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An Analysis of Mandatory Hookup Law: Cases & Statutes

Jesse Richardson
West Virginia University, jesse.richardson@mail.wvu.edu

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Special Report

AN ANALYSIS OF MANDATORY HOOKUP LAW: CASES & STATUTES

WATER SYSTEMS COUNCIL®

In 2002, the Water Systems Council published a report entitled, *"An Analysis of Existing Mandatory Hookup Legislation."* That report detailed state laws allowing local governments to require landowners to connect to public water and sewer, and the judicial interpretations of these laws. A March 2005 report, *"An Analysis of Mandatory Hookup Law – Cases and Statutes,"* updated and expanded upon the 2002 report. In January 2007, that report was updated. This report builds upon the first three and provides further updates.

The main addition to this report, as compared to January 2007, involves the listing of state plumbing codes, many of which mandate connection to public water when available. The increase in states mandating sewer connection recognized in 2007 continues through 2018. Some of the statutes and cases are new, some are newly found. In any case, 38 states now mandate sewer connection, with 11 states silent. One state, Missouri, prohibits mandatory connection for water or sewer. Given the widespread use of mandatory sewer connection, and the focus of this publication on mandatory water connection, the focus on sewer connection has been reduced in this report.

Three states changed from no mandatory water connection to approving mandatory water connection since the last report – Texas, Michigan and New Mexico. A newly found statute in Texas allows mandatory water connection in that state, but only under very narrow circumstances. Recent cases in New Mexico and Michigan allow home rule cities to mandate connection to public water.

Mandatory hookup activity continues to increase dramatically across the country, with a push in many areas for public water. Extension of water lines into rural or suburban areas, say local governments, promotes economic development. The evidence fails to support this contention. To the contrary, extension of water lines often promotes sprawl and strip development along the lines by making development possible in previously rural areas. Meanwhile, mandatory connection robs private landowners of the water wells that they appreciate and that have served them well for many years.

The fundamental question is whether a local government possesses the authority to require hookup. Under the United States' federalist form of governance, the states hold the lion's share of power. Only the United States Constitution, certain federal laws and the state constitution limit a state legislature's authority to pass laws allowing local governments to require hookup to public water and sewer. Local governments, on the other hand, hold only that authority granted to them by the state. *(See Water System Council's Information Sheet on Dillon's Rule for more information at* watersystemscouncil.org/water-well-help/wellcare-info-sheets*)*

Local governments derive authority from the state constitution, enabling statutes passed by the state legislature or charters (documents creating local governments, endorsed and under the control of the state legislature). Courts may construe general grants of authority from the state as encompassing the power to pass a mandatory connection ordinance. In addition, courts may strike down or limit state legislative actions. For example, the Nebraska court limited the reach of a state mandatory connection statute. Thus far, however, the courts have upheld all state laws on mandatory connection.

However, one court -- the Georgia Supreme Court -- found that the local governments in that state lacked authority to mandate connection to public water. The law limits local government's ability to pass ordinances mandating connection much more than it limits state government's ability.

In short, local governments must receive permission from the state to pass mandatory connection provisions. These ordinances must adhere to all state laws, as well as the state constitution and the United States Constitution. Local governments generally hold the authority to require a landowner whose well is contaminated or creates contamination for others, for example, to discontinue use of the well and connect to public water. This authority comes from the general power to protect the health of the citizens. This report discusses several of these types of state court cases that require particular landowners to connect to public water in a zoning or other land use regulation context. However, mandatory connection, as used in this report, denotes a legal requirement on all or a class of landowners requiring connection even though the landowner possesses a productive well free from contamination. One state court, in Georgia, rejected any local ordinances on mandatory connection.

Although useful to local governments in raising money to repay debt incurred to construct public water lines, mandatory connection deprives landowners of their freedom to choose. More importantly from a legal standpoint, these laws may violate constitutionally protected property rights and freedoms.

As a baseline proposition, local and state governments possess the authority to pass laws to protect the health, safety and welfare of their citizens. As a corollary, any law, state or local, must possess some legitimate public purpose. Most laws seek to protect the health, safety, welfare and morals of the citizens. Most mandatory connection laws address health concerns. However, maximizing revenues or profits of a local government lacks validity on these grounds. For perhaps this reason, mandatory connection authorization, whether created by the legislature or the court, almost always contains express limits on its exercise. State laws contain limitations on what type of governmental unit may require connection and in what circumstances connection may be mandated.

Table 1 summarizes the important issue of what governmental unit may mandate connection under state statutes. In several instances, only water districts or improvement districts may require hookup. One must also check whether the local government holds the power to mandate connection.

Table 1. Level of Government Authorized by Enabling Legislation

This table covers the 23 states that enable mandatory water connection ordinances through a state statute.

State	State or state agency	Counties	Municipalities	First-class Cities	Second-class Cities	Towns	Boroughs	Villages	Water Districts	Improvement Districts
AL										X
AZ			X****							
CO									X	X
DE		X								
FL			X							
GA			X							
IA			X*							
KY	X			X**						
LA			X							
MD	X		X							
NE			X							X
NV		X	X			X				
NY									X	
NC			X							
ND			X							
OH			X*						X	
PA			X				X			
SC		X								
SD			X	***						
TN			X*							
VA		X	X			X				
WA		X	X							
WI			X			X		X	X	

*Allows cities to require connections in the context of underground improvements or street repairs.

