

FINAL BETTERMENT ASSESSMENT AND SEWER PRIVILEGE FEES RULES AND REGULATIONS
TYNGSBOROUGH SEWER COMMISSION (COMMISSION)
TOWN OF TYNGSBOROUGH (TOWN)
July 24, 2014

Section 1 - General

NOTE: This Betterment Assessment and Sewer Privilege Fee Rules and Regulations Document is intended to append the existing "First Amended and Restated Sewer Use Regulations" and shall supersede all previous Sewer Commission Regulations for capital additions to the Tyngsborough Sewer System, specifically Article XIV Assessments from the above referenced Regulations.

- 1.1 The entire cost of planning, laying out, design and constructing recommended additions to and expansion of the Town's public sewer system for the collection and transmission of sewage for all or any part of the Town shall be borne by the land benefited by such system additions and/or expansions in accordance with the following provisions.
- 1.2 Capital costs of the treatment and disposal of sewage, whether by intermunicipal agreement or as the result of such facilities being constructed in Town may also be assessed as described below.
- 1.3 These Rules and Regulations incorporate the "Final Recommended Plan" contained in the Town's December 24, 2008 state-approved "Comprehensive Wastewater Management Plan and Final Environmental Impact Report", EEA No. 11788, (CWMP). The amount of sewage that can be processed through the Town's three existing Intermunicipal Agreements is clearly defined in the CWMP; and all applications for connection to the Town's system are subject to the overall provisions in the CWMP, including, but not limited to capacity issues.
- 1.4 The Town, acting through its Sewer Commission (Commission), or authorized agent, shall assess the owners of the land abutting a public sewer line or having a legal right of access to said line installed by the Town based upon the "Uniform Unit Method" as defined by Massachusetts General Law Chapter 83, Section 15. Sewer Assessments shall be determined utilizing Sewer Unit values and shall be levied as Betterment assessments or Sewer Privilege Fees, as here described. Net revenue generated by such Sewer Betterment Assessments or Privilege Fees shall be retained and reserved to pay for the local (Town's) share of the total project costs associated with planning, laying out, design and construction of sewer projects and appurtenant work.
- 1.5 The authority to assess betterments and/or sewer privilege fees, as well as the permitted methodologies for doing so, are described in Massachusetts General Laws (MGL) Chapter 80 "Betterments" and MGL Chapter 83 "Sewers, Drains, and Sidewalks", Sections 14 to 24.
- 1.6 If any provisions of these Rules and Regulations, or their application to any person or circumstance are held invalid, such invalidity shall not affect other provisions or applications of these Rules and Regulations, which can be given effect without such invalid provisions or applications.

Section 2 - Definitions

Unless the context specifically indicates otherwise, the meaning of terms used in these Rules and Regulations shall be as follows:

- 2.1 "Compensatory Sewer Privilege Fee" shall mean a fee assessed to those properties, both developed and undeveloped, originally bettered, but under-assessed due to an unforeseen increase in use. Refer to Section 6.2 of these Rules and Regulations.

- 2.2 "CWMP" shall mean the December 24, 2008 State-approved "Comprehensive Wastewater Management Plan and Final Environmental Impact Report, EEA No. 11788, on file.
- 2.3 "Equivalent Residential Unit (ERU)" is defined as the quantity of wastewater flow expected from a single-family residence. This may be based on average water meter data; Town documented per capita water usage; current United States Census data; or on assumed flow based on Title 5 standards or a combination of such.
- 2.4 "IMA" or "Intermunicipal Agreement" shall mean one of the three current Intermunicipal Agreements between the Town and the Town of Dracut, Town of Chelmsford and the City of Lowell.
- 2.5 "Need Area" shall mean the geographic locations of Town identified and approved in the CWMP as needing an off-site solution for wastewater treatment and disposal.
- 2.6 "Sewage" shall mean wastewater.
- 2.7 "Sewer Service Area" shall mean "Need Area" as defined in Section 2.5 above.
- 2.8 "Sewer Commission" shall mean the elected or appointed Sewer Commission of the Town.
- 2.9 "Sewer Privilege Fee" shall mean a fee assessed those properties not abutting the sewer system or properties serviced by the sewer system, but subdivided and connected on a future date.
- 2.10 "Sewer Unit" shall be equal to one single-family residence.
- 2.11 Title 5 of the State Environmental Code for the Commonwealth of Massachusetts Minimum Requirements for the Subsurface Disposal of Sanitary Sewage shall mean 310 CMR 15.00.
- 2.12 Town shall mean the Town of Tyngsborough, Massachusetts.
- 2.13 "Uniform Unit Method" shall be based upon sewerage construction costs divided among the total number of existing and potential sewer units to be served, after having proportioned the cost of special and general benefit facilities. Potential sewer units shall be calculated based on the state Land Use Code, as shown in the Tyngsborough Assessor database, with the appropriate zoning then in effect. Existing and potential multi-family, commercial, industrial and semi-public uses shall be converted into Sewer Units on the basis of Equivalent Residential Units (ERUs). Every property is assessed, including developable vacant parcels, with the exception of properties owned by governmental entities for public purposes

