

## ARTICLE 19 SEWER CAPACITY ALLOCATION

### Article 19-1 Purpose

The purpose of this ordinance is to comply with the provisions of the Towns permit to operate a sewage collection and transmission system and a sewage treatment and disposal plant. The ordinance shall fairly allocate capacity and set fees in a manner consistent with the Towns obligation to its bond holders and users to maintain and operate the sewer system.

### Article 19-2 Authorization

By authority of 24 V.S.A., Section 3625, the Town is authorized to establish an ordinance which allocates sewage capacity to the users of its sewer system.

### Article 19-3 Definitions

- A. "BOARD" shall mean the Select Board of Bennington, acting as a Board of Sewage Disposal Commissioners under 24 V.S.A., Section 3614.
- B. "Committed Reserve Capacity" is the total amount of development wastewater flow (gallons per day) from all projects/buildings approved by the BOARD and the DEPARTMENT for discharge to the treatment PLANT, but not yet discharging at the time of the calculation.
- C. "Completed Construction" -
  - 1) For building development completion of construction of all foundations, framing, siding and roofs.
  - 2) For subdivision development; the sale of the individual lots.
- D. "Connection Fee" shall mean a fee imposed on applicants for the municipality's cost of performing, supplying, supplying materials, supervising, inspecting and administering a connection to the sewage system including any necessary sewer service extension, upgrading sewers or for any portion of these activities.
- E. "Department" shall mean the Vermont Department of Environmental Conservation.
- F. "Development" - The construction of improvements on a tract of land for any purpose, including, but not limited to, residential, commercial, industrial activity, subdivisions and the intent to subdivide.

- G. "Development Wastewater Flow" is the flow resulting from full use of the development at its peak capacity, which flow shall be calculated using flow quantities, adopted as rules by the DEPARTMENT, as promulgated at the time a connection permit application is made. The flow quantities in State regulation at the time of adoption of this ordinance are shown on Table 7a (Appendix A).
- H. "Discharge Permit" shall mean a permit issued by the Department pursuant to authority granted in 10 V.S.A., Chapter 47.
- I. "Allocation Fee" shall mean a fee imposed on applicants for capacity allocation equal to the capital cost per gallon sewage treatment and disposal capacity attributable to the project or development. This fee shall be consistent with the intent of impact fees authorized under 24 V.S.A. chapter 131.
- J. "Initiate Construction" -
- 1) For building development; the completion of the foundation.
  - 2) For subdivision development; the sale of the individual lots, or other, sale or the intent to subdivide.
- K. "Permitted Wastewater Flow" is the maximum plant wastewater flow authorized in the Discharge Permit on an annual average (365 day average) basis, or on the high seasonal use period as defined in the discharge permit.
- L. "Person" shall have the meaning prescribed in 1 V.S.A., Section 128.
- M. "PLANT" - The municipal sewage treatment plant owned by the Town of Bennington.
- N. "Plant Wastewater Flow" is the wastewater passing through the treatment Plant in gallons per day on an annual average basis (365 day average) except where flows vary significantly from seasonal development. In the latter case, plant wastewater flow is determined as the average throughout the high seasonal use period, as determined by the BOARD.
- O. "Reserve capacity" is the permitted wastewater flow minus the actual plant wastewater flow during the preceding 12 months.
- P. "Sanitary Wastewater" is wastewater of the same character and range of strength as expected from homes.

- Q. "Sewer Service Area" is that area of a municipality that is within 100 feet horizontally from existing municipal collection lines and manholes
- R. "SEWERS" - The sewage collection and transmission system owned by the Town of Bennington.
- S. Town Manager shall mean the Manager or his designee.
- T. "Uncommitted Reserve Capacity" is that portion of the reserve capacity remaining after subtracting the development wastewater flow of all projects approved by the DEPARTMENT but not yet discharging to the SEWER.

