, or townhomes. This excludes single family residential property with an accessory dwelling unit.

c) "Property owner" means a person that owns a parcel of real property, or that person’s authorized representative including a tenant or contractor. As used in this paragraph, “person” means an individual, trust, corporation, nonprofit organization, Homeowners’ Association, partnership, firm, joint venture, limited liability company, or association. A public entity is not a Property Owner for purposes of this Article.

d) "Sanitary sewer" means a pipe or conduit which carries wastewater and to which storm water, surface water, and groundwater are not intentionally admitted.

e) "Sanitary sewer lateral" means a pipe that conveys wastewater from a property building drain to a public sewer main, including the connection to the main.

f) "Sanitary sewer lateral Inspection Form" means any form provided by the City of Monterey in order to verify compliance with this Article.

g) "Wastewater" means liquid and water which is generated or discharged by residential, industrial, commercial, municipal, mobile, agricultural, or other sources, whether treated or untreated, which is contributed into or permitted to enter the publicly owned treatment works as defined by the Clean Water Act (33 U.S.C. § 1292).

Sec. 30-1.1. Connection to City Sewer System Required.

a) No person shall occupy any lot, piece or parcel of land within the City without an adequate and sanitary toilet or privy located thereon unless an equally effective alternative system approved by the City Manager or his/her designee is located and operational on said lot, piece, or parcel of land.
b) It shall be unlawful and a nuisance for any person owning any real property within the City, which property fronts upon a street in which there is laid a sanitary sewer or otherwise has reasonable access to such a sewer line, to maintain, keep or use, or permit to be maintained, kept or used, any privy, privy vault, cesspool, or septic tank, unless said privy, privy vault, cesspool, or septic tank is connected to said sanitary sewer line in a sanitary manner, except that when the City Manager or designee finds the existing system to be adequately functioning in a sanitary manner and not constituting a health hazard to any person, said system shall be allowed to remain separate from the sanitary sewer system. If at any time said non-sewered system fails or ceases to function in a sanitary manner, connection to the sewer shall be mandatory.

Sec. 30-1.2. Maintenance of Sanitary sewer laterals.

a) The property owner shall be responsible for the maintenance, repair, and proper operation of the sanitary sewer lateral and/or private sanitary sewer collection system, regardless of whether any part of the sanitary sewer lateral or private sanitary sewer collection system is located on private property or within the public right-of-way. The City shall have no responsibility or obligation for the maintenance, repair, or proper operation of sanitary sewer laterals or private sanitary sewer collection systems.

b) The property owner shall maintain the sanitary sewer lateral and perform any repair or replacements necessary to meet these standards and requirements:

1. The sewer lateral and/or private sanitary sewer collection system shall be kept free from roots, grease deposits, and other solids that may impede or obstruct the transmission or flow of wastewater.

2. All joints shall be watertight and all pipes shall be sound and free from structural defects, cracks, breaks, openings, sags, or missing portions to prevent exfiltration by waste or infiltration by groundwater or storm water.

3. In the event that material is permitted to enter the main during work on a sanitary sewer lateral, causing or contributing to the cause of a sewage spill, the property owner and/or contractor performing such maintenance work, in addition to any criminal penalties imposed, shall be held civilly liable to the City for any fines or other expenses incurred by the City resulting from the spill.

c) A joint sanitary sewer lateral, also referred to as a branched or common lateral, with two or more laterals from separate parcels that combine into one sanitary sewer lateral that connects to the City's sewer main is prohibited. Notwithstanding the foregoing sentence, joint laterals shall be permitted only in the following instances:

1. Where a lateral is maintained by a homeowner's association or other entity that is party to a formal sanitary sewer lateral maintenance agreement recorded with the Monterey County Recorder in a form acceptable to the City.

2. Where more than one building or other structure is situated upon the same lot, in which case all such buildings and structures may, by permit authorized by the City Manager, or his/her designee be joined in the use of one sewer
connection; provided, that the connection conforms in all other respects to the provisions of this Chapter and a drawn plan of the joint connection is first submitted to and approved by the Public Works Director, or designee. As a further condition of obtaining such a permit, all buildings and structures shall be owned by the same person.

