

TITLE 22: WATER AND WASTEWATER ALLOCATIONS

The Council of the City of St. Albans hereby ordains an ordinance to regulate the process for obtaining a water and wastewater allocation from the City. The ordinance shall be incorporated into the St. Albans Municipal Code as Title 22.

Section 1. Authority

This ordinance is adopted under authority granted in 24A V.S.A. Ch. 11, §§11-18(11), (12), (13), (14), (16) and 24 V.S.A. §§ 3625 and 3313.

Section 2: Governmental Purposes

This ordinance is enacted for the following governmental purposes:

1. Regulate the review of water and /or wastewater allocation requests.
2. Establish a mechanism to consider water and wastewater allocation requests for properties located outside the legal limits of the City, while ensuring the City's designated downtown, tax base, economic development interests, and employment opportunities are not negatively impacted in the process.

Section 3. Definitions

The meaning of terms used in this ordinance shall be as follows:

1. "Affiliation Fee" is an annual fee charged to water and/or wastewater users not located within the City or the Route 7 Wastewater District.
2. "Allocation" is a grant of water and/or wastewater capacity to a particular project and property and is subject to performance conditions, contractual obligations, and expiration dates as determined by the Board.
3. "Board" shall mean the Council of the City of St. Albans, acting as Board of Water and Sewer Disposal Commissioners under 24 V.S.A., Section 3614.
4. "City" shall mean City of St. Albans.
5. "Committed Reserve Capacity" is the total wastewater flow (gallons per day) from all project/buildings approved by the BOARD and/or the DEC for discharge to the WWTF, but not yet discharging at the time of the committed reserve capacity calculation.
6. "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 water and/or sewage systems.

7. "Development" means the construction of improvements on a tract of land or an existing property for any purpose, including, but not limited to, residential, commercial, or industrial activity.
8. "Development Wastewater Flow" is the flow resulting from full use of the development at its build out capacity, which flow shall be calculated using flow quantities, from the DEC Environmental Protection Rules (EPR's), Chapter 1, as promulgated at the time a connection permit application is made.
9. "Discharge Permit" shall mean a permit issued by the DEC pursuant to authority granted in 10 V.S.A., Chapter 47.
10. "Extra – territorial" shall mean outside the City of St. Albans or the Route 7 North Sewer District as defined herein.
11. "Growth Center" shall be defined by 24 V.S.A. 2793C as amended.
12. "Industrial Wastes" shall mean the liquid wastes from industrial manufacturing processes, trade or business as distinct from domestic sanitary sewage.
13. "Initiate Construction" means the following: for building development – completion of construction of all foundations, framing, siding and roofs.
14. "Manager" shall mean the City Manager of the City of St. Albans. Appointed representative of the Mayor and City Council with powers as designated within the City Charter.
15. "Owner" shall mean any person, who owns or legally controls any property connected to the municipal water and/or wastewater systems or proposes to connect to the municipal water and/or wastewater system as applicant.
16. "Permitted Wastewater Flow" is the maximum WWTF flow authorized in the DEC issued Discharge Permit on an annual average (365 day average) basis.
17. "Person" shall mean any individual, firm, company, association, society, corporation, group, institution, partnership, government entity or other entity.
18. "PH" shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.
19. "Plant", see WWTF.
20. "Route 7 North Sewer District" shall mean the geographic area indicated on the attached map so long as the original grant of wastewater capacity (100,000 gpd) has capacity remaining. Once the original grant of 100,000 gpd is exhausted, new projects within the district shall be subject to the approval process for properties located outside the district as set forth herein and shall pay affiliation fees for approved projects.

21. "Reserve Capacity" shall mean the WWTF permitted wastewater discharge flow minus the actual WWTF wastewater average daily flow during the preceding 12 months.
22. "Sewer Service Area" is constituted by the geographical area of the City of St. Albans as of the effective date of this ordinance or as the aforesaid geographical area may from time to time be altered. Although not part of the sewer service area, existing collection lines owned by the City of St. Albans, but which are located outside of the City of St. Albans, will be maintained in the same manner as collection lines within the sewer service area.
23. "Uncommitted Reserve Capacity" shall mean the portion of the WWTF reserve capacity remaining after subtracting the development wastewater flow of all projects approved by the Manager and/or COSA but not yet discharging to the WWTF.

