

Sewer Assessment Ordinance received a First Reading on April 15, 2021. A Special Town Council Meeting has been scheduled for April 29, 2021. The Public Hearing for this item is May 20, 2021.

B. NEW BUSINESS (Refer to Public Hearing 05/20/2021)

BARNSTABLE TOWN COUNCIL

**ITEM# 2021-139
INTRO: 04/15/2021**

2021-139 ORDER AMENDING CHAPTER 184 SEWERS AND WATER OF THE GENERAL ORDINANCES

ORDERED: That Chapter 184 General Ordinances of the Code of the Town of Barnstable be amended by inserting the following new Article II, Sewer Assessments, and renumbering the current Articles II and III as Articles III and IV:

**ARTICLE II
SEWER ASSESSMENTS**

Section 1: Purpose and Authorization

The purpose of this Article II is to assess all properties receiving benefit or advantage from public sewerage construction within a limited and determinable area, including, but not limited to, as set forth in the Comprehensive Wastewater Management Plan approved by vote of the Town Council on November 7, 2019, and in accordance with Section 1 of Chapter 83 of the General Laws, any other applicable section of said Chapter 83 and any other applicable general or special law.

Section 2: Definitions

For the purpose of this Article II, the following words shall be considered to have the following meanings:

(1) Commercial Use: Occupancy of premises for financial gain including profit such as business and industrial uses.

(2) Commercial Sewer Unit: Shall be equivalent to 330 gallons of actual or reasonably anticipated daily sewage volume, as determined by the Director of the Department of Public Works based on Title 5 of the State Environmental Code, 310 CMR 15.203, System Sewage Flow Design Criteria. For purposes of determining the number of Commercial Sewer Units to be assessed, volume in an amount up to and including 330 gallons shall be deemed one Commercial Sewer Unit. An additional Commercial Sewer Unit shall be assessed for each additional 330 gallons of volume.

(3) Compensatory Sewer Privilege Fee: A fee that is assessed in lieu of a sewer assessment to reflect the increased use of a property in situations where: (a) a sewer assessment has been assessed to an undeveloped property based on the number of potential Sewer Units and said property is ultimately developed to accommodate a greater number of Sewer Units than that originally assessed; or (b) a sewer assessment has been assessed to a developed parcel and subsequently the use of that parcel has changed or intensified to accommodate a greater number of Sewer Units than that originally assessed; or (c) no sewer assessment was assessed to an Unbuildable Lot and that lot subsequently is issued a building permit.

(4) Dwelling Unit: One or more rooms providing complete living facilities for one family, including equipment for cooking, or provisions for the same, and including room or rooms for living, sleeping, and eating; provided that, solely for the purposes of this Article II, such complete living facilities that contain one bedroom or fewer shall be a Half Dwelling Unit.

(5) Force Main: A line without access from individual properties providing access from pumping station to pumping station or to trunk and sewer main.

(6) General Benefit Facilities: Improvements, such as pumping stations, trunk and force mains, acquisition of land or interests in land, which will provide benefit or advantage to an area exceeding that served by the Special Benefit Facilities. Ordinarily, General Benefit Facilities will serve a major part of a Pumping District.

(7) Lateral Line: Sewer conduit from a house to a street.

(8) Multifamily Use: Occupancy of premises with two or more dwelling units.

(9) Pumping District: An area, as identified by the Department of Public Works, which consists of a collection of sewer mains that connect to generally used infrastructure, such as pump stations, trunk mains and force mains that moves sewage from said collection of sewer mains to a treatment facility.

(10) Residential Sewer Units: Shall be equivalent to the number of existing Dwelling Units, including Accessory Dwelling Units as defined by the Zoning Ordinance, and the number of potential Dwelling Units on the property, as permitted under the Zoning Ordinance of the Town of Barnstable for the district in which the property is located; provided, that any Accessory Dwelling Unit that did not exist at the time of assessment shall be assessed a Compensatory Sewer Privilege Fee in accordance with Section 4F hereof; provided further, that a Half Dwelling Unit shall be assessed as one half of one Sewer Unit.