3. Where, in the opinion of the Director of Public Works, or designee, it is impossible or impractical to connect a building on a single lot to the main sewer except in conjunction with the connection of a building or buildings on other lots, a joint connection may be allowed; provided, that the connection conforms in all other respects to the provisions of this Chapter and a drawn plan of the joint connection be first submitted to and approved by the Public Works Director. A sanitary sewer lateral maintenance agreement signed by each property owner sharing the common lateral must be recorded with the Monterey County Recorder.

4. The affected property owners and not the City shall have the responsibility for the maintenance, repair, and replacement of any joint sanitary sewer lateral.

30-1.3 Sewer Overflows.

a) If a building drain, sanitary sewer lateral, or private sanitary sewer collection system is not operating properly and causes the discharge of sewage wastewater to any location other than the publicly owned treatment works, it is considered a sanitary sewer overflow. Any sanitary sewer overflow condition shall constitute a public nuisance to be abated by the property owner as follows:

1. The property owner shall: 1) take immediate action to eliminate the overflow upon discovery, and 2) notify the City within twenty-four hours upon discovery of the overflow.

2. The City shall serve a notice of violation (N.O.V.) either upon any property owner or posted conspicuously on or in front of the property to request abatement of the overflow and inspection of the sanitary sewer lateral. The notice shall be deemed effective immediately upon service to begin the timeline for correcting and abating the sanitary sewer overflow.

3. At least within 72 hours of the notice of violation, the property owner shall have a licensed contractor inspect the sanitary sewer lateral internally by a closed circuit television camera or other means to determine the cause of the overflow to bring the condition of the lateral up to City standards as defined by the Sanitary Sewer Lateral Inspection Form.

4. Within thirty (30) calendar days after service of the notice of the violation or sooner if the site poses a health and safety hazard, the property owner must have completed all necessary repairs to bring the condition of the lateral up to City standards as defined by the Sanitary Sewer Lateral Inspection Form. The property owner must obtain all required city permits prior to performing any required repairs in the City's right-of-way. If the City office is closed, a permit must be obtained on the first business day after the known discharge.
b) Penalties for Non-Compliance. The property owner shall have 30 days from the date of the City’s notice of violation to obtain City required permits and make repairs, unless public health and safety considerations require earlier action. If the work is not completed within this timeframe, the City, at its option, may either make the repairs itself or hire a licensed contractor to mitigate the condition all at the owner’s expense, including assessing an administrative fee for each violation to be charged to the property owner. The property owner may also be assessed a civil penalty for failure to comply in the amount of $1000 for each day the violation continues after the 30 day deadline to repair has expired. If payment is not made by the owner, the City may impose a property tax assessment or lien to recover all penalties, administrative and repair costs associated with mitigating the sewer condition.

30-1.4 Sanitary Sewer Lateral Inspection Requirements.

a) The provisions of this Section shall become operative January 1, 2019.

b) Upon Transfer of Real Property. All residential uses shall, prior to the time of any transfer of ownership, have the sanitary sewer lateral inspected for any defects, a completed Sanitary Sewer Lateral Inspection Form accompanied by payment of the Sewer Lateral Report fee submitted to the City, and, if necessary, have the sewer lateral repaired or corrected to meet the City’s standards and specifications unless exempted under this Article.

1. Responsibilities of Transferror. The owner of the real property prior to the time of sale or other transfer (“transferror”) shall be responsible for complying with the requirements of this Chapter and for obtaining a Sanitary Sewer Lateral Inspection.

2. Option to Transfer Transferror’s Responsibility to Transferee. Before the time of sale or other transfer, the transferror and transferee of any property may mutually agree to shift responsibility for compliance with this Chapter to the transferee. In the event the transferee agrees to assume responsibility for inspecting the building sanitary sewer, the transferee shall complete the inspection and meet the City’s standards within ninety (90) calendar days from the date of the sale or other transfer. Before the time of sale or other transfer, the transferror and transferee shall complete the following procedures:

   i. The transferror shall request from the City a Transfer of Responsibility to Inspect Form. Both the transferror and transferee shall sign the form certifying that the transferee has assumed responsibility for the inspection.

   ii. The transferror shall file the signed Transfer of Responsibility to Inspect Form with the City before the time of sale and include it in the real estate transfer documentation.

c) Upon Construction or Remodeling. When constructing a new structure on property with an existing lateral, changing the use of a structure that requires a building permit, connecting a previously unconnected structure to an existing lateral, or constructing a
Major Building Remodel Project, the sanitary sewer lateral must be inspected for any defects and a completed Sanitary Sewer Lateral Inspection Form submitted to the City.

