



AGENDA REPORT

Meeting Date: December 2, 2008

Item Number: E-3

To: Honorable Mayor & City Council

From: Shana Epstein, Environmental Utilities Manager
Christian Di Renzo, Senior Management Analyst

Subject: AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING TITLE 9 OF THE MUNICIPAL CODE REGARDING WATER CONSERVATION PLUMBING FIXTURE STANDARDS AND WATER EFFICIENT LANDSCAPING.

Attachments:

1. Plumbing Retrofit Ordinance
2. Smoke Detector and Water Conservation Plumbing Fixtures Affidavit

RECOMMENDATION

Staff recommends that the City Council adopt the proposed Plumbing Retrofit Ordinance.

INTRODUCTION

The proposed plumbing retrofit ordinance would affect change of ownership or resale for residential, commercial, and industrial properties -- supplementing a pre-existing plumbing retrofit ordinance affecting new construction. In light of the Governor's June proclamation of a statewide drought and the City's adoption of Stage A of its Water Conservation Ordinance, it is in the best interest to the City and its residents to provide plumbing retrofit standards for the conservation of potable water supplies. Moreover, this ordinance satisfies the California Urban Water Conservation Council's (CUWCC) Best Management Practice (BMP) 2 "Residential Plumbing Retrofit." The City is one of 394 member agencies which signed the Council's MOU pledging to adopt voluntary conservation best management practices.

Subsequent to the initial presentation of the draft ordinance to the Public Works Commission, staff was directed to include smart irrigation controllers with the retrofit plumbing requirements. Staff engaged both the Building and Safety Division and the City Attorney's Office to devise appropriate language reflecting the original intent of this request. This addition is covered in greater detail below.

DISCUSSION

Plumbing Retrofit Requirements

The proposed ordinance would require all real properties, including residential, commercial, and industrial property located within the City limits, to be retrofitted, if not already so, with low consumption showerheads, toilets, faucets, and urinals at the time a property is sold. This ordinance would make it the property owner/seller's responsibility for replacing any older, high volume fixtures, and for verifying that all fixtures meet the low consumption standards. The ordinance would also require that irrigation systems of new or altered landscaped areas be equipped with smart irrigation controllers. The Building and Safety Division, as the administrative authority, would require an affidavit from the seller attesting that all plumbing fixtures had met the low consumption requirements.

No change of ownership of any residential, commercial, or industrial building with existing plumbing fixtures is to occur until the transferor retrofits all existing plumbing fixtures in the building with water conserving plumbing fixtures. The cost of compliance may be assumed by the transferor, transferee, or both. At the discretion of the transferor, compliance with this section may be included as a condition of the close of escrow, the costs of which may be paid from the transferor's transfer, sale, or exchange proceeds.

The costs imposed by this ordinance on a person selling property will vary depending on several factors: the number of fixtures that need to be replaced, the cost of these fixtures, parts, and labor. Several toilets are available for under \$100 and many models cost less than \$200. Some may choose to replace the toilet themselves, while others would need to hire a plumber to do the job, which can add on average another \$60 to \$100 per toilet to the seller's cost. If structural problems needing repair are discovered in the process, additional costs could be incurred.

Additionally, prior to the final building inspection or issuance of a certificate of occupancy, projects subject to this ordinance need to apply for and obtain, from Building and Safety, a water efficient landscape permit. Applicants are required to submit a landscape plan, irrigation plan and drainage plan containing the certification of a landscape architect or state certified landscape irrigation auditor that the plans include the following:

1. Plant materials are grouped according to similar water needs, where feasible.
2. Erosion and runoff controls are addressed in the landscape design.
3. **New requirement:** Irrigation systems are equipped with smart irrigation controllers.

Retrofit Exemption

Building and Safety, as the Administrative Authority, may grant an exemption from the ordinance's retrofit requirements if it is determined that the following condition exists:

- Unavailability of a water conserving plumbing fixture to match a well-defined historic architectural style (e.g., Victorian or Mission) fitted with authentic plumbing fixtures in a local, state or federally designated building of historic significance.

