

# TOWN OF JAY ORDINANCE FOR SEWER CAPACITY ALLOCATION

## I. Ownership & Permit

The Town of Jay (TOWN), together with the Town of Troy, owns and operates a sewage treatment and disposal plant (PLANT) and a sewage collection and transmission system (SEWERS) as defined in 24 V.S.A., Section 3501(6) and 3601. The PLANT and SEWERS are more particularly described in Land Use Permit # 7R0739 issued by the District VII- Environmental Commission. The PLANT has a permitted capacity, and is operated in accord with a discharge permit issued by the Vermont Department of Environmental Conservation (DEPARTMENT) under authority granted in 10 V.S.A., Chapter 47. The board of sewage disposal commissioners of the TOWN (BOARD) is obligated by law to comply with conditions of that permit, and to operate and manage the PLANT and SEWERS as governmental functions under and pursuant to 24 V.S.A., Chapters 97 and 101.

## II. Introduction to Reserve Capacity Allocation

- A. The permitted capacity of the PLANT and SEWERS is the property of the TOWN. The uncommitted reserve capacity of the PLANT and SEWERS shall be allocated by the BOARD in the manner described below. This ordinance is adopted pursuant to the provisions of 24 V.S.A., Section 3625, in the manner provided in 24 V.S.A., Chapter 59, 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 sewerage.
- B. The PLANT has a current design treatment capacity of 200,000 gallons per day, and will be expanding to have a design capacity of 800,000 gallons per day. Pursuant to an Intermunicipal Agreement between the Towns of Jay and Troy dated February 22, 1990, the Town of Jay has an allocation of 120,000 gallons per day. After the expansion, there will be 690,000 gallons per day allocated to the Town of Jay.

## III. Current Reserve Capacity Allocation

A. Allocation Flow Basis

1. All allocations to developments shall be based on the applied for development wastewater flow. Any differential between actual and applied for development wastewater flows that occurs is not available to the development owner for re-allotment to another project or a project expansion.

B. Current Allocation Priorities

1. Allocation of current 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 developments.
2. Residential, commercial, institutional and industrial facilities existing within the sewer service area on the date of adoption of this ordinance which are required to be connected to the SEWERS by the Jay Sewer Use Ordinance, by virtue of a request to the BOARD for connection within 90 days of the date of this ordinance and an official notice from the BOARD in respect to that requested connection, or by virtue of existing pollution from the facilities to waters of the State, 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. Accordingly, a development of second priority shall not be given preliminary connection approval until all pending applications from developments of first priority have been granted or denied preliminary connection approval by the BOARD.

C. Current Allocation Principles

1. Subsequent to application of the allocation priority, uncommitted reserve capacity in the PLANT may be allocated to specific developments according to the following procedure.
2. Once sewer permit applications have been returned

to the Town Office and marked with the time and date by the Town Clerk, the BOARD shall review and act upon the applications in the order in which the completed applications are filed with the TOWN Clerk. The total remaining uncommitted wastewater reserve capacity shall be allocated by the BOARD in such a way that there are no limitations on what total reserve amounts can be allocated in any one year as long as uncommitted capacity exists, and no limitation of the type of development receiving the allocation. The total reserve capacity will be determined each 6 months and committed reserve will be continuously recorded for use in allocation decisions.

IV. Future Reserve Capacity Allocation A.

Allocation Flow Basis:

All allocations to projects shall be based on the Development Wastewater Flow. Any difference between actual flows and development wastewater flows that occurs is not available to the development owner for re-allotment to another project or a project expansion.

B. Determination of Annual Capacity Allocation and assignment to Allocation Categories:

During the month of June each year, the BOARD shall determine the Uncommitted Reserve Capacity in the Plant, including previously allocated but reverted capacity. The BOARD shall designate such Uncommitted Reserve Capacity to be available for the next fiscal year. This shall be referred to as the "Annual Capacity Allocation".