Section 4. Permitted Capacity

1. The City of St. Albans 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., Sections 3501 (6) and 3601. The plant has a permitted capacity of 4.0 million gallons per day and is operated in accordance with a discharge permit issued by the Vermont Department of Environmental Conservation (DEPARTMENT) under authority granted in 10 V.S.A., Chapter 57.
2. The permitted flow capacity of the PLANT is the property of the City of St. Albans. The uncommitted reserve capacity of the PLANT shall be allocated 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 Sewer Service Area, nor shall it be construed to impair or inhibit the ability of the City of St. Albans to contract with persons for the collection, transmission, and treatment of sewage.
3. The City of St. Albans also owns and operates two water treatment facilities. The system has a design capacity of 3.0 million gallons per day.

Section 5. Reserve Capacity Calculation

1. Every five (5) years, the City shall determine the uncommitted reserve capacity that is available in the PLANT. This determination shall be based on the following information:
 - a. the total PLANT flow capacity that is expected to be available during the following five year period, including both existing capacity and any anticipated additions to capacity;
 - b. the current average annual flow into the PLANT and flow projections designed to account for seasonal and annual variations in sewage flows;

- c. existing and anticipated commitments of capacity to planned municipal facilities, including schools and other municipal buildings;
 - d. existing and anticipated commitments of capacity to specific developments, including the need to adjust such commitments to reflect actual sewage flows; and
 - e. the need to maintain a reserve capacity sufficient to account for seasonal variations in sewage flows, the uncertainty in sewage flow projections for different land uses, and emergencies.
2. The City's determination of uncommitted capacity may be changed, as necessary, to account for public health emergencies or unanticipated changes in PLANT capacity.

Section 6. Uncommitted Reserve Capacity Priorities

Allocation of uncommitted reserve capacity shall comply with the following priorities intended to govern the gross allocation of reserve capacity before the allocation procedures and principles are applied to specific projects (priorities are listed in the order by which they shall be given preference by the Board):

- 1. Existing facilities within the legal limits of the City which, by virtue of pollution from the facilities to waters of the State of Vermont ("Required Connections"), shall be entitled to first priority in allocation of uncommitted reserve capacity.
- 2. New or expanded development and/or connections located within the designated Growth Center of the City of St. Albans.
- 3. New or expanded development and/or connections located within the City of St. Albans but outside the Growth Center.
- 4. New or expanded development and/or connections located outside the City of St. Albans but within the Route 7 North Sewer District, so long as capacity within the original grant of 100,000 gpd remains.
- 5. New or expanded development and/or connections not addressed in (1) – (4), above.

Section 7. Right to Reserve for Specific Types of Development

Notwithstanding Section 6, the City retains the right to reserve uncommitted reserve capacity to encourage specific types of development so long as such reservation is consistent with the municipal plan or otherwise fosters economic development within the City.

Section 8. Existing Allocations Without Expiration Dates

Upon passage and effective date of this ordinance, all existing allocations that do not have expiration dates and have not been paid for shall have 365 days to make full payment for the allocation or it will revert back to the City.

Upon passage of this ordinance, City staff shall promptly send notice via certified mail to property owners impacted by the requirements of this section.

Section 9. Affiliation Fee Program

Extra-territorial properties that receive a water and/or wastewater allocation will pay an annual affiliation fee to the City of St. Albans.