Smart Irrigation Controller Requirements

Smart controllers also known as WBIC (weather based irrigation controllers) are an emerging technology for adjusting irrigation applications based on actual weather and soil conditions. The concept of adjusting irrigation application to meet prevailing climate and weather conditions is as old as irrigated agriculture. The technology to control irrigation application automatically has been included in large-scale commercial systems for some time, but is relatively new to the residential and small commercial sectors. Over the past five years the number of smart controller products on the market has increased dramatically with different manufacturers opting for different control technology solutions. According to the Irrigation Association's Smart Water Application Technology (SWAT) program, "Smart controllers estimate or measure depletion of available plant moisture to operate an irrigation system that replenishes water as needed while minimizing excess. A properly programmed smart controller makes irrigation adjustments throughout the season with minimal human intervention."

Unlike a standard automatic timer that turns on the sprinklers at set intervals, a smart controller uses weather data and site information such as plant type and sprinkler system output to adjust watering times and frequency. Installation and initial set-up generally requires knowledge of soils, precipitation rates, slope measurements and the plants in each zone therefore professional installation and calibration is advised to maximize efficiencies. Smart irrigation controllers can reduce water consumption by at least 10%. Additionally, such controllers can also significantly reduce irrigation runoff which can often contain nitrates from fertilizers and other chemicals from pesticide application that can pollute streams and the ocean.

According to WaterSense, an Environmental Protection Agency water-conservation program, as much as 70 percent of a home's total water use during the dry season may go to landscape irrigation, and some experts estimate that more than 50 percent of landscape water is wasted because of evaporation, wind or over-watering. Smart irrigation controllers are estimated to save approximately 13,500 gallons a year and over \$700 from a user's water bill over the life of the equipment.

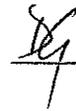
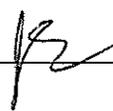
Rebates

Through the City's partnership with MWD and bewaterwise.com, it offers rebates for single-family and multi-family residential on a variety of efficient consumer products such as Energy Star compliant high efficiency washers, high efficiency toilets, weather based irrigation controllers, and synthetic turf. High efficiency toilets (1.28 gpf or less), for instance, are eligible for a rebate up to \$165 per fixture. High-efficiency toilets (HETs) flush at 20 percent below a ULFT (ultra low flush toilets), equating to 1.28 gallons per flush. The average water savings for HETs is estimated to be 38 gallons per day (gpd) when replacing an average, non-efficient toilet and 7 gpd when replacing a ULFT.

Rebates for smart irrigation controllers start at \$80 per controller for less than one acre of landscape and \$630 per controller for more than one acre of landscape. Eligible models must be SWAT-tested and approved. SWAT (Smart Water Application Technology) is a coalition of water purveyors, equipment manufacturers, and irrigation practitioners with shared interests in the Smart Water Application Technologies SWAT initiative in North America. Rebates can be downloaded online from the SoCal WaterSmart program launched by the Metropolitan Water District of Southern California.

FISCAL IMPACT

The City currently assesses a fee of \$86.80 for the filing of a water efficient landscape permit. The Building and Safety Division will determine whether or not this fee is sufficient to fully recover any additional administrative expenses as a result of this ordinance.

 _____ David Gustavson
Approved By 

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS
AMENDING TITLE 9 OF THE MUNICIPAL CODE
REGARDING WATER CONSERVATION PLUMBING
FIXTURE STANDARDS AND WATER EFFICIENT
LANDSCAPING.

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY
ORDAINS AS FOLLOWS:

Section 1: Findings and Purpose. Water is a precious commodity of limited supply. The City Council is the trustee of the City's domestic water supply. The general welfare of the citizens of the City of Beverly Hills and its environs requires that the water resources available to the City be utilized with maximum efficiency and that landscape design, installation, and maintenance should be water efficient.