#### Article 19-4 Reserve Capacity Allocation

##### 19-4.01 Capacity

The Town of Bennington has a design treatment capacity of 5.1 million gallons per day and currently operates the treatment PLANT at an average of 3.50 million gallons per day from "current users". At the time of the adoption of this ordinance committed reserve capacity is estimated at 4.3 million gallons and the uncommitted reserve capacity is 0.8 million gallons, these amounts are subject to change.

##### 19-4.02 Allocation Flow Basis

All allocations to projects shall be based on the development wastewater flow. Any differential between actual flows and development wastewater flows that occurs is not available to the development owner for reallocation to another project or a project expansion.

##### 19-4.03 Allocation Priorities

Allocation of uncommitted reserve capacity shall comply with the following priority intended to govern the gross allocation of reserve capacity before the allocation principles are applied to specific projects.

Residential, commercial, institutional and industrial facilities existing within the sewer service area existing on the date of adoption of this ordinance which are required to be connected to the municipal sewer by the municipal sewer use ordinance, or by virtue of existing pollution from the facilities to waters of the State, or existing health hazard, shall be entitled to first priority in allocation of uncommitted reserve capacity. New development within or outside the sewer service area will have second priority of uncommitted reserve capacity provided that the development is in the best interest of the Town of Bennington.

19-4.04 Allocation Principles

- A. Once sewer permit applications have been returned to the Town Managers Office and marked with the time, and dated by the person receiving the application, the Town may review the applications on a first come, first serve basis. The total remaining wastewater capacity shall be allocated by the BOARD in such a way that uncommitted capacity is distributed in specified gallons according to zoning districts/user classification with a limitation on what reserves can be allocated by the Manager in a year for each zoning district/user classification as long as capacity exists. The annual allotment may be determined by establishing the year when plant expansion might be feasible or necessary and dividing the uncommitted reserve each year by the remaining years to the tentative expansion year. The total amount allocated to the zones will not change until capacity for all zones has been allocated to specific projects. The total reserve capacity will be determined each 6 months and committed reserve will be continuously recorded for use in allocation decisions.

Total Reserve Capacity Allotment for Zones:

	Initial	Revision		Initial	Revision
Residential	_____	_____	Commercial	_____	_____
Industrial	_____	_____	Institutional	_____	_____

Annual Allotment By Zone:

Year	_____			
Residential	_____		Commercial	_____
Industrial	_____		Institutional	_____
Year	_____			
Residential	_____		Commercial	_____
Industrial	_____		Institutional	_____

- B. The BOARD retains the right to review applications and make allocations on other than a first come first serve basis if they find such action is in the municipality's best interest.

Article 19-5 Cost Recovery for SEWERS Expansion

Any extension of the sewer service area to provide for new users shall be funded in the following way:

- A. The proposed users to be served by the expansion pay the cost of the expansion and upgrading of the SEWERS determined necessary and adequate by the BOARD.
- B. Any payments made as required under Article 5A shall not be construed as payments towards treatment capacity that may be provided for the development.

Article 19-6 Application Requirement

Persons wishing to use the PLANT and SEWERS shall apply to the Water Resources Superintendent on a form prescribed by the Board (Appendix B). Such application shall:

- A. Be accompanied by a calculation of the development wastewater flow to be generated by the project/development;
- B. Include calculations for the volume, flow rate, strength and any other characteristics determined appropriate by the State of Vermont Agency of Natural Resources and the Bennington Sewer Use Ordinance;
- C. Unless waived by the BOARD all calculations required in (a) and (b) above for developments generating over 1000 gpd shall be certified by a Vermont registered engineer.
- D. Be accompanied by plans and specifications for the construction of building sewers (from the buildings to municipal sewers) and any municipal sewer extensions, including pump stations, required to service the development prepared by a Vermont registered engineer. This requirement to submit plans and specs may be waived by the Town Manager until final connection approval.