Section 3 - Method of Assessing Betterments

3.1 General

The Sewer Commission shall assess sewer betterments based upon the Uniform Unit Method. Lands shall be assessed proportional to the value assigned to the Sewer Unit at the time of assessment. Said assessment shall be determined by unit and user class, as determined by the State Land Use Codes in the Tyngsborough Assessor database, and shall apply to all eligible lands developed and undeveloped abutting the aforementioned public sewer line. The assessment shall be calculated by dividing the local share of total, allocable sewer project costs by the total number of Sewer Units. The total assessment shall cover and not exceed 100 percent of the local share of the total sewer project cost. The local share of the project costs may include, but are not limited to, all costs of the system development including costs of planning, engineering survey, subsurface exploration, design, construction, land acquisition, construction engineering services, legal, fiscal and administrative services, bidding and all related contingencies less all state and federal aid, gifts and other offsets received.

3.2 Time of Assessment

3.2.1 Betterments

The time of assessment for land abutting a sewer line shall be that date upon which the system with appurtenances is "approved for use" or any reasonable amount of time immediately thereafter up to such time that the total project costs are known. In the case where the construction of that portion for the sewer system to be funded by betterments is completed prior to the date upon which the sewer system is "approved for use," or at which time the total project costs are known, it shall be within the powers of the Commission or its authorized agent to establish an earlier date of assessment.

3.2.2 Estimated Assessments

The Commission may, at its discretion, assess and collect estimated assessments on a given project so long as the total estimated assessments not exceed one half of the value of the construction contract(s) entered into to construct said facilities. Such estimated assessment payments shall be credited against and offset the final betterments to be assessed at project completion.

3.2.3 Sewer Privilege Fees

For those properties not abutting the sewer line but connecting to the system at a future date, the time of assessment shall be the date the application to connect is approved by the Commission and prior to the actual connection into the system.

3.3 Sewer Unit Value Determination

The Sewer Unit value shall be determined as follows:

$$\text{One Sewer Unit* (\$)} = \frac{\text{Amount to be Recovered by Assessments (\$)}}{\text{Total Number of Sewer Units*}}$$

*Total Number of Sewer Units as determined by Section 4, below.

Section 4 - Sewer Unit Designation

4.1 General

Sewer Units shall be designated based upon the unit and user class of those properties to be assessed a betterment. The user class from the State Land Use Codes shall be determined based on the most recent, available information from the Tyngsborough Assessor's Department. Said classes shall include residential and non-residential. The non-residential class shall include commercial, industrial and any or all other non-residential properties; however, as specifically exempted by statute, properties owned by governmental entities for public purposes are exempt from betterments and special assessments. Individuals and charitable, religious or other organizations ordinarily eligible for full or partial exemptions from annual property taxes are not exempt from betterments and special assessments. Developed and undeveloped properties receiving direct benefit from the public sewer system shall be designated a number of Sewer Units in accordance with procedures described in this section. Any future changes in use within an assessed property may result in an increase in the number of Sewer Units allocable under these Rules and Regulations. Any variations to the Sewer Unit Determinations as detailed in this Section shall only be set and allowed with approval from the Commission:

4.2 Sewer Unit Determinations

4.2.1 Residential. Developed

4.2.1.1 Single family dwellings shall comprise one sewer unit.

4.2.1.2 Duplex dwellings shall comprise two sewer units.

4.2.1.3 Three-family dwellings shall comprise three sewer units.

4.2.1.4 Four-Family dwellings shall comprise four sewer units.

4.2.1.5 Multiple family dwellings (in excess of four dwelling units) shall comprise a number of sewer units based on the following methodology

4.2.1.5.1 Rental properties (apartments) shall be assessed one sewer unit for each apartment.

4.2.1.5.2 Condominium complexes shall be assessed one sewer unit for each dwelling unit.

4.2.1.5.3 In-law and/or Au Pair living quarters within a Single Family residence shall be assessed one-half of a Sewer Unit in addition to the main residence.