**Allows first-class cities to assess costs associated with extension of water lines, regardless of use, but not to compel connection.

***State statute specifically excludes first-class municipalities from enabling legislation.

****For exempt wells in certain circumstances.

The more one examines mandatory connection cases and statutes, the more difficult the concept becomes. This report seeks to condense a large amount of material into an understandable and useful summary. The authors sincerely hope that this publication serves as a starting point for citizens as they examine the validity of particular local or state laws requiring hookup to public utilities.

As one examines the legal landscape of mandatory connection, the state legislature appears to provide a more level playing field for advocates of the right to own a private water well than does the court system. Members of the water industry must begin to work with state legislators to amend existing draconian laws on mandatory hookup and to pass new laws, like laws in Georgia, Missouri and New Hampshire, to protect private water rights and freedom of choice. Those laws represent models for future legislation. In addition, these actions generate hope that a trend toward the right to choose wells is emerging. Water well industry members must use this momentum to further improve the legal landscape of mandatory connection.

Jesse J. Richardson, Jr., Esquire, Water Systems Council Policy and Research Advisor and Professor of Law, West Virginia University College of Law, Morgantown, West Virginia, completed the research for this report.

Any questions or comments on the report should be directed to Margaret Martens, Executive Director, Water Systems Council at 202-625-4387 or via email at mmartens@watersystemscouncil.org.

Executive Summary

Under the United States' federalist form of governance, the states hold the lion's share of power. Local governments hold only that authority granted to them by the state.

Early in the 20th century, the availability of federal construction grant programs encouraged the building of thousands of centralized public water systems. States began passing mandatory connection (or "hook up") laws, initially for public sewer systems and then for public water supply systems, in an effort to protect public health and the environment. Local governments also began passing local ordinances mandating connection to public water and/or sewer.

The state constitution and the United States Constitution limit a state's authority to pass such laws. Thus far, however, the courts have upheld all state laws on mandatory connection. The law limits local government's ability to pass ordinances mandating connection much more than it limits state government's ability. In short, local governments must receive permission from the state to pass mandatory connection provisions. These ordinances must adhere to all state laws, as well as the state constitution and the United States Constitution.

Courts have struck down local ordinances mandating connection in a few instances. However, challenging local mandatory connection ordinances in courts remains difficult.

Several issues or themes emerge with respect to mandatory connection ordinances and laws. Does the provision allow the landowner to continue to use a private water well? Is public water distinguishable from public sewer? What are the limits of mandatory connection laws? Notably, each state possessing a mandatory connection statute limits that statute to certain types of governments or entities.

As revealed in this report...

Twenty-three state legislatures authorize, by statute, local governments to mandate connection to public water. This number includes the nineteen states that allow mandatory hookup to water and sewer by statute. An additional fifteen states allow mandatory hookup to public sewer only. However, almost all of these statutes place limitations on this ability. The laws generally limit the types of local governments or the circumstances under which a local government may mandate connection.

Ten more states possess judicial authority to mandate connection to public water, including two states where court decisions allow mandatory water and sewer connection and five states that allow mandatory water connection by case law and mandatory sewer connection by statute.

Three of the court cases (Michigan, Montana and New Mexico) place heavy emphasis on the home rule authority held by the local governments involved in those cases. If the cities did not possess this heightened level of authority, the mandatory connection authority would likely not have been upheld.

Advocates of the right to a private well appear to fare slightly better in state legislatures. Three state statutes explicitly protect the landowner's right to a private water well, at least in some circumstances. Georgia, Missouri and New Hampshire provide express protections to landowners. Missouri also protects the right to a private septic system by statute. (See Appendix 1.)

Only one state, Georgia, has judicial authority disapproving of mandatory hookup ordinances in general.

Therefore, 32 states have some type of legislation or court decision on their books that could be used to require mandatory hookup to public water systems even where private wells can provide a safe, more affordable drinking water source. An additional fourteen states give authority in some circumstances for mandatory sewer connection, but remain silent on mandatory hookup to public water.

Three states (Georgia, Missouri and New Hampshire) protect the landowner's right to a private well. Only three states have failed to rule on some type of mandatory connection. The Kansas Attorney General opines that general law in that state allows mandatory connection. The opinion of an attorney general fails to bind courts and stands on equal ground as the opinions of private attorneys (but the Kansas legislature provides for sewer connection).

Table 2 lists each state and whether the state imposes mandatory water and/or sewer connection.

TABLE 2. The State of Mandatory Connection Laws

This table shows whether a state imposes mandatory water and/or sewer connection.