Article 19-7 Preliminary Connection Approval Findings

Upon receipt of the connection application and supportive documents, the Water Resources Superintendent may make preliminary approval of uncommitted

reserve capacity upon making affirmative findings that:

- A. The proposed wastewater is of domestic, sanitary origin and that there is sufficient uncommitted reserve capacity to accommodate the volume and strength of the proposed connection;
- B. The proposed wastewater is not of domestic sanitary origin and that sufficient evidence has been presented by the applicant to demonstrate that the flow and character of the wastewater is compatible with the proper operation of the PLANT and SEWERS and that the proposed wastewater will not alone or in combination with other wastes cause a violation of the discharge permit, pass through the PLANT without treatment, interfere or otherwise disrupt the proper quality and disposal of PLANT sludge or be injurious in any other manner to the PLANT or SEWERS and that there is sufficient uncommitted reserve capacity to accommodate the strength and volume of the proposed development;
- C. The proposed use of wastewater capacity complies with the allocation priorities and principles and is not in conflict with any other enactment of the Town of Bennington.

#### Article 19-8 Preliminary Connection Approval Prerequisites

The Water Resources Superintendent, after making the approval findings above, may issue a preliminary connection approval, which approval shall be a binding commitment of capacity to the project contingent on compliance with any conditions attached to the preliminary approval and the subsequent issuance of a final connection approval (Appendix C). The preliminary approval conditions may include:

- A.. Specification of the period of time during which the interim connection approval shall remain valid (suggest 120 days). Provisions for time extensions if approved by the Water Resources Superintendent.
- B. Incorporation of specific conditions which must be fulfilled by the applicant to maintain validity of the preliminary connection approval.
- C. Provision for revocation by the action of the Water Resources Superintendent on failure of the applicant to fulfill requirements of the preliminary connection approval.
- D. Specification that the recipient of the preliminary connection approval may not transfer, by any means, the preliminary connection approval to any other person or connect to the SEWERS.

#### Article 19-9 Final Connection Approval Prerequisites

Prior to final connection approval the following commitments shall be met by the applicant:

- A. applicable local, State and Federal permits have been secured for the development/project;
- B. Connection fees, impact fees, permit fees and other local fees or taxes all set by the BOARD, have been paid in full to the Town of Bennington. Impact fees will be partially based on the volume and strength of the proposed wastewater flow.
- C. The plans and specs for connection to and, if necessary, extension of the municipal SEWERS are acceptable to the Water Resources Superintendent.

#### Article 19-10 Final Connection Approval Requirements

The Water Resources Superintendent on making affirmative findings that all conditions of the preliminary connection approval and final connection approval prerequisites in Article 19-8 and Article 19-9 have been fulfilled shall issue the final connection approval permit which approval may be conditioned as follows:

- A. The permit shall specify the allowed volume, flow rate, strength frequency and any other characteristics of the proposed discharge determined appropriate by the Water Resources Superintendent.
- B. The capacity allocation is not transferable to any other person or project.
- C. The construction of the connection and, if necessary, the municipal SEWER extension, must be overseen to assure compliance with the plans and specs and good construction practice in a manner acceptable to the Water Resources Superintendent.
- D. Capacity allocated in conjunction with the final connection permit for building development shall revert to the Town of Bennington if the permit recipient has failed to initiate construction within one year of the issued date on the permit.
- E. The permit shall expire two years from the date of issuance. A revised development plan and connection application may be approved by the Water Resources Superintendent in the same manner as the original. Such revised plans must also be approved under local bylaws and by the applicable State Laws and Regulations. If the Water Resources

Superintendent approves a revised development plan and connection with reduced or increased capacity allocation determined in accord with the allocation priorities and principles. Where reduced capacity is granted in a revised connection permit, the unused capacity shall revert to the Town of Bennington. With any approval of a revised development plan and connection permit the Water Resources Superintendent may consider extension of the original two year permit expiration date.

If a permit expires after two years or after any extension of time provided by the Water Resources Superintendent, the unused portion of the committed capacity allocation at the time of expiration shall revert to the Town and there will be no refund of connection, impact, permit or other fees paid. The Town Manager will determine the amount of unused capacity returned. Generally, the unused capacity reverting to the municipality is associated with buildings that do not at least have foundations, framing and roofs.