1. Should there be any existing pollution from a residential, commercial, institutional, or industrial facility within the Wastewater Service Area, and such pollution constitutes a public health hazard as defined in 18 V.S.A., § 2, then the BOARD shall grant a priority allocation from that year's Annual Capacity Allocation to obviate the public health hazard. The BOARD shall then assign specific capacities from the remainder of the Annual Capacity Allocation to the following

Allocation Categories within the Wastewater Service Area :

- a. Residential Projects within a Designated Growth Center - 18% of reserve capacity
- b. Enterprise Projects within a Designated Growth Center - 75% of reserve capacity
- c. Institutional Projects within a Designated Growth Center - 7% of reserve capacity

The BOARD'S assignment of capacities to the above allocation categories shall be in accordance with the goals and policies of the Jay Town Plan. The BOARD, in assigning capacities to the allocation categories, may also establish conditions for the allocation of the capacities to individual projects, and such conditions shall be for purposes of implementing the goals and policies of the Town Plan.

2 . No capacity shall be allocated from any reserve capacity arising out of the 2009 expansion of the wastewater system, outside the Wastewater Service Area existing on the date of the adoption of this ordinance except as specified below:

- a. In the event that any existing wastewater treatment system fails outside the Wastewater 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 harm;
  - (2) All other possible solutions have been explored and found inadequate, and
  - (3) There will be no additional connections to any wastewater line extensions constructed to solve the problem.

C. Individual Project Allocations:

During the ensuing fiscal year, the BOARD shall consider applications for, and may grant allocations for individual projects within the Designated Growth Centers. No allocations shall be granted beyond the capacity assignments made to the

allocation categories in accordance with Section B-1, above. The BOARD shall act on all applications on a first come, first served basis as soon as practical, but no later than sixty days after it receives an application. The BOARD may attach conditions to allocation approvals in order to achieve the goals and policies of the Town Plan.

V. Reversion of Allocation:

The BOARD allocates reserve capacity to a specific parcel of land for a specific project. After completion of the project, or upon permit expiration, the unused allocation (adjusted to the actual development constructed, if necessary), will revert to the Town.

- A. When a project that has received a wastewater allocation has been completed and on line for at least one year, the Town shall monitor its Actual Flow and determine the actual average daily flow based on metered consumption, unless an alternate method is approved by the BOARD. This will be compared with the estimated development wastewater flow on which the allocation was based.
- B. If the actual first year average daily flow exceeds the allocation, the applicant shall apply for an allocation equal to the difference, and shall pay the standard allocation fee assessed per gpd by the Town at that time.
- C. If the actual first year average daily flow is less than the allocation, the difference, in gpd, shall be added to the Town's unallocated reserve capacity. There shall be no refund of previously paid allocation fees.

VII. Cost Recovery for SEWERS Expansion

Any extension of the sewer service area to provide for new users shall be funded as determined by the BOARD.

VIII. Application Requirement

Persons wishing to use the PLANT and SEWERS shall apply to the BOARD on a form prescribed by the BOARD. Such application shall include:

A calculation of the development wastewater flow to be generated by the development, including a description of all water conservation devices to be installed and maintained;

calculations for the volume, flow rate, strength and any other characteristics determined appropriate by the BOARD;

all calculations required in sections (a) and (b) above for developments generating over 1000 gpd shall be certified by a Vermont registered engineer;

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 BOARD until final connection approval ,-

a copy of the permit issued by the TOWN Planning Commission or Board of Adjustment for the development under applicable zoning and subdivision by-laws of the TOWN. In the event the permit includes conditions for the phasing of the development over time, the calculations of applied for development waste water flow and the dates of expiration of the allocation of reserve capacity shall correspond with those permit conditions.

All applications must be properly completed and shall be submitted with the required fee prior to being considered by the BOARD.

#### :liminary Connection Approval Findings

Upon receipt of the connection application and supporting documents, the BOARD may make preliminary approval of uncommitted reserve capacity upon making affirmative findings that:

1. 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;

2. 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;
- 3 . The proposed use of wastewater capacity complies with the allocation priorities and principles and is not in conflict with any other enactment adopted by the BOARD or TOWN.