4.2.2 Non-Residential. Developed

4.2.2.1 Non-residential buildings shall include all industrial, commercial and other non-profit organization properties.

4.2.2.2 Non-residential buildings, which are metered for water use, shall comprise a number of Sewer Units based upon water consumption using the following formula:

$$\text{Number of Sewer Units} = \frac{\text{Non-residential water usage in gallons per day (gpd)}}{\text{One ERU}}$$

(All decimals shall be rounded up to the nearest whole number)

Non-residential water usage in the above formula shall be based upon an average of the past two years water use. If less than two years of metered water consumption records are available, or if the Commission deems that the water records are not representative of the potential usage, the calculation shall be based on "Title 5 of the State Environmental Code, 310 CMR 15.00, for the Commonwealth of Massachusetts Minimum Requirements for the Subsurface Disposal of Sanitary Sewage", or as detailed in the state-approved CWMP planning documents on file for the sewer system, as outlined below.

4.2.2.3 Non-residential buildings not metered for water use shall be assigned an average sewage disposal volume based on "Title 5 of the State Environmental Code for the Commonwealth of Massachusetts Minimum Requirements for the Subsurface Disposal of Sanitary Sewage" or as detailed in the state-approved CWMP planning documents on file for the sewer system . The number of Sewer Units shall then be determined by using the following formula:

$$\text{Number of Sewer Units} = \frac{\text{Non-residential sewage flow in gallons per day (gpd)}}{\text{One ERU}}$$

(All decimals shall be rounded up to the nearest whole number)

4.2.3 Residential, Undeveloped

Undeveloped lots shall be converted into Sewer Units on the basis of maximum number of buildable dwelling lots using the applicable minimum frontage and area requirements as directed in the Tyngsborough Zoning By-Laws in effect at the time of assessment and/or as detailed in the state-approved CWMP planning documents on file for the sewer system. Each potential dwelling unit shall then comprise one Sewer Unit or as approved by the Sewer Commission in Section 4.1.

4.2.4 Non-residential, Undeveloped

Undeveloped lots shall be converted into maximum anticipated water consumption on the basis of the Tyngsborough Zoning By-Laws and/or existing state-approved CWMP planning documents on file for the sewer system. An equivalent number of Sewer Units shall then be determined utilizing the formula described for non-residential, developed properties in Sections 4 2.2.2 and 4.2.2.3 of this section or as approved by the Sewer Commission in Section 4.1

4.2.5 Dual Use Lands

Lands having both residential and nonresidential uses shall be assessed based on the total number of units for the residential portion, Section 4.2.1 and 4.2.2 non-residential portion Section, respectively, with an allowance made for residential water use. Dual use properties shall have a minimum assessment of two (2) Sewer Units.

4.2.6 For property that may not comply with any of the categories listed above, the Sewer Commission shall determine the estimated flow and subsequent Sewer Unit(s).

Section 5 - Betterment Payment

5.1 General

Except as here provided , the provisions of the Massachusetts General Laws relative to the assessment, apportionment, division, re-assessment, abatement, and collection of sewer assessments, liens, and interest thereon shall apply to assessments made under these Rules and Regulations, and the Tyngsborough Tax Assessor shall have all of the powers conveyed by the law.

5.2 Lump Sum Betterment

The lump sum betterment payment for an assessed property shall be equivalent to the product of the total number of Sewer Units designated upon such property and the appropriate value for one Sewer Unit at the

time of assessment. Such values shall be determined as here described. Full payment shall be made within thirty (30) days upon commitment of the assessment.

5.3 Apportionment for Betterment Payment

Property owners shall have the option to finance betterment payments through apportionment over 20 years. The interest rate charged by the Town shall be 5 percent or 2 percent greater than the cost of borrowing. The betterment assessment shall constitute a municipal lien on said property until the sewer assessment is paid in full. Any assessment may be paid in full at any time within the apportionment period.

