

**AN ORDINANCE TO AMEND THE SEWER CAPACITY ALLOCATION ORDINANCE
UPDATED/ADOPTED May 11, 2021**

The Town of Shelburne Selectboard hereby ordains:

The Town of Shelburne Sewer Capacity Allocation Ordinance, adopted May 8, 2007, is hereby amended in its entirety to state:

SEWER CAPACITY ALLOCATION ORDINANCE

Section 1: Authority

This ordinance is enacted pursuant to the authority of 24 V.S.A. § 3625 to authorize the Town to allocate the capacity of municipal sewage treatment facilities in the Town, to establish a Capacity Waiting List when capacity is unavailable, and to define the status of allocations of capacity which pre-date the adoption of this Ordinance.

Section 2: Purpose

The Town of Shelburne (“Town”) has made a significant public investment in improvements and increased capacity to the Town’s sewage treatment and disposal facilities (“Plants”) and sewage collection and transmission system (“Sewers”) in order to avoid environmental damage and danger to the public health caused by limited or inadequate collection and treatment of wastewater. This sewer allocation ordinance is adopted to ensure that the allocation of sewer capacity occurs in a manner which is consistent with the Town Plan, Subdivision Regulations and Zoning Bylaws, to sustain the available capacity over the projected life of the Plants and to protect the public investment in the Plants and Sewers. The Town recognizes that the extension of sewer lines in a dispersed and unplanned pattern creates an additional burden on the Town to maintain the Sewers and Plants, creates an additional financial burden on the Town and its citizens and reduces capacity by increasing inflow and infiltration. This ordinance will serve to direct growth to areas most appropriate for the efficient provision of municipal sewer service.

Section 3: Definitions

The following words will have the meanings below when used in this ordinance:

- (a) “Actual Flows” - The volume of wastewater discharged into the Sewers by any single connection to the Sewers during any specified period of time, measured in gallons.

- (b) “Allocation” - The decision by the Board, or Board appointed designee, to commit a specified amount of sewage treatment capacity (measured in gallons

per day or gpd) to a specific project. An allocation may or may not include allocation phasing.

- (c) "Allocation Fee" - A fee for the allocation of sewage treatment capacity, specified as dollars per gpd, as established by the Board.
- (d) "Allocation Phasing" - A provision included as part of an allocation to a specific development which specifies the amount of the total allocation which may be used each year.
- (e) "Available for Allocation"-Uncommitted Reserve Capacity, less not Subject to Three Year Capacity Allocation, less 10 % set aside per Ordinance.
- (f) "Board" - Shall mean the Selectboard of the Town of Shelburne acting as a board of sewage disposal commissioners under 24 V.S.A., § 3614.
- (g) "Designee" – shall mean the individual(s) appointed by the Board to perform the daily tasks associated with administering this allocation ordinance.
- (h) "Capacity Waiting List"- The list of applications created when a Three-Year Capacity Allocation has been fully distributed.
- (i) "Committed Reserve Capacity" -The total amount of development wastewater flow (gallons per day) from all projects/buildings approved by the Board for discharge to the treatment Plant, but not yet discharging at the time of the calculation.
- (j) "Development" - The construction of improvements on a tract of land for any purpose, including, but not limited to, residential, commercial and industrial activity.
- (k) "Development Wastewater Flow" - The flow resulting from full use of the development at its peak capacity, which flow shall be calculated using flow quantities, as promulgated at the time an allocation application is made. Flow quantities shall be those established under the Vermont Department of Environmental Conservation's Environmental Protection Rules. For uses which are not specified in the Environmental Protection Rules a flow quantity shall be established by the Department of Environmental Conservation (Department).
- (l) "Discharge Permit" - Shall mean a permit issued by the Department pursuant to authority granted in 10 V.S.A., Chapter 47.