Regardless of the permit expiration period above, the Water Resources Superintendent may order construction of the development over a longer period if this action is in the Town of Bennington's best interest.

- G) For subdivision projects the permit holder (developer) of a proposed subdivided parcel must indicate the development planned for each lot. If all prerequisites defined for final connection approval herein are met, final connection permits will be issued to the subdivision owner for each lot with a specific reserve capacity allocation associated with the proposed development. These final connection permits will expire after two years from the date of initial issuance unless the developer has sold the lot for development or has completed construction in accord with the approved development plan. The expiration at two years from original issuance will not be modified by any revisions to the subdivision or development plan subsequent to the initial approval.

The reserve capacity allotted to lots that are either unsold or do not have building construction completed at the time of permit expiration two years shall revert to the Town of Bennington without refund of any fees paid. Reserve capacity shall also revert to the Town of Bennington from any reductions made to the development wastewater flow planned for each lot subsequent to initial approval.

The subdivision owner shall file the final connection permits in the land records of the Town of Bennington along with copies of all fees paid and reference to the location of the approved connection plans and specifications. When the owner/developer of a subdivision sells individual lots within the (three) year time frame, the final connection permit shall



transfer when the property transfers and the new owner becomes bound to comply with all permits issued and the plans and specifications for connecting the municipal SEWERS. The transferred permit will be considered a new permit issued on the date of property transfer and the constraints of Article-10(E) will apply to this permit. The permit will expire as provided in Article-10(E).

- H) In cases where a final connection permit expires and a new person applies for capacity on the same or a different project, the BOARD may consider previous fees paid by the original person when setting fees for the new person applying for capacity.
- I) The Water Resources Superintendent or other designated municipal official shall be notified one week in advance of any proposed sewer connection authorized by a final connection permit. The connection to the municipal sewer shall not be performed unless the municipal official is present and shall not be covered until approved by the official. Additional constraints may be found in the Sewer Use Ordinance.

#### Article 19-11 Transfer of Allocation

- A) Initially reserve capacity is allocated by the Water Resources Superintendent to a specific person, project and parcel of land. The allocation is not made solely to a parcel of land and therefore does not run with the land during project completion. After completion of the project or permit expiration, however, the allocation (adjusted to the actual development constructed, if necessary) will run with the land.
- B) The transfer of the capacity allocation is prohibited unless approved in writing by the Water Resources Superintendent at the original owner's request.
- C) The Water Resources Superintendent may approve transfer of capacity from one project to another and one owner to another provided the new project and owner meets all the requirements for the final connection approval originally issued and the original owner requests such transfer.

#### Article 19-12 Authority to Require Connection

Nothing herein shall be construed as limiting or impairing the authority of the Town of Bennington or its BOARD to require connections to the PLANT and SEWERS under the general laws of the state or local ordinances.

#### Article 19-13 Enforcement

A violation of this ordinance shall be a civil matter enforced in accordance with the provisions of 24 V.S.A. Section 1974a and 1977 et seq. A civil penalty of not more than \$250 may be imposed for violation of this civil ordinance and a waiver fee of 4200 shall be set. Each day that a violation continues will constitute a separate violation of this ordinance.

Article 19-14 Severability

This ordinance and the various parts, sentences, sections and clauses thereof, are hereby declared to be severable. If any part, sentence, section, or clause is adjudged invalid, it is hereby provided that the remainder of this ordinance shall not be affected thereby.

Article 19-15 Effective Date

This ordinance shall take effect sixty (60) days from date of adoption by the Select Board.

This ordinance is hereby adopted by the Select Board of the Town of Bennington, Vermont on this 13th day of August, 1996. It shall be printed in full in the Minutes of the Select Board, posted in five (5) conspicuous places within the Town of Bennington and published once in the Bennington Banner within fourteen (14) days of its adoption and shall become in full force and effect sixty (60) days after the date of adoption subject to the right of petition as provided by law.

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PWB/ljc  
C:SEWERCAP.ord