

# Memo

To: Ben Schumaker  
From: Ken  
CC: Mary Ann Duncan-Cole  
Date: August 1, 2008  
Re: Sewer connection standards

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Question Presented: Can the City require a resident to connect to sewer under SMC 13.08.050 where the distance to connect is less than three hundred feet, as provided by City ordinance, but more than two hundred feet as set forth as the standard in WAC 246-272A-0025?

Brief Answer: Yes

Discussion:

The City is processing an application for a rezone from single-family residential to multi-family residential of several parcels located near the High School. At least two of these parcels have on site sewage systems (OSS), septic tanks, serving preexisting multi-family residences. One parcel intends to rebuild a burned-down multi-family structure. There is evidence of previous failure of the Johnston's OSS in the recent past.

SMC 13.08.050 requires a resident to connect to City sewer, provided the City sewer system is at or near the property line and within three hundred feet of the building or proposed building. For the Johnston property (the one being rebuilt), both of those conditions appear to be met.

However, this three hundred foot limit appears, at first blush, to conflict with Washington Administrative Code (WAC) 246-272A-0025, adopted by the State Board of Health pursuant to RCW 43.20.050<sup>1</sup>. This section allows the local health officer to require a property owner to hook up to public sewer under certain

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<sup>1</sup> That statute mandates the Board of Health to adopt rules regarding disposal of sewage. RCW 43.20.050(1)(b).

conditions, including when the public system is not more than two hundred feet away and when the system is failing.

It is also worth noting that a local board of health may require a “new development” to connect to a public sewer system (without any distance set forth) “to protect public health”. WAC 246-272A-0025(4)<sup>2</sup>. Similarly, subsection (5) to this section requires the local board of health to have a “new development or a development with a failing system” “to connect to a public sewer system if it is required by the comprehensive land use plan or development regulations.”<sup>3</sup>

The section defines “Development” as “the creation of a residence, structure, facility, subdivision, site, area, or similar activity resulting in the production of sewage.” The new structure proposed by the Johnstons would clearly fall within the definition of “new development” and the local health officer could mandate a connection to public sewer regardless of the distance under section 4, and presumably “must” require a connection because of the City’s “development regulation” contained in SMC 13.08.050, since the building will be within 300 feet of the City sewer. Note this provision only applies to a “development” within the definition, and a rezone (although arguably a “site or “area”) doesn’t directly result in the production of sewage, so it may not apply to this application.

Even assuming the local health officer declined to require a connection at this stage, the City may do so independently, according to an RCW that controls this issue. RCW 35.67.190 provides, in relevant part, as follows:

“All property owners within the area served by such sewerage system shall be compelled to connect their private drains and sewers with such city or town system, under such penalty as the legislative body of such city or town may by ordinance direct. Such penalty may in the discretion of such legislative body be an amount equal to the charge that would be made for sewer service if the property was connected to such system. All penalties collected shall be considered revenue of the system.”

In this case, the City has in 13.08.050 defined the “area served by such sewerage system” as any residence within 300 feet of a sewer line. Thus, the City may (and shall) compel the property owners to connect.

Our City’s ordinance is the prevailing law, superseding the WAC’s. The Washington State Constitution, Article XI, Section 11, authorizes City’s to adopt legislation under its police powers “not in conflict with general laws”. Washington Administrative Code

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<sup>2</sup> (4) Local boards of health may require a new development to connect to a public sewer system to protect public health.

<sup>3</sup> (5) Local boards of health shall require new development or a development with a failing system to connect to a public sewer system if it is required by the comprehensive land use plan or development regulations.

sections are not law – they are rules adopted pursuant to laws<sup>4</sup>. Thus, even if the WAC was read to conflict with the ordinance -- and the above discussion of subsections 4 and 5 suggests it does not -- the ordinance should control. Moreover, the RCW's specifically require us to compel citizen's to connect when they are within our service area, and the Johnstons meet this standard.

Pam James of Municipal Research also noted that many cities have a similar 300 foot connection requirement, and they have stood for a considerable time.

Note our ordinance requires a 90-day notice period to the property owners to connect, and provides an appeal procedure. If you find include connection to sewer should be part of your MDNS, you should condition this requirement with compliance with the notice and appeal procedures set forth in SMC 13.08.050.

Let me know if you have any further questions.

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<sup>4</sup> MRSC will provide a cite for this proposition.