

**AGENDA  
LEBANON CITY COUNCIL  
JULY 10, 2019**

**9. NEW BUSINESS:**

**9.C – DISCUSSION & SET PUBLIC HEARING FOR JULY 24, 2019:  
ORDINANCE 2019-10 TO AMEND CITY CODE  
CHAPTER 181, WATER AND SEWER MAIN EXTENSIONS**

**BACKGROUND**

At a work session on October 25, 2017, the City Council was presented with findings relative to available residual capacity in the sewer interceptor system that carries wastewater from Lebanon (east of Terri Dudley Bridge) to the Wastewater Treatment Plant. Based on those findings, on January 3, 2018, the City Council amended Chapter 181 of the City Code to enact a one-year temporary limitation on sewer extensions to flows of up to 13,600 gallons per day.

At a work session on May 9, 2018, Chris Perkins of Weston & Sampson presented findings of sewer metering and modeling completed between spring and fall 2017 and discussed recommendations and potential next steps for improving capacity within the interceptor. It was decided that prior to finalizing plans to upgrade portions of the interceptor, additional modeling should be completed to determine residual capacity post CSO 11 construction. Results of the additional modeling were presented to the Council at a meeting on November 7, 2018, which showed residual capacity to be approximately 200,000 gallons per day, if the full threshold for pipes was increased from 80% to 95% (which was recommended by Weston & Sampson).

On December 5, 2018, Administration requested that the Council extend the temporary limitation to July 31, 2019, to provide opportunity to formulate language to amend the Code and develop a construction project to upgrade portions of the interceptor to increase capacity. On January 2, 2019, the Council acted to extend the temporary limitation to July 31.

The completion of the sewer model has provided administration with the information necessary to move forward with improvements to the interceptor. It has also provided an opportunity to reassess how we calculate the impact of sewer flows entering the interceptor. The residual capacity post CSO 11 combined with the capacity to be gained through upgrades to the interceptor this year will provide between 325,000 – 400,000 gallons of available residual capacity in 2020. Administration is continuing to work on regulations to best manage this capacity. We have held a LEAN session to review our current process and develop a new process. In order to implement the proposed new process, Chapter 181, as well as the Planning Board's Site Plan Review and Subdivision Regulations will need to be amended. Administration is working with legal counsel to formulate language for the proposed amendments which will be presented to the Council in October/November.

The Council is being asked to extend the current sunset provision for the Temporary Limitation contained in City Code Chapter 181, Section 181-8, to December 31, 2019.

**ACTION**

*If the Council decides to move forward with proposed Ordinance 2019-01, the following motion is offered for consideration:*

***MOVED, that the Lebanon City Council hereby schedules a public hearing for July 24, 2019, beginning at 7:00pm in Council Chambers, City Hall, for the purpose of receiving public input and taking action on Proposed Ordinance 2019-10, to amend the Code of the City of Lebanon, Chapter 181, Water and Sewer Main Extension, by amending Section 181-8.D, Temporary Limitation on Sewer Extensions, to extend the Sunset Provision to December 31, 2019.***

**Included in this Section:**

1. Proposed Ordinance #2019-10
2. City Code Chapter 181, Water and Sewer Main Extensions

**CITY OF LEBANON  
ORDINANCE #2019-10**

AN ORDINANCE TO AMEND Chapter 181, Water and Sewer Main Extension, of the Code of the City of Lebanon, Section § 181-8, Temporary Limitation on Sewer Extensions.

BE IT ORDAINED, by the City Council of the City of Lebanon as follows:

**Section 1.**

The Code of the City of Lebanon, Chapter 181, Water & Sewer Main Extensions, Section §181-8, Temporary Limitation on Sewer Extensions is amended as follows:

§ 181-8. Temporary Limitation on Sewer Extensions.

D. ***Sunset Provision.*** The restriction imposed by this Section shall expire December 31, 2019, or upon repeal or amendment by the Council based on new or additional information, whichever occurs earlier.

**Section 2. Severability**

The provisions of this ordinance are declared to be severable, and if any section, subsection, sentence, clause or part thereof is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdictions, such decisions shall not affect the validity of any remaining sections, subsections, sentences, clauses or part of this ordinance.

**Section 3. Effective Date.**

This ordinance shall become effective upon passage.

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# Chapter 181

## WATER AND SEWER MAIN EXTENSIONS

### GENERAL REFERENCES

Building construction — See Ch. 36.