STATES	Mandatory Water Conservation?	Mandatory Sewer Connection?
Alabama	Yes	Yes
Alaska	Silent	Silent
Arizona	Yes	Silent
Arkansas	Silent	Yes
California	Silent	Yes
Colorado	Yes	Yes
Connecticut	Silent	Yes
Delaware	Yes	Yes
District of Columbia	Silent	Yes
Florida	Yes	Yes
Georgia	Yes	Yes
Hawaii	Silent	Silent
Idaho	Silent	Yes
Illinois	Yes	Yes
Indiana	Yes	Yes
Iowa	Yes	Yes
Kansas	Silent	Yes
Kentucky	Yes	Yes
Louisiana	Yes	Yes
Maine	Silent	Yes
Maryland	Yes	Yes
Massachusetts	Silent	Yes
Michigan	Yes	Yes
Minnesota	Yes	Silent
Mississippi	Yes	Yes
Missouri	No	No
Montana	Yes	Silent
Nebraska	Yes	Yes
Nevada	Yes	Silent
New Hampshire	No	Yes
New Jersey	Yes	Yes
New Mexico	Yes	Yes
New York	Yes	Yes
North Carolina	Yes	Yes
North Dakota	Yes	Yes
Ohio	Yes	Yes
Oklahoma	Silent	Silent
Oregon	Silent	Yes
Pennsylvania	Yes	Yes
Rhode Island	Yes	Silent
South Carolina	Yes	Yes
South Dakota	Yes	Yes
Tennessee	Yes	Yes
Texas	No	Yes
Utah	Silent	Yes
Vermont	Silent	Yes
Virginia	Yes	Yes
Washington	Yes	Yes
West Virginia	Silent	Yes
Wisconsin	Yes	Yes
Wyoming	Silent	Yes

The same information is contained in Table 3, but listed in categories depending upon which, if any, mandatory connection laws exist.

TABLE 3. Breakdown of Mandatory Connection Laws

This table categorizes each state by its mandatory connection laws and, where applicable, indicates whether a state mandates connection by case law or statute.

Key: C = Court decision / S = Statute

STATES ALLOWING MANDATORY WATER CONNECTION ONLY (silent on sewer) (4)
Arizona - S
Minnesota - C
Montana - C*
Nevada - S
STATES ALLOWING MANDATORY WATER & SEWER CONNECTION (26)
Alabama - S**
Colorado - S**
Delaware - S for sewer; C for water
Florida - S**
Illinois - C*
Indiana - S for sewer; C for water**
Iowa - S**
Kentucky - S**
Louisiana - S**
Maryland - S**
Michigan - S** for sewer; C for water
Mississippi - C
Nebraska - S
New Jersey - S for sewer; C for water
New Mexico - S for sewer; C for water
New York - S
North Carolina - S**
North Dakota - S
Ohio - S**
Pennsylvania - S**
South Carolina - S**
South Dakota - S
Tennessee - S
Virginia - S**
Washington - S**
Wisconsin - S

STATES ALLOWING MANDATORY SEWER CONNECTION ONLY (silent on water (14)
Arkansas - S**
California - S***
Connecticut - S
District of Columbia - S
Idaho - S**
Kansas - S
Maine - S
Massachusetts - S**
Oregon - S**
Texas - S
Utah - S**
Vermont - S
West Virginia - S**
Wyoming - S
STATES PROHIBITING MANDATORY WATER CONNECTION (2)
Georgia - C;S (allows mandatory sewer)
Missouri - S
New Hampshire - S
STATES PROHIBITING MANDATORY WATER & SEWER CONNECTION (1)
Missouri - S for water; C for sewer** ***
STATES WITH NO BINDING AUTHORITY ON WATER OR SEWER CONNECTION (4)
Alaska
Arizona
Hawaii
Oklahoma

*Court construes general statute as granting authority.

**One or more court cases support the statute.

***Non-binding court statement supports mandatory water connection.

Private wells provide a reliable and inexpensive source of drinking water. It is cheaper for many communities to use private wells than to invest in the mammoth infrastructure that is required to support a public water supply system. Having the option of using private water wells will also help our country stretch our critically short federal dollars.

The attached survey describes the current state of Federal and State laws on the subject of "mandatory hookup." When examining your particular state's rules on mandatory connection, remember to carefully note the type of governmental or other entity allowed to mandate hookup and any limitations on that right.

It is time to clarify our citizens' rights to "opt out" of mandatory hookup laws. Bigger isn't always better and one size does not fit all. We welcome your thoughts and response.

Benefits to Consumers and Localities

Removing mandatory hookup and related fee requirements where a safe and adequate water supply can be provided with private wells:

- Gives landowners the right to choose a private well when it can provide a safe, dependable drinking water supply. Today, consumers can choose their provider for telephone and power services and heating source: electric, gas and oil. They should also have the right to choose their drinking water provider.

- Eliminates non-user fees, frontage fees and connection fees imposed by public water systems on consumers who elect to use private wells. These fees are an unfair taxation of well owners.

- Allows consumers to choose a private well as a lower cost alternative to public water systems. Savings are not only realized by the individual consumer, but also by the community and federal government. As communities struggle to meet the demand for infrastructure, allowing consumers to choose wells can pro- vide a safe, dependable alternative to a larger, more expensive centralized system. This frees up public funds for other community infrastructure needs.

- Allows citizens concerned about the security of public water systems to choose private wells. Because wells are closed, individual systems, it is much easier to protect their water supply.

- Protects the common law groundwater use rights of private landowners who choose wells. Local governments occupy no special position with respect to the use of groundwater than that of private citizens.

- Prevents sprawl and strip development that inevitably arises along extended water lines in rural areas that previously could not be developed.

