

DATE: December 17, 2024

CASE: TA-08-24 Text Amendment (Article 8 CDO & Section 62-31 City Code) Regarding On-site Sewer Options

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BACKGROUND

As the Commission is aware, properties within the city limits are almost exclusively connected to Concord’s public water and sewer systems and the use of wells and septic systems is rare. In fact, there are Code requirements that mandate connection to the City’s systems if the water and sewer line is within 200 feet.

Partially as a response to the lack of public sewer in many cities in our State, the General Assembly approved HB 628 effective September 1, 2023. These requirements have been codified as GS 160A-317, and it limits how cities and towns can mandate connection to the public sewer system. Simply stated, a property is exempt from this mandatory connection requirement and may pursue a privately maintained system if either 1) the City does not have adequate capacity, or 2) the cost of connection to the public system exceeds the cost of developing a private system.

Some questions existed among staff as to how the definition of “adequate capacity” would factor into our quarterly process of allocation, as the statute is not completely clear. At Council’s work session on October 22nd, and after consultation with Legal, staff essentially proposed two options relative to compliance with the statute in order to elicit feedback for the necessary amendments.

One option was to allow private (aka on-site) systems on any property without the cost factor and regardless of available capacity. The second option was to view “adequate capacity” as not only lacking physical capacity at the treatment plant, but not having received allocation from Council at one of their quarterly meetings. After Council declines to award the allocation, the developer would have the option of pursuing a private system. The Council recommended that staff draft the appropriate amendments to allow the second option.

It should be noted that a developer could construct a private system at any time if the cost is less than connecting to the public system.

Amendments to both the City Code and the CDO are necessary. Code changes are not typically reviewed by the Planning and Zoning Commission, but they are being presented because they are closely related to the changes in the CDO.

City Code Section 62-31

This section of the Code is titled “Water and Wastewater Utilities” and includes the section mandating a required connection as previously discussed. The revisions include referencing the two new exceptions in the statutes (cost and capacity), and stating that applicant for connections to public sewer are required to seek allocation from Council as applicable. If Council does not award sewer to the project, the applicant may pursue the private system option. The revision also includes a requirement for a DRC meeting prior to utilizing the private system option.

The changes also include corrections of incorrect references, and includes a caveat to allow connection to a private well for water services in the event that the public system cannot provide adequate water pressure. The new statutes include a section that specifies the procedure for the pressure determination.

CDO Articles 5 and 8

The necessary changes to the CDO include revising the requirements in Article 5 to state that the private systems shall be shown on preliminary and final plats and Article 8 (use table) to reflect that private sewer treatment systems are permitted by right in all zoning districts.

In summary, these revisions represent guidance from Council and are compliant with the minimum statutory requirements. The amendment is in approval form and may be forwarded to Council for approval.

CITY CODE CHANGE

Sec. 62-31. - Required connection.

(a) Except as provided in subsection (e) on developed property, it shall be unlawful to use or maintain any residential buildings or nonresidential~~commercial~~ establishments in the city that are located on a lot abutting on the city water line, such residences or establishments being not more than 200 feet from the water line, unless such residences or establishments are connected with the water line.

(b) On developed property, it shall be unlawful to use or maintain any residential buildings or nonresidential ~~commercial~~ establishments in the city that are located on a lot abutting on the city sewer line, such residences or establishments being not more than 200 feet from the sewer line, unless such building is provided with plumbing connected with the sewer, provided that water is available from the city mains within 200 feet of the residences or establishments. In accordance with G.S. 160A-317(a-b), an establishment may be exempt from this requirement if either inadequate sewer capacity exists, or if the cost of the connection exceeds the cost of installing an on-site wastewater system authorized pursuant to Article 11 of Chapter 130A of the North Carolina General Statutes.

1. Applicants for connection to public sewer shall follow the City's most recent policy on public sewer allocation as applicable. If City Council does not allocate public sewer to the project, the applicant may pursue the private system option in accordance with subsection (b) above.
2. In the event that an applicant wishes to pursue an on-site sewer option as provided under subsection (b) above, a pre-application meeting shall be required with the Development Review Committee (DRC) as set forth in Section 2.6 of the Concord Development Ordinance (CDO).

(c) Applicants requesting sewer service shall be required to connect to both the wastewater collection system and the water distribution system if water service is available, except where connection to the city sewer line is required by subsection (b) but not required by subsection (a).