Sewer service — See Ch. 136.

Fees — See Ch. 68.

Water service — See Ch. 182.

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#### **§ 181-1. Authority.**

This chapter is adopted pursuant to the authority contained in RSA 47-17.

#### **§ 181-2. Declaration of purpose.**

The purpose of this chapter is to provide the procedure, terms and conditions for extensions of city water mains and sewer mains to protect the public welfare and safety of residents of the City of Lebanon.

#### **§ 181-3. Approval. [Amended 9-14-2005 by Ord. No. 2005-5]**

- A. Extensions of water and sewer mains to serve more than three sewer units within the City of Lebanon shall require the approval of the City Council. The City Manager may approve an extension to serve three or fewer sewer units.
- B. The procedure outlined in § 181-5 shall govern extensions of water and sewer mains to serve not more than three sewer units. Any requests for extensions of water and sewer mains to serve more than three sewer units shall be governed by the procedure outlined in § 181-6. Prior to any request for extensions under § 181-6, the developer shall apply to the Lebanon Planning Board for approval under the applicable development review regulations. After receiving findings and a decision from the Lebanon Planning Board concerning whether the proposal meets applicable subdivision or site plan review regulations, but prior to the approval becoming final, the developer shall request approval from the City Council of necessary extensions.

#### **§ 181-4. Winter construction.**

Except in cases of emergency, or unseasonably good weather, as determined by the Director of Public Works, no extensions of water and/or sewer mains or service lines shall be installed in or near any public right-of-way from November 1 through March 31. In the event of any emergency, the property owners/developer shall bear the increased cost of construction as determined by the Director of Public Works.

#### **§ 181-5. Determination by City Manager for three or fewer sewer units.**

- A. Upon the petition of property owners or developer for the extension of water or sewer mains to provide service for three or fewer sewer units, the City Manager shall make a determination upon the request and shall base his decision upon:
- (1) Topographic limitations of the city to supply.
  - (2) Proximity of a supply point or source to the street or streets to be served.
  - (3) Priority considerations.
  - (4) Need.
  - (5) Estimated costs and schedule of financing.
  - (6) Whether or not the petitioners or developer shall pay for all costs relating to the extension.
- B. Method of construction. The method of construction shall be determined by the City Manager in accordance with city standards.
- C. Cost estimates. Unless the petitioners or the developer are paying the full cost of the extension, prior to a determination by the City Manager to extend water and/or sewer main or mains in any street, the City Manager shall prepare and submit to the Council the estimated cost of the proposed extension and a schedule of financing based on the procedure outlined in the following section.
- D. Procedure for financing:
- (1) For the purpose of water and/or sewer main extensions, if deemed necessary, the City Council shall appropriate the necessary funds.
  - (2) The total cost of an extension shall be assessed to each benefited property owner in accordance with the procedure, to the extent applicable, set forth in the Code of the City of Lebanon, Chapter 147, Special Assessment. **[Amended 9-14-2005 by Ord. No. 2005-5]**
- E. Additional connections and recoument by the property owners/developer. No additional connections to the extension will be made for any other property owners requesting service for a period of 10 years from the date of acceptance of the extension by the city unless such property owners agree to reimburse the property owners/developer a pro rata share of the cost of construction of the extension as paid by them, determined by the City Manager in a manner and method as if the extension had been paid by a special assessment.

**§ 181-6. City Council approval for extension serving more than three units.**

- A. Extension agreements.

- (1) All requests for extensions of water and sewer service for more than three units shall require approval by the City Council and an extension agreement between the city and the developer containing the following:
  - (a) The developer shall pay the full cost of design and construction of the extension in accordance with the city's requirements. All plans for the design of the extension shall be submitted to the City Engineer or such other person as designated by the Public Works Director, for written approval. Any cost incurred by the city in reviewing the design by persons other than the City Engineer shall be paid for by the developer.
  - (b) The developer shall pay to the city, prior to any construction, an amount estimated by the city to pay for independent engineering inspection services hired by the city if deemed necessary by the City Manager. If the city spends less than the amount paid by the developer, the balance shall be refunded to the developer. If the city spends more than the payment made by the developer, the developer shall reimburse the city. The city's review of the construction documents and inspection during the period of construction and inspection prior to acceptance shall not bar or preclude, in any way, the rights of the city to assert claims against the developer for defects in construction under Subsection A(1)(g) below.
  - (c) The developer shall provide indemnification to the City for any costs, damages or other expenses arising from review or construction of the extension. **[Amended 9-14-2005 by Ord. No. 2005-5]**
  - (d) If any portion of the proposed extension is not in a city highway, the developer shall convey and transfer to the city, as a condition of acceptance of the extension, adequate rights-of-way in compliance with the city's requirements and in conformity with the requirements of the city as to the form of the deed, a title opinion, monuments and recordable plan.
  - (e) After the extension has been substantially completed, the developer shall be responsible to repair and maintain the extension for a period of one year.
  - (f) After the expiration of the one-year period for maintenance, the City Manager shall determine whether or not to issue a certification that the extension has been constructed and installed in accordance with the plans, specifications and standards of the city. The City Manager may require a report of a professional engineer, hired by the city and paid for by the developer.