Section 2: Section 9-4-103 of Article 1 of Chapter 4 of Title 9 (Building and Property Health and Safety Regulations) of the City of Beverly Hills Municipal Code is hereby amended to read as follows:

“9-4-103: DEFINITIONS:

A. Unless the context otherwise requires, the following definitions shall govern the construction of this article:

1. ADMINISTRATIVE AUTHORITY: The Building and Safety Division of the City of Beverly Hills.
2. CHANGE OF OWNERSHIP: The transfer, sale or exchange of a fee interest in any residential or commercial real property located in the City of Beverly Hills or served by the Environmental Utilities Division of the City of Beverly Hills. Change of Ownership shall not mean:
 - a. The transfer, sale, or exchange of real property between spouses, including, but not limited to, transfers to a trustee for the beneficial use of a spouse, or the surviving spouse of a deceased transferor, or by a trustee of such a trust to the spouse of the

- trustor; transfers to a spouse which take effect upon the death of a spouse; transfers to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation; the creation, transfer, or termination, solely between spouses, of any co-owner's interest; and the distribution of a legal entity's property to a spouse or former spouse in exchange for the interest of the spouse in the legal entity in connection with a property settlement agreement or a decree of dissolution of a marriage or legal separation.
- b. The transfer, sale, or exchange of real property between parents and their children, including, but not limited to, voluntary transfers or transfers resulting from a court order or judicial decree.
 - c. The transfer, sale, or exchange of real property pursuant to state foreclosure proceedings.
 - d. The transfer, sale, or exchange of real property to a revocable or irrevocable living trust.
3. **EXISTING PLUMBING FIXTURE:** Any toilet using more than 1.6 gallons of water per flush, urinals using more than 1.0 gallons of water per flush, showerheads with a flow capacity of more than 2.5 gallons of water per minute, faucets that emits more than 2.2 gallons of water per minute, or a residential reverse osmosis system not equipped with shutoff valves.
 4. **FLUSHOMETER TANK:** A tank integrated within an air accumulator vessel which is designed to discharge a predetermined quantity of water to fixtures for flushing purposes.
 5. **FLUSHOMETER VALVE:** A device which discharges a predetermined quantity of water to fixtures for flushing purposes and is actuated by direct water pressure.
 6. **LOW FLOW FAUCET:** A faucet that allows a maximum flow rate of 2.2 gallons per minute.
 7. **LOW FLOW SHOWERHEAD:** A showerhead that allows a maximum flow rate of 2.5 gallons per minute.
 8. **RETROFIT or RETROFITTING:** The replacement of Existing Plumbing Fixtures with Water Conserving Plumbing Fixtures.
 9. **TRANSFeree:** Any person, persons, or entity to whom a transfer, sale or exchange of any real property is made.
 10. **TRANSFEROR:** Any person, persons, or entity transferring, selling or exchanging a fee interest in any real property.
 11. **ULTRA LOW FLOW URINAL:** A urinal that discharges no more than 1.0 gallons of water per flush for flushing purposes.
 12. **ULTRA LOW FLOW WATER CLOSET:** A Water Closet that discharges no more than 1.6 gallons of water per flush for flushing purposes.
 13. **WATER CLOSET:** A flush toilet, a Flushometer Tank, or a Flushometer Valve operated toilet.

14. WATER CONSERVATION AFFIDAVIT: shall mean a signed, written statement and declaration by the Transferor which declares that Water Conserving Plumbing Fixtures have been installed prior to Change of Ownership.
15. WATER CONSERVING PLUMBING FIXTURES: Any Ultra Low Flow Water Closet, Ultra Low Flow Urinal or Waterless Urinal, Low Flow Showerhead, Low Flow Faucet, or residential reverse osmosis systems equipped with shutoff valves.
16. WATERLESS URINAL: A Waterless Urinal, approved for use by the Administrative Authority pursuant to the requirements of the California Plumbing Code as an alternative and equivalent (or superior) urinal system, with a vertical-trap design that incorporates a cylinder or trap filled with a thin layer of liquid sealant sitting atop the drain area of the urinal.”