The BOARD, after making the approval findings above, may issue a preliminary connection approval, which approval shall be a binding commitment of capacity to the development contingent on compliance with any conditions attached to the preliminary approval and the subsequent issuance of a final connection approval. The preliminary approval conditions shall include:

1. Specification of the period of time during which the interim connection approval shall remain valid, not more than 120 days. Time extensions may be subsequently approved by the BOARD for good cause shown.
2. Incorporation of specific conditions which must be fulfilled by the applicant to maintain validity of the preliminary connection approval.
- 3 . Provision for revocation by the action of the BOARD on failure of the applicant to fulfill requirements of the preliminary connection approval .
4. 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 without specific approval by the BOARD.

#### X. Final Connection Approval Findings

A. The BOARD may make final approval of uncommitted reserve capacity to a development upon making affirmative findings that:

1. All applicable local, State and Federal permits have been secured for the development;
2. The plans and specifications for connection to and, if necessary, extension of the SEWERS are acceptable to the BOARD.
3. The developer is in compliance with all terms of the BOARD'S permit, any other permit issued by the TOWN, and all other ordinances and regulations of the TOWN.

#### XI. Conditions of Final Connection Approval

A. The BOARD on making affirmative findings that all conditions of the preliminary connection approval and final connection approval prerequisites have been fulfilled shall issue the final connection approval permit which approval shall be conditioned as follows:

1. The permit shall specify the allowed volume, flow rate, strength frequency and any other characteristics of the proposed discharge determined appropriate by the BOARD.
2. The capacity allocation is not transferable to any other person or project unless requested by the original owner and approved by the BOARD.
3. The construction of the Connection and, if necessary, the SEWER extension, shall be overseen and certified by a Vermont registered engineer to assure compliance with the plans and specifications and good construction practice in a manner acceptable to the BOARD. The BOARD may waive the requirement of certification in cases of

development waste water flow of less than 1,000 gallons per day.

4. The permit and allocation of capacity is subject to expiration under the conditions of Section 16 of this ordinance.
5. The permit is subject to revocation, and the connection to the PLANT and SEWERS may be severed, upon a finding by the BOARD that the connection or use thereof is causing a violation of the discharge permit, is causing a nuisance or health hazard, is causing damage to the PLANT or SEWERS, is in violation of any law, regulation or ordinance, or is the subject of delinquent payment of charges, fees or assessments.

The Final Connection Permit shall expire without notice two years from the date of issuance based on the original development plan at the time of Permit approval. The unused portion of the committed capacity allocation will then revert to the TOWN and there will be no refund of connection, impact, permit or other fees. The unused capacity reverting to the TOWN is that capacity associated with buildings or individual lots which the BOARD finds have not completed construction on the expiration date. Notwithstanding the foregoing, the BOARD may extend the expiration of a permit for a period of one year upon affirmative findings that the delay was not caused by the developer and that the extension is in the TOWN'S interests.

The developer shall promptly file the final connection permits in the land records of the TOWN along with copies of all fees paid and reference to the location of the approved connection plans and specifications. When the developer of a subdivision sells individual lots within the three year period, 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 SEWERS. The transferred permit will be considered a new permit issued on the date of property transfer and the terms of expiration will apply to this permit.

The chief wastewater treatment plant operator or other designated TOWN official shall be notified one week in advance of any proposed sewer connection authorized by a final connection permit. The connection to the SEWERS shall not be performed unless the municipal official is present and shall not be covered until approved by the official.

#### Applicant to Pay Fees

Upon final approval of connection, the applicant shall pay to the BOARD the remainder of any payments due pursuant to this Ordinance.

Once the connection is established, the applicant shall pay any and all sewer usage fees assessed by the BOARD within thirty days of the bill being due.

If the bill is not paid within 30 days of being due, the applicant will be mailed by certified mail a Notice that the applicant is subject to disconnect. The Applicant will be required to reimburse the BOARD for any fees associated with such mailing.