- (g) It shall be a condition of the extension agreement and any city acceptance that the developer shall be responsible for any latent defects discovered within eight years from the date of substantial completion. In the event that the developer conveys and transfers the project for which the extension was granted, the subsequent owner shall be responsible for the obligations of the developer for the remainder of the eight-year period regardless of whether or not such obligation is expressly assumed.
- (2) No additional connections to the extension will be made for any other property owners requesting service for a period of 10 years from the date of acceptance of the extension by the city unless such property owners agree to pay to the developer a pro rata share of the cost relating to the extension as determined by the City Manager. The developer shall provide a copy of the contract documents for the construction of the extension to the city prior to undertaking any construction for review and approval by the city to ensure that the requirements of the extension agreement have been met. The developer shall include in any construction documents that the proposed extension is intended to be transferred to the city for ownership and maintenance. In addition, any security or bond obtained by the contractor constructing and installing the extension for the benefit of the developer shall remain in effect until the expiration of the eight-year period and shall be for the benefit of the city.
- B. Upon compliance with all the conditions set forth herein, the developer may request and the City Council shall accept the transfer of the extension, including the water or sewer main and rights-of-way to the city to become part of the city water system or sewer system and the responsibility of the city thereafter.
- C. Notwithstanding any other provisions of this chapter, the City Council, upon determination by the Planning Board that the proposed development requiring the extension is premature and scattered, shall deny the sewer and/or water extensions. If the Planning Board does not make such a determination, the City Council shall consider only issues related to the technical feasibility and fiscal consequences of any proposed extension in deciding whether to approve an extension under this Chapter. **[Amended 9-14-2005 by Ord. No. 2005-5]**

### **§ 181-7. Private water and/or sewer mains.**

- A. Private water and/or sewer mains are defined as those lines having a diameter of eight inches to twelve inches and installed on private property by the landowner or developer. Such private mains shall be constructed, installed and maintained at the sole expense of the landowner, and not the City, and shall require approval by the City Manager or City Council under § 181-5 or § 181-6. **[Amended 9-14-2005 by Ord. No. 2005-5]**

- B. Any permit issued which includes the installation of a private main shall be subject to the following conditions regardless of whether or not contained in such permit:
- (1) Such private mains shall be inspected by the city as required by law, as required by the Code of the City of Lebanon, Chapter 136, Sewer Service, Chapter 182, Water Service, and Chapter 36, Building Construction, solely for the purpose of determining whether or not the private mains meet city requirements. Any expense to meet city requirements as to the installation of the private mains shall be at the sole expense of the landowner. The costs of inspection shall be as provided by the Code of the City of Lebanon, Chapter 68, Fees.
  - (2) If, at any time in the future, the city determines that the public interest requires the acquisition of such private mains to be incorporated into the city water and/or sewer systems, the landowner at that time shall convey and transfer such private mains to the city upon such terms and conditions as deemed to be in the best interest of the city.