1. For purposes of this section, a Major Building Remodel Project is one that is estimated by the City to cost $50,000 or more and increases the total number of bedrooms. The fifty thousand dollar ($50,000) limit set forth herein shall be automatically increased by one thousand dollars ($1,000) on January 1, 2020, and by the same amount each fifth year thereafter.

d) Upon the occurrence of two (2) or more known Private Lateral Sewer Discharges caused by a private sanitary sewer lateral within two (2) years, the sanitary sewer lateral must be inspected for any defects and a completed Sanitary Sewer Lateral Inspection Form submitted to the City within sixty (60) days following notice from the City Manager, or his/her designee.

e) Health and Safety Basis for Inspections. As part of its construction and maintenance of sewer mains, the City may discover defective laterals. Upon notice from the City Manager, or his/her designee, to the property owner, any sanitary sewer lateral that the City knows or reasonably suspects to be defective must be inspected for any defects and a completed Sanitary Sewer Lateral Inspection Form submitted to the City within sixty (60) days following notice from the City Manager, or his/her designee.

1. The lateral shall be considered defective if it has any of the following conditions: displaced joints, root intrusion, substantial deterioration of the lines, damaged clean-out, defective clean-out, inflow, infiltration of extraneous water, or other conditions likely to substantially increase the chance for a lateral blockage, or if, within a period of two years, a lateral suffers two or more blockages resulting in overflows.

2. Whenever defective laterals are found, the property owner, at the sole expense of the property owner, shall repair or replace the lateral. The City Manager or designee shall determine the extent of repair required, and more limited repair than complete replacement of the lateral may be permitted at the sole discretion of the City Manager or his/her designee.

30-1.5 Exemptions from Sanitary Sewer Lateral Inspection Requirements.

The sanitary sewer lateral inspection requirements do not apply if any of the following applies:

a) If the sanitary sewer lateral was completely replaced pursuant to valid City permits within the prior 10 year period; or

b) If the sanitary sewer lateral was inspected and found to be meeting City standards as required by this Chapter within the prior 1 (one) year period from the date of the report.

30-1.6 Sanitary Sewer Lateral Inspection and Repair Requirements.

a) The City Manager, or his/her designee, shall establish standards and specifications for the condition, maintenance, and repair of sanitary sewer laterals and will prepare a
Sanitary Sewer Lateral Inspection Form in accordance with these standards and specifications.

b) Notice to Repair. Upon receipt of the Sanitary Sewer Lateral Inspection Form, if the City Manager, or his/her designee, determines that it indicates any deficiencies in the operation of the sanitary sewer lateral, the City Manager, or his/her designee, shall provide the determination and issue a notice to repair within thirty (30) business days after receipt of the Sanitary Sewer Lateral Inspection Form. The notice to repair shall specifically identify the deficiencies to be corrected and shall establish a deadline of 30 days within which the property owner shall complete the required corrective actions. The corrective action may include a requirement that the lateral be replaced altogether and also may include the installation of cleanouts and backwater valves if those devices are otherwise required by the City or the current and adopted version of the California Plumbing Code.

c) Obligations of the Property Owner. The property owner shall complete all corrective action to the satisfaction of the City Manager, or his/her designee, and, if a city permit is required for the repairs, the property owner shall obtain the requisite city permit and a final permit inspection and approval of the relevant Inspector.

1. A replaced or repaired lateral shall not be covered or backfilled until it has been inspected by a representative of the City.

2. All repaired or replaced sanitary sewer laterals shall be brought into compliance with the requirements of the current edition of the California Plumbing Code and the Monterey City Code.

d) Appeals. Any property owner who receives a notice to repair may request an administrative hearing before the Appeals Hearing Board by filing a written notice of appeal with the City Attorney’s Office no later than 10 days after issuance of the notice to repair.

1. Upon receiving a written request for hearing, the Board shall set a time and place for the hearing not less than 10 days nor more than 60 days thereafter. The property owner shall be notified of the hearing by means of registered mail, certified mail, or hand delivery at least five days before the hearing date.