State Plumbing Codes

Anecdotal evidence had indicated that some states include mandatory connection provisions in state plumbing codes. This edition of the booklet therefore includes information on mandatory connection provisions in state plumbing codes. Internet searches were conducted to find and review the plumbing codes for each of the fifty states and the District of Columbia. Although the status of the plumbing code remains unclear, all state plumbing codes were located and analyzed, except for Wyoming.

States use three different model plumbing codes. Table 4 lists the states, the model plumbing code and mandatory connection information. Twenty-nine states use the International Plumbing Code, drafted by the International Code Commission. Nineteen states use the Model Plumbing Code and 2 states use the National Standard Plumbing Code, both administered by the International Association of Plumbing and Mechanical Officials (IAPMO). Wyoming's state plumbing code could not be located.

Neither the Model Plumbing Code nor the National Standard Plumbing Code contain mandatory connection provisions. However, Section 602 of the International Plumbing Code, at Section 602.3, mandates connection to public water when "available." Section 602 is reprinted below.

TABLE 4. Plumbing Code by State

State	Plumbing Code
Alabama	International Plumbing Code
Alaska	Uniform Plumbing Code
Arizona	International Plumbing Code-some local authority
Arkansas	International Plumbing Code
California	Uniform Plumbing Code
Colorado	International Plumbing Code
Connecticut	International Plumbing Code
Delaware	International Plumbing Code
District of Columbia	International Plumbing Code
Florida	International Plumbing Code
Georgia	International Plumbing Code
Hawaii	Uniform Plumbing Code
Idaho	Uniform Plumbing Code
Illinois	Uniform Plumbing Code
Indiana	International Plumbing Code, but 6.02.3 deleted
Iowa	Uniform Plumbing Code
Kansas	International Plumbing Code-some local authority
Kentucky	Appears to be Uniform Plumbing Code
Louisiana	International Plumbing Code
Maine	Uniform Plumbing Code
Maryland	National Standard Plumbing Code
Massachusetts	Appears to be Uniform Plumbing Code
Michigan	International Plumbing Code, but 6.02.3 deleted
Minnesota	Uniform Plumbing Code, but added mandatory connection provision
Mississippi	International Plumbing Code-some local authority
Missouri	International Plumbing Code-some local authority
Montana	Uniform Plumbing Code
Nebraska	Uniform Plumbing Code-some local authority
Nevada	Uniform Plumbing Code-some local authority
New Hampshire	International Plumbing Code
New Jersey	National Standard Plumbing Code
New Mexico	Uniform Plumbing Code
New York	International Plumbing Code-adds language requiring registered well contractor
North Carolina	International Plumbing Code-retained 6.02.3, but not subheadings (no mandatory connection)
North Dakota	Uniform Plumbing Code
Ohio	International Plumbing Code, but 6.02.3 deleted
Oklahoma	International Plumbing Code
Oregon	Uniform Plumbing Code
Pennsylvania	International Plumbing Code
Rhode Island	International Plumbing Code
South Carolilna	International Plumbing Code
South Dakota	Uniform Plumbing Code
Tennessee	International Plumbing Code
Texas	International Plumbing Code
Utah	International Plumbing Code-6.02.3 only; must meet construction standards
Vermont	International Plumbing Code
Virginia	International Plumbing Code
Washington	Uniform Plumbing Code
West Virginia	International Plumbing Code
Wisconsin	Uniform Plumbing Code
Wyoming	Unclear-local government appears to control

Section 602
Water Required

602.1 General.
Structures equipped with plumbing fixtures and utilized for human occupancy or habitation shall be provided with a potable supply of water in the amounts and at the pressures specified in this chapter.

602.2 Potable water required.
Only potable water shall be supplied to plumbing fixtures that provide water for drinking, bathing or culinary purposes, or for the processing of food, medical or pharmaceutical products. Unless otherwise provided in this code, potable water shall be supplied to all plumbing fixtures.

602.3 Individual water supply.
Where a potable public water supply is not available, individual sources of potable water supply shall be utilized.

602.3.1 Sources.
Dependent on geological and soil conditions and the amount of rainfall, individual water supplies are of the following types: drilled well, driven well, dug well, bored well, spring, stream or cistern. Surface bodies of water and land cisterns shall not be sources of individual water unless properly treated by approved means to prevent contamination. Individual water supplies shall be constructed and installed in accordance with the applicable state and local laws. Where such laws do not address all of the requirements set forth in NGWA-01, individual water supplies shall comply with NGWA-01 for those requirements not addressed by state and local laws.

602.3.2 Minimum quantity.
The combined capacity of the source and storage in an individual water supply system shall supply the fixtures with water at rates and pressures as required by this chapter.

602.3.3 Water quality.
Water from an individual water supply shall be approved as potable by the authority having jurisdiction prior to connection to the plumbing system.

602.3.4 Disinfection of system.
After construction, the individual water supply system shall be purged of deleterious matter and disinfected in accordance with Section 610.

602.3.5 Pumps.
Pumps shall be rated for the transport of potable water. Pumps in an individual water supply system shall be constructed and installed so as to prevent contamination from entering a potable water supply through the pump units. Pumps shall be sealed to the well casing or covered with a water-tight seal. Pumps shall be designed to maintain a prime and installed such that ready access is provided to the pump parts of the entire assembly for repairs.