Section 3: Section 9-4-104 of Article 1 of Chapter 4 of Title 9 (Building and Property Health and Safety Regulations) of the City of Beverly Hills Municipal Code is hereby amended to read as follows:

“9-4-104: NEW CONSTRUCTION:

- A. No building permit shall be issued for any new building unless all showerheads, Water Closets and urinals meet the following requirements:
 1. Faucets: All faucets shall be equipped with Low Flow Faucets.
 2. Showerheads: All showers shall be equipped with Low Flow Showerheads.
 3. Water Closets: All Water Closets shall be Ultra Low Flow Water Closets.
 4. Urinals: All urinals shall be Ultra Low Flow Urinals or a Waterless Urinals”

Section 4: Section 9-4-105 of Article 1 of Chapter 4 of Title 9 (Building and Property Health and Safety Regulations) of the City of Beverly Hills Municipal Code is hereby amended to read as follows:

“9-4-105: REPLACEMENT FIXTURES:

If any person replaces a showerhead, faucet, toilet, or urinal in any building served by the Environmental Utilities Division of the City of Beverly Hills, then that showerhead, faucet, toilet, or urinal shall be replaced with a Low Flow Showerhead, Low Flow Faucet, Ultra Low Flow Water Closet or, in the instance of a urinal, an Ultra Low Flow Urinal or a Waterless Urinal.”

Section 5: Section 9-4-106 of Article 1 of Chapter 4 of Title 9 (Building and Property Health and Safety Regulations) of the City of Beverly Hills Municipal Code is hereby amended to read as follows:

“9-4-106: REQUIREMENTS PRIOR TO CHANGE OF OWNERSHIP:

- A. Purpose. It is the purpose of this section to reduce sewer flows and decrease the use of imported, potable water in the City of Beverly Hills by establishing water conservation plumbing standards for plumbing fixtures Retrofitted prior to Change of Ownership.
- B. Notification and Retrofit Requirements prior to Change of Ownership.
 - 1. Prior to a Change of Ownership, the Transferor shall give written notice of the requirements of this section to the Transferee. Where an escrow agreement has been executed in connection with a Change of Ownership, the Transferor shall give written notice of the requirements of this section to the Transferee prior to the close of escrow
 - 2. No Change of Ownership of any residential or commercial building served by the Environmental Utilities Division of the City of Beverly Hills with Existing Plumbing Fixtures shall occur unless and until the Transferor Retrofits all Existing Plumbing Fixtures in the building and signs a Water Conservation Affidavit, or, where an escrow agreement has been executed, the Transferor Retrofits all Existing Plumbing Fixtures in the building and submits a signed Water Conservation Affidavit to escrow prior to the close of escrow. The cost of compliance with this section may be borne by the Transferor, Transferee, or both. The Transferor of property subject to this section shall provide the Transferee with confirmation of compliance with the requirements of this section in the transfer, sale, or exchange agreement.
- C. Retrofit Exemption. Notwithstanding section 9-4-108 of this article, the Administrative Authority may grant an exemption from this section if it is determined that a Water Conserving Plumbing Fixture is unavailable to match a well-defined historic architectural style (e.g., Victorian or Mission) fitted with authentic plumbing fixtures in a local, state or federally designated building of historic significance.
- D. Verification of Compliance.
 - 1. Upon Retrofitting, the Transferor, prior to a Change of Ownership, shall contact the Administrative Authority to request a Water Conservation Affidavit.
 - 2. The Transferor shall sign the Water Conservation Affidavit, and, where an escrow agreement has been executed in connection with the Change of Ownership, shall submit the Water Conservation Affidavit to escrow prior to the close of escrow.
 - 3. The Administrative Authority shall maintain copies of all executed Water Conservation Affidavits so as to provide future verification of previously installed Water Conserving Plumbing Fixtures.
 - 4. Water Conservation Affidavits shall be provided to those who voluntarily install Water Conserving Plumbing Fixtures.

- E. Notwithstanding any other provision of this section, all Transferors shall obtain a plumbing permit and comply with all plumbing permit requirements when installing Water Conserving Plumbing Fixtures pursuant to this section.”

Section 6: Section 9-4-108 of Article 1 of Chapter 4 of Title 9 (Building and Property Health and Safety Regulations) of the City of Beverly Hills Municipal Code is hereby amended to read as follows:

“9-4-108: EXEMPTION:

The Director of the Administrative Authority may exempt any person from the requirements of sections 9-4-105 and 9-4-106 of this article if the Director determines that compliance with the requirements of those sections will cause existing wastewater systems to malfunction or will cause a danger to any person’s health or safety.