**§ 181-8. Temporary limitation on sewer extensions. [Added 1-3-2018 by Ord. No. 2018-01]**

A. Purpose and findings.

- (1) A sewer line capacity study performed by Wright-Pierce Engineering in the course of the Planning Board's preliminary review of the proposed Carter Country Club - Houses on the Hill development, and the results of which are reflected in a report with a cover letter from Ryan T. Wingard, P.E., to City Engineer Christina Hall, P.E., dated July 17, 2017, and in a memorandum from Wright-Pierce to the City Engineer and Jay Cairelli, Assistant Director of Public Works dated July 24, 2017, has determined that portions of the sewer interceptor connecting Downtown Lebanon to the wastewater treatment facility (all areas east of the Terri Dudley Bridge, as shown on Exhibit A<sup>1</sup>) - when flows from already approved but unconstructed development are factored in - are nearing their capacity (considered conservatively by the City as 80% of calculated full flow). Specifically, the Wright-Pierce study found that the existing residual capacity of the sewer interceptor, in the absence of any pipe replacements, was 110,000 gallons per day.
- (2) The City finds that the conclusions of the Wright-Pierce study evidence a clear and present emergency which must be addressed on a temporary basis pending remedial actions to increase the overall capacity of the line, in order to prevent the approval of sewer extensions, or combinations thereof, which, if implemented,

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1. Editor's Note: Exhibit A is included as an attachment to this chapter.

could bring about a failure or overflow of the sewer interceptor, and cause serious health and environmental damage as well as violations of clean water and pollution laws.

- (3) When calculating residential sewage flows, the City has historically utilized a figure of 150 gallons per day per bedroom for a single-family dwelling (600 gallons per day for a four-bedroom house). To allot for wet weather conditions within the sewer system, this figure is peaked by a factor of six (or 3,600 gallons per day for a four-bedroom house).
- (4) In presentations made to the Council, representatives of both Wright-Pierce and Weston & Sampson have recommended that - in addressing the question of interceptor capacity - it would be reasonable for the City to reduce its sewage flow estimates associated with residential units to a level which, while still conservative, is closer to the figures used by New Hampshire Department of Environmental Services.
  - (a) The City accordingly finds that, based on the information presented, utilizing the Metcalf and Eddy/AECOM Wastewater Engineering Treatment and Resource Recovery, Fifth Edition, Table 3-2, (assuming one person per bedroom) is the method to be used as follows:
    - 1 bedroom flowrate = 103 gpd/capita x 1 person = 103 gpd = 105 gpd rounded
    - 2 bedroom flowrate = 77 gpd/capita x 2 people = 154 gpd = 160 gpd rounded
    - 3 bedroom flowrate = 68 gpd/capita x 3 people = 204 gpd = 210 gpd rounded
    - 4 bedroom flowrate = 63 gpd/capita x 4 people = 252 gpd = 280 gpd rounded
  - (b) In applying this calculation method to those developments previously approved, but not yet constructed (specifically ICV Phase II and 4 South Park Street), the recalculated residual capacity of the interceptor is 153,559 gallons per day.
- (5) Sewer extensions/connections granted.
  - (a) The following sewer extensions/connections have been granted since the completion of Wright-Pierce's study of the interceptor capacity:
    - Thai Orchid Restaurant (Hanover Street) = 48 seats, 48 seats x 40 gal/seat X 6 = 11,520 gpd peaked
    - Lucky's coffee shop and bar = 980 gpd x 6 = 5880 gpd peaked (980 gpd based on 3 employees at 35 gpd and 54 seats at 20 gpd — 1 sewer unit for preexisting use.)

1 single-family home (2 bedroom) = 960 gpd peaked.

- (b) Applying the total allocation for those flows approved since the completion of Wright-Pierce's study (18,362 gallons per day) to the recalculated capacity when applying the Metcalf and Eddy method (153,559 gallons per day) yields a total new residual capacity of 135,997 gallons per day that may be allocated to future development.
- B. Restriction on new extensions. For as long as this section is in effect, neither the City Manager acting pursuant to § 181-5 of this chapter, nor the City Council acting pursuant to § 181-6 of this chapter, nor both, shall approve any sewer extension, or combination of extensions, which would increase sewer flowage to the sewer interceptor running from Downtown Lebanon to the wastewater treatment facility, to a level in excess of the residual capacity of that interceptor as of July 17, 2017, as recalculated pursuant to Subsection A above.
- C. Allocation. For as long as this section is in effect, no single owner of land shall be given approval for a sewer extension, pursuant to either § 181-5 of this chapter or § 181-6 of this chapter, which increases the estimated flows in the said sewer interceptor by an amount greater than 13,600 gallons per day.
- D. Sunset provision. The restriction imposed by this section shall expire July 31, 2019, or upon repeal or amendment by the Council based on new or additional information, whichever occurs earlier. **[Amended 1-2-2019 by Ord. No. 2019-01]**

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