602.3.5.1 Pump enclosure.
The pump room or enclosure around a well pump shall be drained and protected from freezing by heating or other approved means. Where pumps are installed in basements, such pumps shall be mounted on a block or shelf not less than 18 inches (457 mm) above the basement floor. Well pits shall be prohibited.

When states adopt model plumbing codes, the state may delete or add provisions. With respect to mandatory connection, Indiana, Michigan, North Carolina and Ohio adopted the International Plumbing Code, but removed the mandatory connection provision. Minnesota adopted the Uniform Plumbing Code, but added a mandatory connection provision. Note that, in some states, local governments can amend the state plumbing code or may adopt their own plumbing code. Therefore, local rules must be consulted.

In summary, research indicates that the following 26 states mandate connection to public water in the state plumbing code: Arizona; Arkansas; Colorado; Connecticut; Delaware; District of Columbia; Florida; Georgia; Kansas; Louisiana; Minnesota; Mississippi; Missouri; New Hampshire; New York; Oklahoma; Pennsylvania; Rhode Island; South Carolina; Tennessee; Texas; Utah; Vermont; Virginia; and West Virginia.

Policy Recommendations

1. Federal agencies should delete language in their regulations, lending criteria, or criteria for programmatic priorities that require local communities to implement mandatory hookup laws in order for drinking water infrastructure projects to be eligible for federal monies.

2. Projects incorporating individual wells as part of a drinking water delivery system should be eligible for federal loan and grant funds.

3. States should enact legislation that allows their citizens to keep existing wells, provides them with the option of "opting out" of proposed public water system projects, and permits the installation of new private water supply wells. The Missouri and New Hampshire laws, as well as the Georgia bill, provide sound models. (See Appendix 1.)

4. The cost savings provided by private wells should be documented in an economic study.

Recommendations for Water Industry Professionals

1. Become aware of the laws in your state regarding mandatory connection.

2. Work with local and state legislators and officials to make everyone aware of the limitations of the state law.

3. Involve yourself in state and local legislative affairs and offer your expertise in water issues to legislators.

4. Work with your trade association and affiliated industry groups to have present laws involving mandatory connection changed and new laws protecting the right to choose wells passed. Georgia provides an example of how this can work. *(See Appendix 1.)*

An Analysis of Mandatory Hookup Law: Cases & Statutes

This report reviews applicable state case law and statutes authorizing local mandatory water connection ordinances in each of the 50 states and the District of Columbia, followed by Federal Court and United States Supreme Court decisions related to mandatory water connection ordinances.

Cases & Statutes

ALABAMA

Alabama Code § 11-99A-6 (2000) allows improvement districts to require water connections when property owners contract with them for improvements. The relevant portion states:

Code of Alabama
Title 11. Counties and Municipal Corporations
Subtitle 3. Provisions Applicable to Counties and Municipal Corporations
Chapter 99A. Alabama Improvement Districts

§ 11-99A-6. Powers of a district.

Any district shall have the following powers, in addition to those stated elsewhere in this chapter:

(10) To enter into contracts with one or more owners of property within the district relating to the acquisition, construction, or installation of improvements. *Without limitation, contracts may require owners to connect their properties with gas, water, or sewer mains or other utilities in the streets in front of, at the rear of, or otherwise adjacent or near to their properties prior to the paving or final paving of roads on which their properties front.* In addition, to the extent not subject to a bid law, contracts may specify the improvements to be made in general or particular terms, the choice of construction companies or other contractors, consultants, or professionals, choice of underwriter, trustee, fiscal agent, attorneys, engineers, and all other matters relating to the acquisition, construction, and installation of the improvements, the levying of assessments, or the issuance of bonds. *(italics added)*

The Alabama courts have not addressed the issue of mandatory water connection ordinances. The Alabama Supreme Court has, however, upheld mandatory sewer connection ordinances.

In *Spear v. Ward*, 199 Ala. 105, 74 So. 27 (1917), the court stated that "[t]he preservation of the public health by the installation and maintenance of sanitary systems of sewers and closets is well recognized as one of the most important duties of municipal governments, and falls clearly within the police powers of government, subject to which the inhabitant and citizen of the municipality hold his individual rights to property and to liberty." *Id*., at 111.

Alabama has adopted the International Plumbing Code, including the mandatory connection provision.

ALASKA
No authority located.

Alaska adopted the Uniform Plumbing Code, which does not include a mandatory connection provision.

ARIZONA
Arizona requires connection in certain circumstances where the landowner seeks to use an "exempt well". Arizona Revised Statutes § 45-454.C. provides that:

On or after January 1, 2006, an exempt well otherwise allowed by this section may not be drilled on land if any part of the land is within one hundred feet of the operating water distribution system of a municipal provider with an assured water supply designation within the boundaries of an active management area established on or before July 1, 1994, as shown on a digitized service area map provided to the director by the municipal provider and updated by the municipal provider as specified by the director.

Arizona has adopted the International Plumbing Code, but local governments appear to hold discretion in adopting the code.