1. The affiliation fee shall be calculated as follows:
 - a. New construction or expansion of existing property requiring both Water and Wastewater connections: .28 per \$100 of appraised value based on municipal appraisal from Town where property is located.
 - b. New construction or expansion of existing property requiring only Water connection: .12 per \$100 of appraised value based on municipal appraisal from Town where property is located.
 - c. New construction or expansion of existing property requiring only Wastewater connection: .16 per \$100 of appraised value based on municipal appraisal from Town where property is located.
 - d. Conversion of existing property from a well and septic to City water and wastewater without expansion of improvements thereon: .14 per \$100 of appraised value based on municipal appraisal from Town where property is located.
 - e. Conversion of existing property from a well to City water without expansion of improvements thereon: .06 per \$100 of appraised value based on municipal appraisal from Town where property is located.
 - f. Conversion of existing property from a septic to City wastewater without expansion of improvements thereon: .08 per \$100 of appraised value based on municipal appraisal from Town where property is located.
2. The affiliation fees described above will remain fixed for the first five years of the program. Thereafter, they may be adjusted by vote of the Council without amending the ordinance, but will not increase by an annual percentage that is greater than the annual increase in the City tax rate.
3. Affiliation fees will apply to the first \$10 million of appraised value, will be reduced by half for the second \$10 million of appraised value (up to \$20 million), and will not apply to the portion of the property value that is over \$20 million in appraised value.
4. The Affiliation Fee program shall be a direct contract between the property owner and the City of St. Albans. All unpaid affiliation fees shall constitute a lien upon the premises which may be enforced by action at law or suit.
5. Properties that participate in the affiliation fee program will pay water and wastewater rates and charges (both flat and usage) that are the same as City users.

6. Properties that qualify as tax exempt properties are likewise exempt from the affiliation fee and will continue to pay water and wastewater surcharges applied to properties located outside the City that are not part of the affiliation fee program.

Section 10. Affiliation Fee Billing Procedures

1. Fees shall commence upon connection to the City water and/or wastewater system.
2. The City will generate an annual bill based on the current grand list value of the property. The property owner as of April 1 is responsible for the fee.
3. Affiliation fees shall be considered delinquent 45 days after the billing date. Delinquent affiliation fees shall bear interest at the rate of one percent per month or fraction thereof for the first three months, and thereafter one and one-half percent per month or fraction thereof.

Section 11. Allocation Principles

Recognizing that the capacity of the wastewater treatment facility is a limited resource in high demand, and that uncontrolled assignment of capacity could cause an adverse impact on the City's tax base, economic competitiveness, and ability to provide municipal services, the City shall strictly allocate the uncommitted reserve capacity pursuant to the policies, procedures, principles and criteria outlined in this Ordinance.

Section 12: Application Requirements

1. A developer or property owner seeking an allocation for water and/or wastewater service must complete an application on a form to be furnished by the City. All requested information must be completed before the application will be considered. The applicant must specify the particular use of the property and the application will be considered only for that use.
2. The application must be accompanied by a calculation of the water and/or wastewater flow and infiltration to be generated by the project/development and shall include calculations for the volume, flow rate, strength and any other characteristics determined appropriate by the Manager. All calculations for developments generating over 1000 gallons per day shall be certified by a Vermont professional engineer.
3. The application must be accompanied by plans and specifications for the construction of water and wastewater connections from proposed buildings to City of St. Albans water and wastewater mains including any pump stations and must be prepared by a Vermont professional engineer. This requirement to submit plans and specs may be waived by the Manager until final connection approval.
4. All flow allocations to projects shall be based on the development's estimated flows. These calculations shall follow DEC EPR's. Any differential between actual flows and development estimated wastewater flows that occurs is not available to

the development owner for reallocation to another project or a project expansion and shall revert back to the City of St. Albans.