Section 7: A new Section 9-4-109 is hereby added to Article 1 of Chapter 4 of Title 9 (Building and Property Health and Safety Regulations) of the City of Beverly Hills Municipal Code to read as follows:

“9-4-109: PENALTIES; ENFORCEMENT:

- A. It is unlawful for any person, firm, partnership, association or corporation to violate, cause the violation of, or maintain a violation of any section of this article.
- B. It is unlawful for any person, firm, partnership, association or corporation to remove or cause the removal of Water Conserving Plumbing Fixtures contrary to the provisions of this article.
- C. In addition to any other remedy provided by the Beverly Hills Municipal Code, any provision of this article may be enforced by an injunction issued by the Superior Court upon a suit brought by the City of Beverly Hills.
- D. Any provision of this article may be enforced pursuant to the administrative penalty process set forth in Chapter 3 of Title 1 of the Beverly Hills Municipal Code.
- E. No liability shall arise, nor shall any action be brought or maintained against, any agent of any party to a transfer of title, including any person or entity acting in the capacity of an escrow officer, for any error, inaccuracy, or omission relating to compliance with this article. Except as otherwise provided in this article, this section shall not be deemed to create or imply a duty upon a licensee, as defined in Section 10011 of the State Business and Professions Code, or upon any agent of any party to a transfer of title, including any person or entity acting in the capacity of an escrow officer, to monitor or ensure compliance with this article, or to notify any person of requirements to comply with this article.

- F. Every person, firm, partnership, association or corporation that violates, causes the violation of, or maintains a violation of any provision in this article is guilty of an misdemeanor and is subject to the penalties imposed by the Beverly Hills Municipal Code.
- G. The Administrative Authority is authorized and empowered to enforce the provisions of this article.”

Section 8: Section 9-4-402 of Article 4 of Chapter 4 of Title 9 (Building and Property Health and Safety Regulations) of the City of Beverly Hills Municipal Code is hereby amended to read as follows:

“9-4-402: APPLICABILITY:

Except as set forth in section 9-4-404 of this article, this article shall apply to all Landscaped Areas of new residential or commercial development projects, all new installations of Landscaped Area irrigation systems, and all Altered Landscaped Areas, whether proposed as part of projects subject to irrigation plan reviews by any design review body, or as part of projects not subject to review.”

Section 9: Section 9-4-403 of Article 4 of Chapter 4 of Title 9 (Building and Property Health and Safety Regulations) of the City of Beverly Hills Municipal Code is hereby amended to read as follows:

“9-4-403: DEFINITIONS:

Unless the context otherwise requires, the following definitions shall govern the construction of this article:

ALTERED LANDSCAPED AREA: A Landscaped Area that has been altered by more than fifty percent (50%) in total area.

LANDSCAPED AREA: The entire lot, including, water features such as pools, spas, ponds, and fountains. “Landscaped Area” shall not include the building footprint, driveways, non-irrigated portions of parking lots, hardscapes such as decks and patios, and other nonporous areas.

SMART IRRIGATION CONTROLLER: A weather-based device that automatically controls an outdoor irrigation system by using weather, site or soil moisture data as a basis for determining an appropriate watering schedule, and utilizing prevailing weather conditions, current and historic evapotranspiration, soil moisture levels, and other relevant factors to adapt water applications to meet the actual needs of the plants.”

Section 10: Section 9-4-404 of Article 4 of Chapter 4 of Title 9 (Building and Property Health and Safety Regulations) of the City of Beverly Hills Municipal Code is hereby amended to read as follows:

“9-4-404: EXCEPTIONS:

This article shall not apply to:

- A. Projects which involve alterations or additions to, or retrofits of, existing residential or commercial structures, unless the Landscape Area is altered as defined in Section 9-4-403.
- B. Projects with a Landscaped Area of less than two thousand five hundred (2,500) square feet.
- C. Projects which have received a hillside development permit, a development review permit, or have submitted a complete application for a building permit prior to December 2, 2008.
- D. Projects which involve the construction of accessory structures only.
- E. Landscaping that is part of a property listed on the National Register of Historic Places.”