- (m) “Nonresidential” - Any use, or portion of a mixed-use project, other than residential and shall include both profit and not for profit businesses and institutions.
- (n) “Permitted Wastewater Flow” - The maximum Plant wastewater flow authorized in the Discharge Permit on an annual average (365-day average) basis.
- (o) “Person” - Shall have the meaning prescribed in 10 V.S.A., §6001(14).
- (p) “Plant” – shall mean the Town of Shelburne Wastewater Treatment Facilities.
- (q) “Plant Wastewater Flow” - The wastewater passing through the treatment plant in gallons per day as determined on a twelve-month rolling average.
- (r) “Priority District” - The Village, Residential-Commercial, Commercial-Industrial or Commercial-Industrial South Districts, as designated in the Town of Shelburne Zoning Bylaws.
- (s) “Reserve Capacity” - The permitted wastewater flow minus the actual plant wastewater flow and committed reserve capacity during the preceding 12 months.
- (t) “Residential” - Any structure, or portion of a mixed-use project, principally used as a dwelling for an individual, family, or group of unrelated individuals, including single or multifamily dwellings. A residential unit shall contain kitchen and bath facilities. Units, such as dormitories or nursing home facilities, without these facilities shall be considered nonresidential.
- (u) “Sanitary Wastewater” - Wastewater of the same character and range of strength as expected from homes.
- (v) “Sewer Service Area” - That area designated on the attached plan, titled “Town of Shelburne, Map of Sewer Service Area,” prepared by Civil Engineering Associates, dated January, 2001.
- (w) “Sketch Plan Allocation” - An allocation approval which is granted by the Board after a project has received subdivision sketch plan approval from the Planning Commission.
- (x) “Uncommitted Reserve Capacity” - That portion of the reserve capacity remaining after subtracting the development wastewater flow of all projects approved by the Board but not yet discharging to the sewer.

Section 4: Discharge Permit and Reserve Capacity

a) Discharge Permit

The Town of Shelburne has a certain amount of uncommitted reserve capacity at the two Plants located in and owned by the Town, as defined in 24 V.S.A. § 3501(6) and 3601(3). The Plants and Sewers were upgraded and expanded based on a report entitled “Facilities Planning Report for Wastewater Pollution Control and Plant Expansion”, prepared by Webster-Martin, Inc., dated October, 1996. The Plants are operated in accord with a discharge permit, as amended, issued by the Vermont Department of Environmental Conservation (“Department”) under authority granted in 10 V.S.A., Chapter 47. The Town of Shelburne Selectboard shall serve as the board of sewage disposal commissioners (“Board”) and is obligated by law to comply with conditions of that permit, and to operate and manage the Sewers and Plants as governmental functions under and pursuant to 24 V.S.A., Chapters 97 and 101.

b) Control of Capacity

The capacity of the Plants is the property of the Town. The projected life span of the Plants is twenty-six (26) years from 2001, the date that the upgrade and expansion, as described in Section 4.a, above, is deemed to be available for allocation. The uncommitted reserve capacity of the Plants shall be allocated over the life of the system by the Board in the manner described below. This ordinance is adopted pursuant to the provisions of 24 V.S.A. § 3625, in the manner provided in Town of Shelburne Charter and shall not be construed as an abandonment or relinquishment of the authority or responsibility of the Board to regulate, control and supervise all means and methods of sewage collection, treatment and disposal within the Town, nor shall it be construed to impair or inhibit the ability of the Town to contract with persons for the collection, transmission and treatment of sewage.

c) Allocation of Capacity

Recognizing that the load on the Plants and Sewers must be controlled, that there is insufficient capacity to service the entire Town, that uncontrolled assignment of capacity will reduce the projected lifespan of the Plants and that it is necessary to maintain a balance of residential and nonresidential uses, the Board shall allocate pursuant to this Ordinance the uncommitted reserve capacity by type of use and at a rate as specified below.

Section 5: Sewer Service Area

No capacity shall be allocated outside the sewer service area, except as specified below:

a) **Rural Mixed Use Planned Unit Development**

A project which has received Planning Commission sketch plan approval as a Rural Mixed Use Planned Unit Development may be granted capacity regardless of location within or outside of the sewer service area.

b) **Failed Systems**

In the event that any existing waste water treatment system fails, within or outside of the sewer service area, the Board may make an emergency allocation to alleviate the problem provided that the following conditions are met:

- (1) The failure has created a public health hazard as defined in 18 V.S.A. § 2, or has the potential for causing substantial environmental harm;
- (2) All other possible solutions have been explored and found inadequate; and
- (3) There will be no additional connections to any sewer line extensions needed to solve the problem.

c) **Additional Allocation**

Any structure located outside of the sewer service area, which is connected to the Sewers as of the effective date of this ordinance, may be granted additional allocation, under the same terms and conditions of this ordinance, provided that the additional allocation is used solely for the connected structure and that the Sewers are not extended beyond the connected structure, except in the situation of an accessory apartment. The additional allocation shall not exceed sixty-seven per cent (67%) of the existing allocation to the structure as of May 22, 2001.