(d) All properties in the city not included under this subsection shall be governed by the requirements of the state departments of health and human services and environmental quality.

(e) Effective August 1, 2016, any property owner receiving a permit pursuant to G.S. ~~897~~-97.2(a) or (b) shall not be required to connect to the public water system for so long as the permitted private drinking water well remains compliant and in use, except that subsection (a) may apply in any of the following situations:

Places of Worship	Religious Institution/House of Worship, more than 350 seats	SS	SS	SS	SS	SS	SS	SS	PS	SS	SS	PS	P			8.3.4.E
	Religious Institution/House of Worship, up to 350 seats	SS	SS	SS	SS	SS	SS	SS	P	P	P	P	P			8.3.4.E
Utilities	All utilities, except as listed below	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	Electric Generating Facility	S												S	P	
	Natural Gas Distribution Facility	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	Pipeline, Petroleum and Natural or Manufactured Gases	S	S	S	S	S	S	S	S	S	S	S	S	P	P	
	Sewage Treatment Facility, Private as permitted by NCDENR	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>SP</u>	<u>SP</u>	<u>PS</u>	<u>SP</u>	<u>PS</u>	<u>PS</u>	P	P	
	Water Treatment Facility	P											P		P	
	Solar Farm	S														

5.2. PRELIMINARY PLAT

5.2.2. CONTENTS.

C. Right-of-Way and Easement Information.

1. Proposed streets, sidewalks, and pedestrian ways, including vehicular access points, sidewalks, street names, right-of-way widths, pavement widths, centerline curve radii, proposed functional classifications for streets, sight triangle easements and typical cross-sections,
2. Existing streets, sidewalks, and pedestrian ways on subject and adjacent properties, including vehicular access points, sidewalks, right-of-way widths and pavement widths,
3. Proposed and existing utility easements, such as water, sanitary sewer, storm sewer, electric, natural gas, telephone, cable, etc., including labels for easement types and widths,

4. Proposed private sewer easements and facilities,

~~54.~~ Labeled proposed and existing public and/or private drainage and stormwater controls, including labels for easement types and widths,

~~65.~~ Proposed and existing buffers, such as undisturbed buffers, vegetative buffers, buffer yards, etc., including labels for easement types and widths, and

6. Proposed open spaces, including labels for easements types and widths, and details.

5.3. FINAL PLATS

5.3.2. CONTENTS.

C. Right-of-Way and Easement Information.

1. Proposed and existing streets, sidewalks, and pedestrian right-of-ways and easements, including street names and right-of-way widths on subject and adjacent properties,

2. Site triangle easements meeting the standards shown in the *Manual*,

3. Proposed and existing utility easements, such as water, sanitary sewer, storm sewer, electric, natural gas, telephone, cable, etc., including labels for easement types and widths,

4. Proposed private sewer easements and facilities,

~~54.~~ Labeled proposed and existing public and/or private drainage and stormwater controls, including labels for easement types and widths,

~~65.~~ Proposed and existing buffers, such as undisturbed buffers, vegetative buffers, buffer yards, etc., including labels for easement types and widths, and

~~76.~~ Proposed open spaces, including labels for easement types and widths.

under Article 7A of this Chapter when running electrical wires from the well pump to the pressure switch.

- (2) The installation, construction, maintenance, or repair of water pipes by a person certified as a well contractor under Article 7A of this Chapter when running water pipes from the well to the water tank.
- (3) The installation of both water pipes and electrical wiring in a single ditch by a person certified as a well contractor under Article 7A of this Chapter when running electrical wires from the well pump to the pressure switch or other pressure sensing device and water pipes from the well to the water tank. The ditch shall be as deep as the minimum cover requirements for either electrical wiring or water pipes, whichever is greater. The ditch shall be covered by a person certified as a well contractor under Article 7A of this Chapter upon the completion of the activities conducted pursuant to this subsection.

This subsection shall not be interpreted to prohibit any person licensed by an independent occupational licensing board from performing any authorized services within the scope of practice of the person's license.

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PROHIBIT FORCED SEWER CONNECTIONS IN CERTAIN SITUATIONS

SECTION 10.(a) G.S. 160A-317(a) reads as rewritten:

"§ 160A-317. Power to require connections to water or sewer service and the use of solid waste collection services.