ARKANSAS
There were no mandatory water connection statutes or cases identified in Arkansas. In *City of Mountain Home v. Ray*, 223 Ark. 553, 267 S.W.2d 503 (1954), the Arkansas Supreme Court did, however, uphold a local mandatory sewer connection ordinance. The court stated that "irrespective of the ordinance... cities have inherent power to compel obedience to sanitary and health regulations." *Id.*, at 558. See also *Branch v. Gerlach*, 94 Ark. 378 (1910) (holding that an ordinance requiring a separate sewer connection for each lot was reasonable and that the city's right came from its police powers).

In addition, a 2005 Arkansas statute authorizes municipalities to require connection to public sewer. A.C.A. § 14-235-302.

Arkansas adopted the International Plumbing Code, including the mandatory connection provision.

CALIFORNIA

The California courts have not specifically ruled on the validity of mandatory connection ordinances.

In *Freeman v. Contra Costa County Water District,* 95 Cal. Rptr. 852 (App. 1 Dist. 1971), one California court upheld the authority of water districts to require homeowners to install protective devices to prevent water from auxiliary supplies from backing up into the public water supply. The court held that requiring the homeowner to pay for the devices did not constitute a taking, but rather was an exercise of police power. "This contention confuses an exercise of the police power with an exercise of the power of eminent domain; the constitutional guaranty of just compensation attached to an exercise of the power of eminent domain does not extend to the state's exercise of its police power, and damage resulting from a proper exercise of the police power is simply Damnum absque injuria." *Id.*, at 855. The court noted that the state "need not wait until the public safety has actually suffered injury; it may take reasonable steps to protect a public water supply from potential cross-connections that may create a substantial hazard of contamination." *Id*.

However, in *City of Glendale v. Trondsen*, 48 Cal.2d 93, 308 P.2d 1 (1957), the California Supreme Court stated in dicta (non-binding statements not necessary to decide the case) that "...there is no constitutional objection to... a city water system to which premises must connect and pay the rates although they have other water supplies..." These dicta imply that mandatory water connection falls within the police power of cities in California without express enabling authority.

A general grant of police power in Article XI., § 7 of the Constitution of California includes "Sanitary... ordinances" and therefore arguably grants mandatory sewer connection authority. § 5009 of the California Health and Safety Code also grants mandatory sewer connection authority for buildings within one hundred feet of the system.

California adopted the Uniform Plumbing Code. with no mandatory hookup provisions.

COLORADO

Revised Statutes Annotated (CRSA) § 32-1-1006 (2001) permits the board of any water or sanitation district to compel connection to a local water system. The relevant portion states:

Colorado Revised Statutes Annotated
Title 32. Special Districts Special District Act Article 1. Special District Provisions
Part 10. General Powers

§ 32-1-1006. Sanitation, water and sanitation, or water districts – additional powers – special provisions

(1) In addition to the powers specified in section 32-1-1001, the board of any sanitation, water and sanitation, or water district has the following powers for and on behalf of such district:

(a)(I) *To compel the owner of premises located within the boundaries of any such district, whenever necessary for the protection of public health, to connect such owner's premises, in accordance with the state plumbing code, to the sewer, water and sewer, or water lines, as applicable, of such district within twenty days after written notice is sent by registered mail, if such sewer or water line is within four hundred feet of such premises*. If such connection is not begun within twenty days, the board may thereafter connect the premises to the sewer, water and sewer, or water system, as applicable, of such district and shall have a perpetual lien on and against the premises for the cost of making the connection, and any such lien may be foreclosed in the same manner as provided by the laws of this state for the more closure of mechanics' liens. *(italics added)*

(II) Nothing in subparagraph (I) of this paragraph (a) shall be construed as authorizing the board of any sanitation, water and sanitation, or water district to compel any connection with the sewer, water and sewer, or water lines, as applicable, of such district, by any owner of premises located outside of such district who utilizes private or on governmental persons, services, systems, or facilities including, but not limited to, an individual sewage disposal system, for the provision of sewer, water and sewer, or water lines to such premises.

Under § 32-1-1006, a district has the authority to compel owners of certain premises to connect to the District's water and sewer lines. See *Clare v. Florissant Water & Sanitation District*, 879 P.2d 471 (Colo. App. 1994). In supporting an ordinance requiring connection of all premises located within 400 feet of any public sewer, the court said the "District reasonably exercised its general powers to regulate the health, safety, and welfare of its residents..." *Risen v. Cucharas Sanitation & Water District,* No. 00CA1067, 2001 WL 423059, at *1 (Colo. App. Apr. 26, 2001).

In addition, CRSA § 30-20-624 allows improvement districts to require connection to public water "before paving." CRSA § 30-20-416 allows counties to require sewer connection for properties whose boundaries are within four hundred feet of the system, while CRSA § 31-15-709 allows mandatory sewer connection for blocks adjacent to a sewer district in municipalities.