Section 6: Reserve Capacity Allocation

The Board shall have the authority to set the Three-Year Capacity Allocation for each Plant as set forth below. This allocation may be amended during the three-year period as deemed appropriate by the Board.

a) **Determining Allocation**

Application shall be made, using a form provided for that purpose by the Town, for the number of gallons per day of estimated sewer usage determined by applying the standard factors specified by the Public Facilities Division of the Vermont Agency of Natural Resources, or its successor, as amended from time to time.

Industrial projects and others not covered by those standard factors will be allocated a reasonable number of gallons, as determined by the Designee consistent with the Environmental Protection Rules established by the Vermont Department of Environmental Conservation. The amount requested may be amended by the applicant prior to final action by the Designee, or by the Designee in connection with its final approval.

b) **Ten Percent (10%) Set Aside Amount**

Upon adoption of this ordinance the Board shall establish a set aside amount of capacity. This amount shall be calculated based on the uncommitted reserve capacity at the Plants, less the estimated capacity required for categories not subject to the Three-Year Capacity Allocation, times ten percent (10%). This set aside amount shall be available in any Three-Year Capacity Allocation period for allocation by the Board to applications which have been deemed by the Planning Commission to demonstrate exceptional design or to provide affordable housing or public amenities and which advance the objectives of the Town of Shelburne Comprehensive Plan. This set aside amount shall only be allocated as specified in Section 7: b) (2) below.

c) **Determination of Three-Year Capacity Allocation and Assignment to Allocation Categories**

The Board shall determine the remaining Capacity to be allocated within the Three-Year Capacity Allocation by 1) subtracting the Plant Wastewater Flow, from the Permitted Wastewater Flow, 2) subtracting the Committed Reserve, 3) less an estimate of the capacity needed for categories not subject to the Three-Year Capacity Allocation and 4), less the Ten Percent Set Aside, divided by the remaining number of years in the twenty-seven (27) year Plant life spans, and multiply the result by three. The Board may consider anticipated future demand for allocation when establishing the Three-Year Capacity Allocation. The Board shall establish a Three-Year Capacity Allocation amount which accommodates demand as much as possible, but which also preserves capacity for future years of the projected Plant life.

d) **Three Year Capacity Allocation**

The Three-Year Capacity Allocation shall be set forth in a document entitled "Attachment B: Three Year Sewage Treatment Capacity Allocation from May 8, 2021 to May 8, 2024". Attachment B shall be adopted as if it were an ordinance in accordance with the Town of Shelburne Charter.

e) **Attachment A**

Categories Not Subject to Three Year Capacity Allocation are defined and the amount of allocation estimated for each is contained in Attachment A.

f) **Distribution of Three-Year Capacity Allocation**

- (1) Residential Allocations: In each allocation period eighty per cent (80%) of the Three-Year Capacity Allocation shall be distributed to residential uses.
- (2) Nonresidential Allocations: In each allocation period 20% of the Three-Year Capacity Allocation shall be distributed to nonresidential uses.

Section 7: Allocation Procedures

a) **Timing of Applications**

The Board's designee shall act on all applications on a first come, first served basis as soon as practical.