(11) Semi-public Use: Occupancy of premises by private non-profit organizations, including without limitation private schools, hospitals, and religious institutions.

(12) Sewer Main: The line serving as a conduit for sanitary sewerage from the lateral lines from each individual property.

(13) Special Benefit Facilities: The sewer main to which a lateral line from an individual abutting property can be connected, acquisition of land or interests in land, pumping stations that are required to service a specific project area and any other costs of improvements required to service a specific project area.

(14) Trunk Main: The line serving as a conduit for sanitary sewerage from a number of sewer mains and lateral lines. Trunk mains shall be considered as those lines ten (10) inches and over in diameter.

(15) Unbuildable Lot: At the time at which a sewer assessment would have been imposed, a lot, as determined by the assessors of the Town, on which there is no apparent legal way to build a legal residence or commercial building because the lot does not conform to the Town's building regulations or Zoning Ordinance.

(16) Uniform Unit Method: A means by which sewerage construction costs shall be equally divided between the total number of existing and potential Sewer Units to be served after having proportioned the costs resulting from the construction of Special and General Benefit Facilities.

(17) Zoning Ordinance: The Zoning Ordinance in effect in the Town of Barnstable at the time the sewerage assessment is levied.

Section 3: Basic Requirements

The Town Manager shall assess sewerage construction costs to all properties receiving benefit or advantage on the basis of the Uniform Unit Method. The Town Manager shall separate the costs of the General Benefit Facilities from those of the Special Benefit Facilities. The proportional cost of the Special and General Benefit Facilities shall be assessed in accordance with Section 5 hereof.

Section 4: Determination of Sewer Units

Section 4A: Each parcel of land in a Pumping District shall be converted into permanent Residential or Commercial Sewer Units, as defined herein, by the DPW for the purpose of proportionally dividing the construction costs equitably among such parcels of land.

Section 4B: Developed Residential Lots

A residential lot that contains one Dwelling Unit shall be assessed as one Sewer Unit. If such residential lot contains more than one Dwelling Unit, the number of assessed Residential Sewer Units shall equal the number of Dwelling Units. Single family dwellings shall comprise one Residential Sewer Unit; single family dwellings which have an Accessory Dwelling Unit as defined by the Zoning Ordinance within the single family residence or in a detached building on the same lot shall comprise two Residential Sewer Units; duplex dwellings shall comprise two Residential Sewer Units; three-family dwellings shall comprise three Residential Sewer Units; four-family dwellings shall comprise four Residential Sewer Units; and multiple family dwellings (in excess of four dwelling units) shall comprise one Residential Sewer Unit for each apartment in a rental property and one Residential Sewer Unit for each dwelling unit in a condominium complex; provided that the number of Residential Sewer Units in the foregoing list

shall be adjusted accordingly for Half Dwelling Units. A Dwelling Unit that occupies two residential lots in such a way that only one Dwelling Unit is allowed shall be assessed as one Residential Sewer Unit.

Section 4C: Lots Capable of Division or Sub-Division

1. Residential Lots Capable of Division or Sub-Division

Residentially zoned land which is capable of being divided or sub-divided according to the Zoning Ordinance shall be assessed as currently used plus one additional Sewer Unit for each lot which could be created in accordance with the Zoning Ordinance. At the property owner's request, the time for payment of such additional assessment may be extended until such time as the land is built upon, provided that interest at the annual rate of 4% shall be paid annually upon the assessment from the time it was made, and the assessment shall be paid in full within three months after such land is built upon.

2. Commercial, Industrial, Business and Semi-public Lots Capable of Division or Sub-Division

Commercial, industrial, business, and semi-public lots which could be divided or sub-divided according to the Zoning Ordinance shall be assessed as currently used plus one additional Commercial Sewer Unit for each additional 330 gallons of reasonably anticipated daily sewage volume which could be generated from the use in accordance with the Zoning Ordinance. At the property owner's request, the time for payment of such additional assessment may be extended until such time as the land is built upon, provided that interest at the annual rate of 4% shall be paid annually upon the assessment from the time it was made, and the assessment shall be paid in full within three months after such land is built upon.