West's Colorado Revised Statutes Annotated Title 30. Government – County
County Powers and Functions General
Article 20. Public Improvements
Part 6. Local Improvement Districts – Counties

§ 30-20-624. Utility connections may be ordered before paving – costs – default

Before paving in any district in pursuance of this part 6, the board may order the owners of property therein to connect their several premises with the gas, water or sewer mains or with any other utility in the street in front of their several premises. Upon default of any owner for thirty days after such order to make such connections, the city or town may contract for and make the connections at such distance, under such regulations, and in accordance with such

specifications as may be prescribed by the board. The whole cost of each connection shall be assessed against the property with which the connection is made, and the cost shall be paid upon the completion of the work and in one sum. The cost shall be assessed, shall become a lien, and shall be collected in the same manner as is provided in this part 6 for the assessment and collection of the cost of other special improvements. Upon default in the payment of any such assessment, the property shall be sold in like manner and with like effect.

Colorado adopted the International Plumbing Code, with mandatory connection.

CONNECTICUT

There was no authority located with respect to mandatory water connection ordinances.

In one case of note, *Smith v. Old Lyme Zoning Board of Appeals*, 2001 WL 128919, at *1 (Conn. Super. Jan. 24, 2001), the court examined a requirement that plaintiffs connect to a public water system in order to receive a variance allowing them to convert their seasonal residence to year round use. The court found in favor of the Board, stating that the plaintiffs "failed to prove that the Board acted arbitrarily, illegally or in abuse of its statutory authority." *Id*., at *5. The court concluded that "the condition requiring plaintiffs to connect with the public water supply is inextricably linked to the viability of the variance itself." *Id*.

Connecticut General Statutes Annotated § 7-257 gives mandatory connection authority to water pollution control authorities with respect to any building to which a sewerage system connection is available. The statute grants a right to notice and hearing to the property owner.

Connecticut adopted the International Plumbing Code, with mandatory connection.

DELAWARE

9 Delaware Code § 6517 allows mandatory water and sewer connection within sanitary or water districts.

Delaware Code Annotated Title 9. Counties
Part IV. Sussex County
Chapter 65. Sanitary and Water Districts
§ 6517 Order to connect to sanitary sewer; enforcement.

(a) The county government may, where it deems it necessary to the preservation of public health, order the owner of any lot or parcel of land within a sanitary or water district which abuts upon a street or other public way containing a sanitary sewer or water main, which is part of or which is served, or may be served, by the county sewerage or water system, and upon which lot or parcel of land a building shall have been constructed for residential, commercial or industrial use, to connect such building with such sanitary sewer or water main.

(b) If any owner shall fail to comply within 60 days with the order to connect with a sanitary sewer or water main, the county government shall forthwith institute action in the Court of Chancery to compel compliance with the order.

9 Delaware Code § 2321 gives New Castle County mandatory sewer connection mandatory sewer connection authority, while 9 Delaware Code 65 § 4621 grants mandatory sewer connection authority to Kent County. 16 Del.C. § 1413 grants mandatory sewer hookup power for sewer authorities.

In *Siegfried v. State Department of Natural Resources and Environmental Control*, 1985 WL 165730, at *1(Del. Ch. July 24, 1985), the plaintiff was denied a permit to locate a well on his land and sought injunctive relief to restrain the town and Department of Natural Resources and Environmental Control from "interfering with the reasonable use of his land." The court cited a Department regulation in holding that when an "approved public water supply system is legally and reasonably available to the area to be served, the Commission may require a connection to that system. When proposed wells are to be located within the jurisdiction or service area of a municipality serving public water the applicant must first obtain a written statement of approval from said municipality before Commission approval will be granted." *Id.*, at *2.

Delaware adopted the International Plumbing Code, with mandatory connection.

DISTRICT OF COLUMBIA

No District of Columbia case or statute addresses mandatory water connection ordinances. District statutes §§ 8-201 to 204, however, relate to mandatory sewer connections.

Those provisions state in part:

District of Columbia Code
Part I. Government of the District.
Title 8. Environmental and Animal Control and Protection. Subtitle A. Environmental Control and Protection.
Chapter 42. Drainage of Lots.

§ 8-201 Lots to be drained into public sewers and connected with water mains.

Each original lot or subdivisional lot situated on any street in the District of Columbia where there is a public sewer *shall be connected with said sewer* in such manner that any and all of the drainage of such lot, whether water or liquid refuse of any kind, except human urine and fecal matter, shall flow into said sewer; and if such original lot or subdivisional lot is situated on any street in said District where there is a public sewer and water main, such original lot or subdivision lot shall be connected with said sewer and also with said water main in such manner that any and all of the drainage of such lot, whether water or liquid refuse of any kind shall flow into said sewer: Provided, that the connections required to be made by this section shall be made under the following conditions:

(1) When there is on any such original lot or subdivisional lot aforesaid any building used or intended to be used as a dwelling, or in which persons are employed or intended to be employed in any manufacture, trade, or business, or any stable, shed, pen, or place where cows, horses, mules, or other animals are kept, then, and in that instance, such original lot or subdivisional lot shall be connected with a public sewer and water main or with a public sewer, as may be required with this section; and

(2) Whenever there is no such building, stable, shed, pen, or place, as aforesaid, on such original lot or subdivisional lot, then such lot shall be required to be connected with a public sewer only when it has been certified by the Director of the Department of Human Services of said District that such connection is necessary to public health. *(italics added)*

The District of Columbia adopted the International Plumbing Code, with mandatory connection.