- (1) Application Eligibility: No applications for individual project allocations shall be considered by the Board's appointed designee unless the project has first received sketch plan approval, pursuant to the Town's Subdivision Regulations, is located on a lot in preexisting or approved residential or commercial/industrial subdivision or has received conditional use approval or site plan approval, as appropriate, in accordance with the Town's Zoning Bylaws.
- (2) Sketch Plan Approval: A project which has received subdivision sketch plan approval by the Planning Commission may be granted a one-year Sketch Plan Allocation by the Designee.
- (3) Application: Sewer allocation applications (on forms provided by the Board) shall be completed and returned to the Office of the Town Manager. The application shall be accompanied by an application fee established by the Board.

b) **Priority of Applications**

If the application is filed with the Office of the Town Manager within thirty (30) days after the granting of conditional use, site plan or sketch plan approval, its priority vis-à-vis other applications shall be determined by the date of said approval; otherwise, its priority shall be determined by the date of filing with the Town Manager.

c) **Phasing**

- (1) Exceeding the Three-Year Capacity: If the allocation required for a project exceeds the amount remaining in a three-year period the Board may grant the remaining capacity available in that Three Year Capacity

Allocation and capacity from future years' Three-Year Capacity Allocation in order to allocate the total gallons needed for that application. In determining such an allocation schedule the Board shall consider any phasing schedule imposed as a condition of Planning Commission approval. Any application which receives a phased allocation shall not connect to the Sewers until the beginning of the designated Three-Year Capacity Allocation period.

- (2) **Maximum Allocation:** No more than forty percent (40%) of any Three-Year Capacity Allocation, for either residential or nonresidential allocation, as appropriate, may be granted to a single person or project. If allocation remains in a Three-Year Capacity Allocation block at the time that the forty percent (40%) cap is imposed on an application, the application may be phased by granting the remaining allocation needed from future years' Three-Year Capacity Allocation under the same conditions as specified in Section 7: d) (2) below.

d) Insufficient Three-Year Capacity Allocation

- (1) **Full Distribution:** If a Three-Year Capacity Allocation block has been fully distributed, no additional allocations shall be granted throughout the remainder of that period, except as allowed in Section 7: d) (2) below. If the remainder of a Three-Year Capacity Allocation block is less than a complete unit of Development Wastewater Flow (a bedroom, employee, etc., as appropriate), the Three-Year Capacity Allocation block shall be considered fully distributed.
- (2) **Use of 10% Set Aside:** If a Three-Year Capacity Allocation block has been fully distributed the Board may grant an allocation from the Ten Percent Set Aside Amount to applications which meet the standards as specified in Section 6: b), above.

Section 8 Expiration of Allocations

a) Subdivisions or PUDs/PRDs

Allocations approved after Sketch Plan shall expire one (1) year from the date of approval from the Designee unless the Board grants a one (1) year renewal. The Designee, upon determination that the project is still active in any state or local application process, may grant additional one (1) year renewals. A request for any one (1) year renewal must be made to the Town Manager prior to the expiration of any Sketch Plan approval or prior renewal.

- b) **Allocations Approved After Final Approval**
Unless infrastructure sufficient for a connection to the sewers have been constructed; allocations shall expire three (3) years from the date of Designee approval.
- c) **Multiple Use or Lots**
Where allocation was granted for multiple uses or lots, allocation shall expire for any such use or lot-not connected to the Sewer within three (3) years of the allocation date.
- d) **Phased Allocations**
For phased allocations, a connection for each approved unit must be made to the Sewer within three (3) years of the date on which allocation becomes available to a use or lot or that allocation shall expire.
- e) **Extensions**
The Board shall grant extensions of up to three (3) years to any allocation, other than one granted after Sketch Plan approval, if an application is received by the Office of the Town Manager prior to the expiration date of the original allocation. Such extensions shall be approved by the Board upon determination that the project is still active in any applicable permit process.
- f) **Reversion of Allocation**
Reserve capacity is allocated by the Designee to a specific project on a specific parcel of land. After completion of the project, or upon expiration of necessary permits issued under the Town's Zoning or Subdivision regulations, the unused allocation (adjusted to the actual development constructed, if necessary), will revert to the Town.

Section 9: Assignability of Allocations

- a) **Use of Allocations**
Allocations of capacity and places on a waiting list under this Ordinance may not be:
 - (1) Sold or transferred for use on property other than that for which the allocation was originally granted; or
 - (2) Used for substantially different improvements of the same property, whether or not owned by the original applicant.
- b) **Undistributed Three-Year Capacity Allocation**
Any residential or nonresidential allocation which is undistributed during a Three-Year Capacity Allocation period shall be returned to the Uncommitted Reserve Capacity calculation for the Plants.