Section 11: A new Section 9-4-405 is hereby added to Article 4 of Chapter 4 of Title 9 (Building and Property Health and Safety Regulations) of the City of Beverly Hills Municipal Code is hereby amended to read as follows:

“9-4-405: WATER EFFICIENT LANDSCAPING IRRIGATION REQUIREMENTS:

Irrigation systems of new or Altered Landscaped Areas subject to this article shall be equipped with Smart Irrigation Controllers.”

Section 12: A new Section 9-4-406 is hereby added to Article 4 of Chapter 4 of Title 9 (Building and Property Health and Safety Regulations) of the City of Beverly Hills Municipal Code is hereby amended to read as follows:

“9-4-406: WATER EFFICIENT LANDSCAPE PERMIT:

- A. Prior to the final building inspection or issuance of a certificate of occupancy, projects subject to this chapter must apply for and obtain, from the department of building and safety, a water efficient landscape permit. The director of building and safety shall issue a water efficient landscape permit to an applicant if the director finds that the following requirements have been met:

The applicant submits a landscape plan, irrigation plan and drainage plan which contains the certification of a landscape architect or state certified landscape irrigation auditor that the plans include the following:

1. Plant materials are grouped according to similar water needs, where feasible.
 2. Erosion and runoff controls are addressed in the landscape design.
 3. Irrigation systems are equipped with Smart Irrigation Controllers, unless the project is otherwise exempt from this requirement as set forth in this Article.
- B. Upon completion of all work in the Landscaped Area, the applicant shall submit to the department of building and safety an affidavit of the landscape architect or the state certified landscape irrigation auditor who certified the plans under subsection A of this section, that the work in the Landscaped Area was completed in compliance with the certified plans approved by the city pursuant to subsection A of this section.
- C. A fee as set by resolution of the city council, shall be payable upon filing an application for a water efficient landscape permit.”

Section 13: Severability. The City Council declares that, should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction, or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences and words of this Ordinance shall remain in full force and effect.

Section 14. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation publishes and circulated in the City within fifteen (15) days after its passage, in accordance with Section 36933 of the Government Code; shall certify to the adoption of this Ordinance and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 15. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

PASSED AND ADOPTED this _____ day of _____, 2008.

CITY OF BEVERLY HILLS
A Municipal Corporation

BARRY BRUCKER
Mayor of the City of Beverly Hills,
California

ATTEST:

(SEAL)
BYRON POPE,
City Clerk

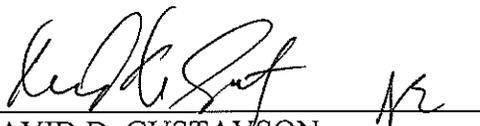
APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT

RODERICK J. WOOD, CCM
City Manager



DAVID D. GUSTAVSON
Director of Public Works & Transportation



SMOKE DETECTOR & WATER CONSERVATION PLUMBING FIXTURES AFFIDAVIT

RE: TRANSFER, SALE OR EXCHANGE OF REAL PROPERTY IN BEVERLY HILLS

The undersigned, hereby states and declares, under penalty of perjury in accordance with the laws of the State of California, that the information provided on this form is true and correct.

Address of property transferred, sold or exchanged: _____

Date of transfer, sale or exchange: _____

Smoke detectors have been installed as per Municipal Code Requirements: Yes [] No []**

** A permit to install smoke detectors must be applied for within thirty (30) days from the date of sale. For further information, please contact the Building and Safety Division.

SIGNATURE OF BUYER/TRANSFeree: _____

EXECUTED ON: _____

Water conserving plumbing fixtures, as defined in Municipal Code Section 9-4-103, have been installed prior to the transfer, sale or exchange of the above referenced property per the requirements of Municipal Code Section 9-4-103:

Yes []

SIGNATURE OF SELLER/TRANSFEROR: _____

EXECUTED ON: _____

SELLER/TRANSFEROR

BUYER/TRANSFeree

NAME: _____

ADDRESS: _____

CITY/STATE: _____

TELEPHONE: _____

Based upon the information provided in this Affidavit, the Building and Safety Division elects not to inspect the premises to verify that smoke detectors and water conserving plumbing fixtures are or have been properly installed.