5.4 Betterment Deferral

The provisions of MGL C 80, § 13B, with regard to deferral of betterment assessments shall apply.

5.5 Assessment Payment for Vacant Lots

As per Section 3 of these Rules and Regulations, all undeveloped lands abutting the sewer line shall be assessed a betterment proportional to the value assigned to the Sewer Unit at the time of assessment. The Sewer Commission may, upon written request of the property owner, extend the time of payment of the sewer assessment for vacant lots in accordance with the provisions of Chapter 83, section 19 of the Massachusetts General Laws. The request must be made within three (3) months of the notice of assessment. If approved, the payment may be extended for 1) a maximum period of two (2) years, or 2) within three (3) months after the property is built upon, whichever occurs first. The assessment payment shall be made in full at the conclusion of the extension period. During the extension period the property owner shall pay annually at the interest rate of 4 percent on the outstanding assessment from the date of the original assessment.

5.6 Abatements

The Sewer Commission will review and may provide abatements on the payment of the betterment assessment on an individual case-by-case basis.

Section 6 - Sewer Privilege Fee

6.1 Private Sewer Extension

If a private developer or a person other than the Town or their authorized representative applies to construct a sewer extension to the system, the Town shall assess a Sewer Privilege Fee in lieu of betterment assessment against each property connecting to the sewer extension. The Sewer Privilege Fee shall be equivalent to the amount that would have been calculated as the betterment assessment pertinent to each property as determined following procedures outlined in Section 5. Sewer Privilege Fees shall be levied at the time of connection to the public sewer system. Section 5.2 of these Rules and Regulations shall govern a property owner's method of payment. Fees shall be due and payable in full upon approval to connect.

6.1.1 Any request to connect to the Tyngsborough sewer system shall be in accordance with the approved Sewer Service Areas defined as a Needs Area designated in the CWMP and determined based on available capacity established within the current Intermunicipal Agreements.

6.1.2 In addition, property owners connecting to a private sewer extension shall bear the burden of all costs, including costs of legal services, related to the following:

- 6.1.2.1 Review of design plans and specifications for the private sewer extensions to be accepted as part of the municipal sewer system conducted by a Registered Professional Engineer as authorized by the Tyngsborough Sewer Commission.
- 6.1.2.2 Inspection fees related to the installation of the private sewer line connecting to the public sewer system.
- 6.1.2.3 Application fees for any applicable Town inspection or connection permits.
- 6.1.3 Costs associated with the design and construction of a private sewer extension shall be considered separate to the Sewer Privilege Fee. Payments or method of payment related to these costs shall not be reflected within the Sewer Privilege Fee.

6.2 Compensatory Sewer Privilege Fee

Where (1) a betterment has been assessed to an undeveloped property based upon the estimated number of developable Sewer Units as required by these Rules and Regulations and the property is ultimately developed to accommodate a number of Sewer Units in excess of the number estimated for determining the betterment assessment, or (2) a betterment has been assessed to a developed parcel and later in time the use of that parcel is increased to accommodate a number of Sewer Units in excess of the number estimated for determining the betterment assessment, the Town shall assess a Compensatory Sewer Privilege Fee to reflect the increased use. This fee shall be equivalent to that sum of money that would have been charged as a betterment assessment upon the additional Sewer Units at the time of the original assessment. Section 5.2 of these Rules and Regulations shall govern the method of payment.

6.2.1 Compensatory Sewer Privilege Fee Charge

Charges shall be levied at the time of determination of the Compensatory Privilege Fee as detailed in Section 6.2. to the public sewer system. Section 5.2 of this by law shall govern a property owner's method of payment.

6.3 Superseding Conditions

These Rules and Regulations shall append the existing "First Amended and Restated Sewer Use Regulations" and shall supersede all previous Sewer Commission regulations for all future capital additions to the Tyngsborough Sewer System., specifically at "XIV Assessments".

6.4 Miscellaneous Authorization

The Commission is authorized to take any other action necessary or appropriate to accomplish the establishing and recovery of such betterment assessments and privilege fees.

Section 7 – Mandatory Sewer Connections

7.0 Mandatory Connections

The Sewer Commission does not require mandatory connection to the sewer system. However, other Regulations and/or laws may require mandatory connections.