Section 10: Approval, Findings, Conditions and Connection Authorization

a) Findings

Upon receipt of the sewer allocation application and supporting documents, the Designee may grant approval of an allocation from the Three-Year Capacity Allocation, upon making affirmative findings that:

- (1) Compliance: The proposed use of wastewater capacity complies with the standards set forth in this Ordinance and is not in conflict with any other ordinances duly adopted by the Selectboard of the Town of Shelburne, and Subsections 2 below.
- (2) Wastewater Origin: 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; or 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 Plants 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 Plants without treatment, interfere or otherwise disrupt the proper quality and disposal of Plant sludge or be injurious in any other manner to the Plants or Sewers and that there is sufficient uncommitted reserve capacity to accommodate the strength and volume of the proposed development.

b) Approval and Conditions

The Designee, after making the approval findings above, may grant approval of an allocation from the Three-Year Capacity Allocation. The approval shall be a binding commitment of capacity to the project contingent on compliance with any conditions attached to the approval. The Board may revoke the allocation approval upon finding that the applicant failed to meet any of the conditions attached to the approval. The Designee may attach additional conditions deemed necessary to ensure compliance with the intent of this ordinance and for purposes of implementing the goals and policies of the Town's Comprehensive Plan.

Section 11: Capacity Waiting List

a) Three Year Capacity Allocation Waiting List

Once a Three-Year Capacity Allocation has been fully distributed any subsequent applications for allocation within that period shall be placed on a waiting list. Applications on the Three-Year Capacity Allocation Waiting List shall be acted on in the following order once a subsequent Three-Year Capacity Allocation period begins:

- (1) Priority: Applications located within a Priority District or which have been deemed by the Planning Commission to be eligible for a density bonus as part of a planned residential development subdivision review, whether or not that density bonus is actually utilized.
- (2) All other applications: In the order as specified in Section 7: b), above.

b) Insufficient Plant Capacity Waiting List

In the event that there is no capacity in the Plants, applications for capacity shall be placed on a waiting list in the same order as specified in Section 7: b above. Within thirty (30) days after receipt of notice from the Vermont Agency of Natural Resources or its successor that Capacity is available and that sewer connections may be resumed the Board shall re-establish a Three-Year Capacity Allocation and the Designee shall consider applications in the order in which they are on the waiting list.

c) Removal from the List

Unless voluntarily withdrawn, an application will remain on the waiting list until notified that capacity is available, provided that final Planning Commission or Zoning Board of Adjustment approval, as appropriate, has been obtained and remains in effect.

Section 12: Cost Recovery for Sewer Expansion

a) Costs

The cost of any extension of the Sewers to provide for new users shall be borne by the persons served by the expansion.

b) Payments

Any payments made as required by Section 7 shall not be construed as payments towards treatment capacity that may be provided for the development.

Section 13: Fees

Fees shall be as set or amended by the Board as authorized by this Ordinance or other Town ordinances regulating the Plants and Sewers.

Article 14: Authority to Require Connection

Nothing herein shall be construed as limiting or impairing the authority of the Town or its Board to require connections to the Sewers under the general laws of the state or local ordinances.

Section 15: Prior Allocations

Adoption of this ordinance and any amendment thereto, shall not modify any allocations of treatment capacity issued prior to the adoption of this ordinance or amendment, however, the procedures established by this ordinance shall govern.

Section 16: Effect of Adoption of Ordinance

To the extent that any provision herein shall be inconsistent with or contrary to any provision of other Town Sewer Ordinances, then the provisions of this ordinance shall apply. The adoption of this allocation ordinance shall not interfere with the authority and responsibility of the Board in matters relating to the management and operation of the Plants and Sewers as provided in Chapter 97 and 101 of 24 V.S.A.

Section 17: Severability

If any portion of this Ordinance and any amendments made hereto are held unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance and any amendments made hereto shall not be affected and shall remain in full force and effect. If any statute referred to in this Ordinance shall be amended, this Ordinance shall be deemed to refer to such amended statute.

This ordinance shall take effect upon adoption by the Board of Selectmen.

ADOPTED this 11th day of May, 2021, by the Town of Shelburne Selectboard.

/s/ Jerry Storey, Chair

/s/ Luce Hillman

/s/ Cate Cross

/s/ Kate Lalley

/s/ Michael X. Ashooh