Section 4D: Improved Commercial, Industrial, Business, and Semi-public Lots and Uses

Improved commercial, industrial, business, and semi-public lots and uses shall be assessed according to the reasonably anticipated sewage volume to be generated from the use. 330 gallons of actual or anticipated daily sewage volume shall equal one Commercial Sewer Unit.

Section 4E: Unbuildable Lots

An Unbuildable Lot shall not be assessed any Sewer Units, provided that upon the issuance of a building permit, said lot shall be assessed a Compensatory Sewer Privilege Fee in accordance with Section 4F below.

Section 4F: Changes in Use or Intensity of Use

In the event that existing uses on a parcel of land are changed or intensified under any circumstance, including without limitation issuance of a building permit for what had been classified as an Unbuildable Lot at the time a sewer assessment otherwise would have been imposed, changes in zoning, variance from the Zoning Ordinance, new construction and changes in use or reconfiguration, resulting in greater actual or potential sewage output than that established at the time of the original assessment or at the time the decision was made not to assess, the Town Manager or his or her designee shall assess a Compensatory Sewer Privilege Fee to reflect the new or increased use. The Compensatory Sewer Privilege Fee shall be

computed based on the number of Sewer Units attributable to the new or increased use; provided that the amount of the fee for each such Sewer Unit shall be no greater than the initial maximum amount, as adjusted and most recently in effect, in accordance with Section 5A hereof. The Compensatory Sewer Privilege Fee shall be levied either at the time of connection of new or additional flow to the public sewer or upon Town of Barnstable approval of the change in use. Payment of the Compensatory Sewer Privilege Fee shall be made in accordance with the process for payment of assessments set forth in Section 8 hereof; provided that if the property owner chooses to apportion the payments, the Town will apply the same interest rate as that which would have been imposed for a sewer assessment on the property. Compensatory Sewer Privilege Fees collected by the Town shall be placed into a Sewer Privilege Fee Fund to be established by the Town and such monies shall be used to pay costs associated with the operation and maintenance costs of the Town's sewer system and wastewater treatment facility.

Section 5: Cost Determination and Apportionment Using the Uniform Unit Method

Section 5A: Sewer Cost Determination and Apportionment for Residential Land and Uses

Sewer assessments shall be based on one hundred percent (100%) of the cost of Special and General Benefit Facilities, as determined in accordance with the formulas set forth below. The actual assessment per Residential or Commercial Sewer Unit shall be the allocated cost or Seventeen Thousand Dollars (\$17,000.00) (the "initial maximum amount"), whichever is lower. This initial maximum amount will remain in effect until June 30 of the year following the calendar year in which the first sewer assessments are made. Thereafter, the initial maximum amount may be adjusted annually as of July 1 of each year by the percentage change in the construction cost index as calculated by the Gordian Company for the immediately preceding year ending June 30, as determined by the Town Manager. In the event that Gordian ceases to publish such index, the Department of Public Works will select an index which most closely resembles the Gordian index and the substitute index shall then be used for so long as the Director of the Department of Public Works determines that the substitute index accurately reflects market conditions.

Section 5B: Cost and Assessment of General Benefit Facilities

1. The cost of General Benefit Facilities and of Special Benefit Facilities shall be determined separately from each other.
2. The cost of General Benefit Facilities for a Pumping District shall be divided by the number of Sewer Units in such Pumping District. The result of such calculation shall be the General Benefit Facility Unit Cost.
 - a. The General Benefit Facility Unit Cost shall be assessed to Sewer Units which abut existing streets and have the capability to connect to the sewer system so that the property will receive a direct benefit and advantage upon connection to the sewer system.
 - b. The General Benefit Facility Unit Cost shall not be assessed to Sewer Units that do not currently abut existing streets to be sewerd but shall be assessed at such later time as such Sewer Units shall have the capability to connect to the sewer system and directly benefit from the General Benefit Facilities.