If the applicant fails to pay any and all fees associated with the applicant's use of the sewers, within thirty days of receipt of the above Notice, then and in that event, the BOARD shall have the right to terminate the connection. If the connection is terminated, the Applicant will be required to pay reconnection fees and any other fees determined appropriate by the BOARD, should reconnection be granted.

Upon receipt of a written request the BOARD may allow quarterly sewer charges for committed, unconnected sewage allocations to be deferred for a period not to exceed two years. The BOARD shall impose a 10% deferment fee on the entire unpaid amount to be paid within one year of the deferred ending period. The account holder is responsible for paying the bond portion of the unused allocations during the deferment period, which cannot be deferred. The BOARD must approve all payment schedules requested by the Applicant, however, in no event shall the balance remain unpaid for more than one year after

- E. An inspection fee may be assessed upon actual connection to the municipal sewer.
- F. The applicant shall pay for all costs associated with obtaining connection to and using the municipal sewers.

#### XII. Transfer of Allocation

- A. Reserve capacity is allocated by the BOARD 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 development completion. After completion of the development 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 BOARD at the original owners request.
- C. The BOARD may approve transfer of capacity from one development to another and one owner to another provided the new development and owner meets all the requirements for the final connection approval originally issued and the original owner requests such transfer.

#### XIII. 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 PLANT and SEWERS under the general laws of the state or local ordinances.

#### XIV. Definitions

Unless the context specifically indicates otherwise, the meaning of terms used in this ordinance shall be as follows:

"BOD" (denoting Biochemical Oxygen Demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20 C, expressed in milligrams per liter.

"Building Drain" shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it through the building wall to the building sewer. The building drain extends five feet beyond the outer face of the building wall.

"Building Sewer" shall mean that part of the sewage system which receives the sewage from the building drain and conveys it to the nearest end of the house connection unless a house connection is not available, whereby the building sewer shall be extended to the nearest available "Y" branch on the main sewer.

"Connection Fee" shall mean a fee imposed on applicants for the municipality's cost of performing, 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.

"Committed Reserve Capacity" is the total amount of total development wastewater flow (gallons per day) from all developments approved by the BOARD and the DEPARTMENT for discharge to the PLANT, but not yet discharging at the time of the calculation.

"Combined Sewer" shall mean a sewer receiving both surface runoff and sewage.

"Completed Construction" shall mean:

- 1) For building development, completion of construction of all foundations, framing, siding and roofs.
- 2) For subdivision development, the sale of each individual lot to an unaffiliated person.

"Current Reserve Capacity" is the permitted wastewater flow minus the actual plant wastewater flow from sources within the TOWN as of the date of the enactment of this Ordinance.

"Department" shall mean the Vermont Department of Environmental Conservation.

"Development" shall mean existing or the construction of improvements on a tract of land for any purpose, including, but not limited to, residential, commercial, industrial, manufacturing, farming, educational, medical, charitable, civic, recreational, and religious uses.

"Development" shall also mean subdivisions and the intent to subdivide. "Development" also includes any increase or change in development waste water flow previously permitted and approved by the TOWN. "Development" also includes any activity or site producing waste water flow which is required by TOWN, State or Federal law, regulation or permit to be connected to the PLANT and SEWERS.

"Development Wastewater Flow" is the flow resulting from full use of a 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.

"Discharge Permit" shall mean a permit issued by the DEPARTMENT pursuant to a authority granted in 10 V.S.A. Chapter 47.

"Future Reserve Capacity" is the permitted wastewater flow minus the actual plant wastewater flow from sources within the TOWN resulting from the Town of Jay and Town of Troy Wastewater Expansion Project, and does not include any of the reserve capacity existing as of the day of the enactment of this ordinance.

"Garbage" shall mean solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage, and sale of produce.

"Health Officer" shall mean the legally designated Health Officer or Deputy Health Officer of the TOWN.