2. All parties involved shall have the right to offer testimonial, documentary, and tangible evidence bearing on the issues, to be represented by counsel, and to confront and cross-examine witnesses. Formal rules of evidence shall not apply; any relevant evidence may be admitted if it is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The City shall have the burden of proof of by a preponderance of the evidence. Any hearing under this section may be continued for a reasonable time for the convenience of a party or witness. In the event that the property owner fails to appear at the hearing, the evidence of the existence of facts which constitute grounds for the notice to repair shall be considered conclusively established.
3. Within 30 days of the hearing, the Board shall issue a written decision specifying the reasons for the decision, which shall be delivered by means of registered mail, certified mail, or hand delivery to the property owner. The decision of the Board shall be final and shall be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6.

e) Failure to Repair. Should a property owner fail to submit a Sanitary Sewer Lateral Inspection Form or take required corrective action within the time required by this Chapter, the City may pursue any administrative, civil, or criminal remedies available and/or commence nuisance abatement proceedings.

f) Public Nuisance. Whenever the City Manager, or his/her designee, believes a public nuisance exists as a result of inadequate, improper or negligent operation or maintenance of any sanitary sewer lateral or appurtenance thereto which may endanger public health and safety, the City may commence abatement proceedings pursuant to Chapter 22, Article 4 of this Code, including, but not limited to, recovery of the costs of abatement.

Sec. 30-1.7. Trash Enclosure Connections to City Sewer System.

a.) All new or replaced trash enclosures for commercial, industrial, or multi-family residential (more than four units) shall install a drain that connects to the City sanitary sewer system. In addition to other trash enclosure standards contained elsewhere, the following trash enclosure sewer connection standards shall apply:

1. Enclosure slabs shall slope inward at no more than 1% to collect any effluent in the enclosure.
2. Tallow containers shall be separated from waste and recycling containers by barrier, with at least 12 inches of space from other containers. Tallow containers shall not be allowed to spill or drain to the sanitary sewer drain.
3. Trash enclosures shall have a water connection in or nearby to provide for cleaning inside the enclosure area. If inside, the connection shall be located such that it cannot be damaged by enclosure bins.
4. Waste generated by trash enclosure cleaning shall be discharged to the sanitary sewer. Wastewater discharges or potential discharges to the parking lot, street or storm drain system are illicit discharges and a violation of the City Municipal Code.
5. Enclosure drains shall be traffic rated and located so they are not under container wheels or in the path of service vehicles.
6. Developments with the potential to generate the following types of waste shall flow through a grease trap, as defined in this Chapter, with a minimum capacity of 35 gallons per minute (70 lbs):

   i. Automotive fluid waste, including gas stations, auto repairs, oil change centers and facilities with similar wastes.
   ii. Food Waste, including restaurants, food preparation businesses, facilities with large kitchens, multi-family units of 5 or more units and facilities with similar wastes.
   iii. Commercial or Industrial waste, including any commercial or industrial businesses that use significant quantities of solvents, lubricating greases, oils or similar wastes.
b.) At the discretion of the City Manager or designee, limited areas around trash compactors may be allowed to drain to the sanitary sewer system without excluding rain water.

Sec. 30-1.8. Closure of Sanitary Sewer Laterals.
Property owners shall remove any abandoned sanitary sewer lateral. No sanitary sewer lateral shall remain in place, without serving an inhabitable building, for more than 12 (twelve) months. Laterals that are not serving an inhabitable building shall be removed at the property line (or back of sidewalk) as determined by the City Manager, or his/her designee. The property owner shall video any portion of the lateral that is proposed to remain to ensure it's not cracked or otherwise defective; if found to be defective, the property owner must remove all defective pipeline and cap at its terminus, to reduce infiltration and inflow and prevent tree root intrusion into the City sanitary sewer collection system. This requirement shall not apply to laterals abandoned before the effective date of the ordinance codified in this chapter, unless determined that they are causing problems with the sewer main, as determined by the City Manager, or his/her designee.

SECTION 3: All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 4: This ordinance shall be in full force and effect thirty (30) days from and after its final passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 17th day of April, 2018, by the following vote:

AYES: 5  COUNCILMEMBERS: Albert, Barrett, Haffa, Smith, Roberson
NOES: 0  COUNCILMEMBERS: None
ABSENT: 0  COUNCILMEMBERS: None
ABSTAIN: 0  COUNCILMEMBERS: None

APPROVED:

[Signature]
Mayor of said City