Section 5C: Cost and Assessment of Special Benefit Facilities

1. The cost of Special Benefit Facilities for a Pumping District shall be divided by the number of Sewer Units in such Pumping District. The result of such calculation shall be the Special Benefit Facility Unit Cost.
 - a. The Special Benefit Facility Unit Cost shall be assessed to Sewer Units which abut existing streets and have the capability to connect to the sewer system so that the property will receive a direct benefit and advantage upon connection to the sewer system.
 - b. The Special Benefit Facility Unit Cost shall not be assessed to Sewer Units that do not currently abut existing streets to be sewerred but shall be assessed at such later time as such Sewer Units shall have the capability to connect to the sewer system and directly benefit from the Special Benefit Facilities.

Section 6: Estimated Assessments

The Town may assess and collect estimated sewer assessments in connection with the construction of water pollution collection, pumping, treatment and disposal facilities. The total amount of such estimated sewer assessments shall not exceed the lesser of: (i) one-half of the Town's liability under all contracts it has entered into for the construction of such facilities or (ii) the amount of any cap on sewer assessments as determined under Section 5 multiplied by the total number of Residential and Commercial Sewer Units. The total of such estimated assessments shall be determined by the same method to be used for the determination of the actual assessments upon the completion of the work. When the final costs of construction of the facilities have been determined, the Town may assess and collect actual sewer assessments for the balance owed. The interest rate on estimated sewer assessments will be the rate as determined under Section 8.

Section 7: Sewer Connection Costs

The cost of connecting the abutter to the completed section of sewer will be assessed back to the property abutter at one hundred percent (100%) of the cost. Property abutters may elect to pay the entire cost of connection upon completion or may choose to have it added to their sewer assessment. Alternatively, property abutters may elect to privately arrange and pay for the connection to the completed section of sewer.

Section 8: Interest Rate on Apportioned Sewer Assessments (NOTE: Ability to make payments over 30 years is subject to acceptance by the Town of G.L. c. 83, sec. 15D)

At the time of assessment, the property owner will have the option to pay the full amount of the assessment within thirty (30) days, or to make a partial payment on the assessment and apportion the unpaid balance over future tax bills for a period of their choosing, up to 30 years, or to apportion the full assessment over future tax bills for a period of their choosing, up to 30 years. The Town will apply an interest rate to the sewer assessment at an annual fixed rate of two percent (2.0%) above the borrowing costs the Town incurs on the loan. If multiple loans are issued, a blended rate will be used to calculate the Town's borrowing cost. The property owner may pay the total remaining principal amount due at any time without a prepayment penalty.

Section 9: Deferral of Charges (NOTE: Section c. 83, sec 16G needs to be accepted by the Town)

In accordance with and subject to the provisions of Section 16G of Chapter 83 of the General Laws, the Department of Public Works shall, upon application of the owner of real property served by the common sewers, if such owner is receiving an exemption from property taxes under clause Forty-first A of Section 5 of Chapter 59 of the General Laws with respect to such property, defer charges for said use of the common sewers. An application for deferral may be filed with the Department of Public Works within the time limit established for the filing of an application for exemption under said clause Forty-first A.

Section 10: Abatements

A property owner aggrieved by a sewer assessment imposed under this Article II may apply for abatement thereof by filing a request for abatement with the Town Manager on a form provided by the Department of Public Works within six months of the date of notice of such Assessment. The Town Manager shall make a final ruling on the application within 45 days from the date of filing. The filing of the application does not stay the payment of the sewer assessment, which must be paid as assessed. If the abatement request is allowed, the appropriate refund will be made by the Town. A property owner who is aggrieved by the refusal of the Town Manager to abate an assessment in whole or in part may within thirty days after notice of the decision of the Town Manager appeal therefrom by filing a petition for the abatement of such assessment in the superior court in accordance with Section 7 of Chapter 80 of the General Laws.”

SPONSOR: Mark S. Ells, Town Manager

DATE

ACTION TAKEN

- ____ Read Item
- ____ Motion to Open Public Hearing
- ____ Rationale
- ____ Public Hearing
- ____ Close Public Hearing
- ____ Council Discussion
- ____ Vote