"House Connection" shall mean that part of the sewage system that runs from the main sewer to the property line and includes all necessary fittings.

"Industrial Wastes" shall mean the liquid waste from an industrial manufacturing process, trade or business. Industrial wastes do not include sanitary sewage.

"Impact Fee" shall mean a fee imposed on applicants for capacity allocation equal to the capital cost per gallon of 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.

"Living Unit" or "Unit" shall mean any building or portion thereof

which is separately identifiable as a self-contained housekeeping or permanent or temporary living facility, commercial facility, or business facility, as determined by the Sewer Commissioners of the TOWN.

"Main Sewer" shall mean the sewers laid longitudinally along the center line or other part of the streets or other rightsof-way and which all owners or abutting properties have equal rights and which is controlled by public authority.

"Natural Outlet" shall mean any outlet into a watercourse, pond, ditch, lake or other body of surface or groundwater.

"Owner" shall mean any person, who owns, controls or possesses any property.

"Person" shall mean any individual, firm, company, association, society, corporation, institution, partnership, group governmental e ntity or other entity.

"Permitted Wastewater Flow" is the 80,000 gallons per day of the plant waste water flow allocated to the TOWN, as further defined in the discharge permit.

"Plant Wastewater Flow" is the wastewater passing through the 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

"Public Sewage System or Facilities" shall mean all facilities for collecting, pumping, treating and disposing of sewage which is under the control of the TOWN.

"Private Sewage System or Facilities" shall mean all facilities for collecting, pumping, treating, and disposing of sewage not under the control of nor operated by the TOWN.

"pH" shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

"Properly Shredded Garbage" shall mean the wastes from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers,

which is separately identifiable as a self-contained housekeeping or permanent or temporary living facility, commercial facility, or business facility, as determined by the Sewer Commissioners of the TOWN.

"Main Sewer" shall mean the sewers laid longitudinally along the center line or other part of the streets or other rightsof-way and which all owners or abutting properties have equal rights and which is controlled by public authority.

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"Private Sewage System or Facilities" shall mean all facilities for collecting, pumping, treating, and disposing of sewage not under the control of nor operated by the TOWN.

"pH" shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

"Properly Shredded Garbage" shall mean the wastes from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers,

twenty-four (24) hour concentration or flows during normal operation.

"Storm Drain" (sometimes "Storm Sewer") shall mean a sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

"Subdivision" shall mean a tract of land, owned or controlled by a person as defined herein, which has been partitioned or divided for the purpose of sale or lease into two (2) or more lots.

"Subsurface Sewage Disposal System" shall mean any sewage treatment system whereby the tank or plant effluent is leached into the ground by subsurface disposal.

"Suspended Solids" shall mean solids that either float on the surface of, or are in suspension in water, sewage or other liquids, and which are removable by laboratory filtering.

"Uncommitted Reserve Capacity" is that portion of the reserve capacity remaining after subtracting the development wastewater flow of all developments approved by the DEPARTMENT and the TOWN but not yet discharging to the SEWER.

"Watercourse" shall mean a channel in which a flow of water occurs, either continuously or intermittently.

Dated at the Town of Jay in the County of Orleans and State of Vermont this /19 day of /October, A.D. 2009

*MARC BURROUGHS-BIRON*  
*MARGARET D. LOUX*  
*DAVE SANDERS*

The above ordinance was adopted by the Selectboard for the Town of Jay on October 19/ 2009, and shall become effective, pursuant to the provisions of 24 V.S.A., § 1971, et seq, sixty days from the date of its adoption, to wit, December 18, 2009\_\_/\_ unless a petition for a vote on the

question of disapproving the same shall be filed in accordance with the provisions of Section 1973(6) of Title 24, Vermont Statutes Annotated, which section provides that a petition for a vote on the question of disapproving an ordinance or rule shall be signed by not less than five percent of the qualified voters of the municipality, and presented to the legislative body or the clerk of the municipality within forty five (45) days following the date of adoption of the ordinance or rule by the legislative body.