(a) Connections. – ~~A~~ Except as provided in subdivisions (1) and (2) of this subsection, a city may require an owner of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the city limits and within a reasonable distance of any water line or sewer collection line owned, leased as lessee, or operated by the city or on behalf of the city to connect the owner's premises with the water or sewer line or both, and may fix charges for the connections. In lieu of requiring connection under this subsection and in order to avoid hardship, the city may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected. The following provisions apply to a city's authority to require connection of an owner's premises to a water or sewer line:

(1) A property owner shall be exempt from mandatory connection to a city's sewer if:

- a. The city has inadequate capacity to transport and treat the proposed new wastewater from the premises at the time of connection.
- b. The costs of connection, including the costs of underground piping and connections to the dwelling or building, exceed the costs of installing an on-site wastewater system authorized pursuant to Article 11 of Chapter 130A of the General Statutes. Determination of the comparative costs of connection shall be assessed by (i) a licensed soil scientist, as defined in G.S. 89F-3, (ii) an on-site wastewater contractor certified under Article 5 of Chapter 90A of the General Statutes, or (iii) a plumbing contractor licensed under Article 2 of Chapter 87 of the General Statutes. If a property owner elects to install an on-site wastewater system in lieu of connection to the city's sewer system pursuant to this subdivision, (i) the on-site wastewater system shall comply with all applicable requirements of Article 11 of Chapter 130A of the General Statutes, and rules adopted thereunder, and (ii) the owner shall have sole responsibility for the system and its use and performance.

- (2) A property owner shall be exempt from a mandatory connection to a city's water supply if adequate water pressure cannot be achieved using the same piping size as the meter provides to the owner's premises. A city is prohibited from requiring a property owner to install a larger meter and corresponding larger piping connection, or imposing an increased fee, to achieve adequate water pressure. For purposes of this subdivision, the term "adequate water pressure" shall mean the average water pressure delivered to all connected customers within a one-quarter mile radius in either direction of the owner's point of connection. In order to establish the adequacy or inadequacy of water pressure for purposes of this subdivision, a property owner shall submit to the city a determination of same prepared by a professional engineer, licensed in accordance with the provisions of Chapter 89C of the General Statutes. In the event water pressure is determined to be inadequate, a property owner may elect, in lieu of connection to the city's water supply, to install a private drinking water well, as that term is defined under G.S. 87-85, which well shall be approved by the city if the well meets the requirements of Chapter 87 of the General Statutes and rules adopted thereunder. A city, however, shall have no liability for the quality or quantity of water, or water pressure, from a private drinking water well installed pursuant to this subdivision."

SECTION 10.(b) G.S. 153A-284 reads as rewritten:

"§ 153A-284. Power to require connections.

(a) A county may require the owner of developed property on which there are situated one or more residential dwelling units or commercial establishments located so as to be served by a water line or sewer collection line owned, leased as lessee, or operated by the county or on behalf of the county to connect the owner's premises with the water or sewer line and may fix charges for these connections. A county may only require connection of an owner's premises to a sewer line, however, if the county has adequate capacity to transport and treat the proposed new wastewater from the premises at the time of connection.

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ESTABLISH A REGISTERED ENVIRONMENTAL HEALTH ASSOCIATE CERTIFICATION

SECTION 10.1.(a) Subdivisions (2a) and (2b) of G.S. 90A-51 are recodified as subdivisions (2b) and (2c) of G.S. 90A-51.

SECTION 10.1.(b) Article 4 of Chapter 90A of the General Statutes, as amended by subsection (a) of this section, reads as rewritten:

"Article 4.

"Registrations of Environmental Health Specialists.

...

"§ 90A-51. Definitions.

The words and phrases defined below shall when used in this Article have the following meaning unless the context clearly indicates otherwise:

- (1) ~~"Board" means the Board.~~ – The Board of Environmental Health Specialist Examiners.
- (2) ~~"Certificate of registration" means a Certificate of registration.~~ – A document issued by the Board as evidence of registration and qualification to practice as a registered environmental health specialist or a registered environmental health specialist intern under this Article. The certificate shall bear the designation "Registered Environmental Health Specialist" or "Registered Environmental Health Specialist Intern" and show the name of the person, date of issue, serial number, seal, and signatures of the members of the Board.