Section 13. Application Review

1. The Manager may review the following application types:
 - a. Projects located wholly within the legal boundaries of the City.
 - b. Projects located wholly within the Route 7 North Sewer District.
 - c. Single and two family residential units located wholly outside the City.
2. The Manager shall use the criteria in Section 14 to guide his/her review and shall issue a decision in writing, which may be appealed to the Board.
3. All other applications for connections shall be reviewed by the Board. The Board may administer oaths and compel the attendance of witnesses and the production of material germane to any issue under review. The Manager shall provide staff assistance and analysis to the board, unless the Board is hearing an appeal of a Manager's decision.
4. In evaluating each application, the Board shall use the criteria in Section 14 to guide its review and shall issue a decision in writing.
5. The Board may conduct a hearing to take evidence and hear arguments. It shall be the applicant's burden to demonstrate to the Board how the development complies with the criteria. It shall be within the sole discretion of the BOARD to determine whether to approve or deny an application and whether to apply any conditions. The Board shall issue its decision in writing together with its findings and such conditions it deems appropriate.
6. If the allocation is approved, the Board may grant preliminary connection approval.
7. Applicants may appeal the Board's decision to Superior Court pursuant to the Vermont Rules of Civil Procedure.

Section 14: Allocation Review Criteria

1. Projects located within the City limits or within the Route 7 North Sewer District shall be reviewed according to the below criteria.
 - a. Is there sufficient capacity in the water and/or wastewater plants and distribution / collection system?
 - b. Is the proposed wastewater of sanitary sewage origin and is there sufficient uncommitted reserve capacity to accommodate the volume and strength of the proposed connection?
 - c. If the proposed wastewater is not of sanitary sewage origin, has sufficient evidence 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 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?

2. In reviewing projects located outside the City limits or the Route 7 North Sewer District the following criteria shall be considered. Projects need not receive favorable responses to all criteria.
 - a. Is there sufficient capacity in the water and/or wastewater plants and distribution / collection system?
 - b. Has the applicant demonstrated why the project cannot reasonably or adequately be located within the boundaries of the City of St. Albans?
 - c. Has the applicant presented convincing evidence that the connection will result in an increase in the number and type of employment opportunities in the City or the region?
 - d. Does the project directly or indirectly result in the addition or retention of employment opportunities and/or economic activity in the City?
 - e. Does the project result in the relocation of employment opportunities or economic activity from within the City limits to outside the City limits?
 - f. Could any relocation of employment opportunities, tax base, or economic activity from within the City limits to outside the City limits be mitigated through conditions?
 - g. Does the connection result in retention of existing facilities in the City or the region?

- h. Does the project address unique environmental, public health or economic concerns for the region?
- i. Does the project support the expansion, retention or creation of facilities which provide essential or desirable public services?
- j. Does the project result in a net financial benefit or loss to the City?
- k. Could the project undermine the City's own economic development efforts?

Section 15: Preliminary Approval Minimum Conditions

After making the approval findings above, a preliminary connection approval may be issued. Preliminary connection approval shall constitute a binding commitment of capacity to the project, contingent on compliance with all conditions attached to the preliminary approval and subsequent issuance of a final connection approval. The preliminary approval conditions at a minimum shall include:

1. Three years for the preliminary approval to remain valid unless extended by the Manager / Board, depending on who issued the approval.
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. Specifications that the recipient of the preliminary connection approval may not transfer, by any means, the preliminary connection approval to any other person, or project without the express written approval of the Board.

Section 16: Extensions of the Service Area

The proposed users to be served by the expansion and/or the developers shall pay the entire cost of the extension which shall be constructed in accordance with City specifications. Once the infrastructure is constructed, inspected, and certified by a Vermont professional engineer, it shall be deeded over to the City.

Section 17: Final Connection Pre-requisites

Prior to consideration of final connection approval, the following commitments shall be met by the applicant:

1. Applicable local, state and federal permits must be secured for the development/project.
2. Allocation fees, connection fees, permit fees, and other local fees or taxes, must be

paid in full to the City of St. Albans.

3. The plans and specifications for connection to and, if necessary, extension of the City's water and wastewater infrastructure are accepted by the Manager.

Section 18: Final Connection Approval

Upon making affirmative findings that all conditions of the preliminary connection approval and final connection pre-requisites have been fulfilled, the Manager shall issue the final connection approval permit, which may be conditioned as follows:

1. The permit shall specify the allowed volume, flow rate, strength, and any other characteristics of the proposed discharge determined appropriate.
2. The construction of the connection and, if necessary, the extension, must be overseen by Vermont Professional Engineer to ensure compliance with the plans and specifications and good construction practice in a manner acceptable to the Manager.
3. The Vermont Professional Engineer must provide the City a written certification that the project was constructed in accordance with the approved plans and specifications.
4. Any capacity allocated in conjunction with the final connection approval for building development shall revert to the City of St. Albans if the permit recipient has failed to initiate construction within three years. An Applicant may request one extension of the permit expiration date, not to exceed three years, provided the Applicant files a request in writing prior to the expiration of their permit. Such an extension shall be granted or denied in the sole discretion of the Board.
5. Upon expiration of the Permit, the unused portion of the committed capacity allocation will revert to the City of St. Albans and there will be no refund of any paid fees. Generally, the unused capacity reverting to the City of St. Albans is associated with buildings that do not at least have foundations, framing, and roofs.
6. Regardless of the permit expiration period above, the Board may extend the permit to allow for construction of the development over a longer period if this action is in the best interest of the City of St. Albans.
7. For subdivision projects the permit holder of a proposed subdivided parcel must indicate the development planned for each lot. If all prerequisites defined for final connection approval herein are met, final connection permits will be issued to the subdivision owner for each lot with a specific reserve capacity allocation associated with the proposed development.
 - a. The subdivision owner shall file the final connection permits in the land records of the municipality the property is located in along with the copies of all fees paid and reference to the location of the approved connection plans and specifications. When the owner/developer of a subdivision sells individual lots within the time frame, the final connection permit shall transfer when the property is transferred and the new owner becomes bound to

comply with all permits issued, as well as the plans and specifications for connecting to the City infrastructure. The transferred permit will be considered a new permit issued on the date of property transfer and the constraints of subsection (e) above will apply to this permit. The permit will expire as provided in subsection (e) above.

8. In cases where a final connection permit expires and a new owner applies for capacity on the same or different project, the Board may consider fees paid by the original owner when setting fees for the new owner applying for capacity.
9. The designated City of St. Albans official shall be notified one week in advance of any proposed sewer connection authorized by a final connection permit. The connection to the City of St. Albans sewer shall not be performed until approved by the official. Additional constraints may be found in other articles of this ordinance.
10. No final connection shall be permitted until the developer or other record owner conveys to the City of St. Albans by easement deed in a form satisfactory to the City:
 - a. A perpetual right and permanent easement to lay, repair, maintain and operate water and sewer pipes and associated equipment over, under, and upon the specified lands and premises;
 - b. A perpetual right and permanent easement, from time to time, to renew, replace, modify, and otherwise change said water and sewer lines, manholes, and associated equipment, and to pass over specified lands for all said purposes;
 - c. Title in fee to all water and sewer lines or pipes, manholes, and associated equipment, as may be depicted on the plat for the project/development. In said easement deed, the City of St. Albans will agree that upon completion of construction, said water and sewer lines, manholes, and associated equipment, and after each subsequent entry, it will restore the surface of the lands and premises to the condition of such lands and premises prior to entry.

Section 19: Allocation Transfer

1. Initially, reserve capacity is allocated to a specified owner, project, and parcel of land. The allocation is made solely to a parcel of land and therefore does not run with the land until project completion. After completion of the project, the allocation will run with the land, provided the specific use identified in the allocation application remains unchanged. If the property use changes a new application must be filed pursuant to this Ordinance.
2. Requests to transfer an allocation may be considered following the same process for granting a new allocation so long as the allocation has not expired or violated any conditions.

Section 20. Moratorium and Severability

Upon implementation of this ordinance, the moratorium on water and wastewater allocations outside the legal limits of the City, adopted May 2, 2011, shall be repealed. However, if a court of competent jurisdiction invalidates the affiliation fee components of this ordinance,

such finding shall not invalidate the remaining parts of this ordinance but shall automatically reinstate the moratorium on water and wastewater allocations outside the City limits, adopted May 2, 2011.

Section 21. Effective Date.

This ordinance shall become effective November 15, 2015.