FLORIDA

Florida law may authorize mandatory connection ordinances in certain circumstances. Florida Statutes Annotated (FSA) § 180.02 (2000) grants municipalities the power to create a zone by ordinance and to require all persons or corporations within that area to connect, when available, to any sewerage system or alternative water supply system, including, but not limited to, reclaimed water. FSA § 373.309 (2000) allows for mandatory connection to available potable water systems in areas of known contamination. The relevant portions of these two statutes state:

Florida Statutes Annotated Title XII. Municipalities
Chapter 180. Municipal Public Works
§ 180.02 Powers of municipalities.

(3) In the event any municipality desires to avail itself of the provisions or benefits of this chapter, it is lawful for such municipality to create a zone or area *by ordinance and to pre- scribe reasonable regulations requiring all persons or corporations living or doing business within said area to connect*, when available, with any sewerage system or alternative water supply system, including, but not limited to, reclaimed water, aquifer storage and recovery, and desalination systems, constructed, erected and operated under the provisions of this chapter; provided, however, in the creation of said zone the municipality shall not include any area within the limits of any other incorporated city or village, nor shall such area or zone extend for more than 5 miles from the corporate limits of said municipality. *(italics added)*

Florida Statutes Annotated
Title XXVIII. Natural Resources; Conservation, Reclamation, and Use
Chapter 373. Water Resources Part III. Regulation of Wells

§ 373.309 Authority to adopt rules and procedures

(1) The department shall adopt, and may from time to time amend, rules governing the location, construction, repair, and abandonment of water wells and shall be responsible for the administration of this part. With respect thereto, the department shall:

(e) Encourage prevention of potable water well contamination and promote cost effective remediation of contaminated potable water supplies by use of the Water Quality Assurance Trust Fund as provided in § 376.307(1)(e) and establish by rule:

3. *Requirements for mandatory connection to available potable water systems in areas of known contamination, wherein the department may prohibit the permitting and construction of new potable water wells. (italics added)*

FSA § 381.00655 allows mandatory sewer connection, but gives the landowner notice and opportunity to be heard.

The Florida courts have not directly addressed the issue of mandatory water connection ordinances, however, they have ruled on the validity of mandatory sewer connection ordinances. In *State v. City of Miami*, 157 Fla. 726, 27 So.2d 188 (1946), the Florida Supreme Court considered several issues regarding the financing and operation of a city sewer system. The Court held that a mandatory connection ordinance was valid, saying "[P]rivate rights must always be subordinated to public rights and the public health is as sacred as any public right can be. So it is that it must be conceded that the City may use all reasonable means to protect the public health." *Id*., at 742.

Florida adopted the International Plumbing Code, with mandatory connection.

GEORGIA

The Georgia Supreme Court has ruled that a city has no authority to enact and enforce ordinances that require connection to city water systems and payment of a minimum charge, that prohibit without any qualification any repairs, alterations, or improvements on privately owned water pumps, wells, and water system, if city-supplied water was available. In *City of Midway v. Midway Nursing Convalescent Center, Inc*., 230 Ga. 77, 195 S.E.2d 452 (1973), the City argued it was acting under its police powers to enact a series of ordinances requiring the use of city-supplied water where available. In its ruling, the Court recognized that a municipal corporation can compel connection to a public drain or sewer using its police powers. However, "the city cites no cases supporting the proposition that a municipal corporation can dictate to its citizens the use of city sup- plied water." *Id*., at 80. The Court further noted that the general Georgia water system construction statute does not provide cities with mandatory connection authority. "There is nothing in the general authority conferred upon a city under the law set forth in Code Ann. § 69-314 (now O.C.G.A. § 36-34-5) in respect to the acquisition or construction of a water system, in addition to any powers a municipality may already have, whereby a city can compel the use of city water, or connection to a city water system." *Id*.

City of Midway was cited in *Hummings v. City of Woodbine*, 253 Ga. 255, 319 S.E.2d 862 (1984). In *Hummings*, the Georgia Supreme Court considered whether O.C.G.A. § 36-34-5 allows cities to charge a monthly fee for sewer service to residents who do not use the city's sewer system. The Court held that O.C.G.A. § 36-34-5 is a "user" statute and "that under it a city is authorized to prescribe and collect rates, fees and charges only for public and private consumers and users who use the city's sewer system." *Id.*, at 257.

City of Midway was again cited in *Wall v. City of Athens*, 663 Supp. 747 (1987). In *Wall*, a United States District Court examined whether the City's water connection pricing policies violated federal antitrust and price discrimination laws. The Court ruled in part for the City and in part for the residents. In citing *City of Midway*, the Court stated, "Georgia case law indicates that nothing in the general authority conferred under this section in respect to the acquisition or construction of a water system, in addition to any powers a municipality may already have, empowers a city to compel the use of city water or connection to a city water system." *Id.*, at 756.

In 2013, in a case that the Georgia Association of Groundwater Professionals supported, the Superior Court of Washington County found that the City of Sandersville's ordinance, which denied a permit for a residential water well where city water is available was unconstitutional. *Ashley v. City of Sandersville*, Civil Action No. 13CV347 (Super. Ct. Washington County, November 18, 2013). Basing the decision on *City of Hawkinsville v. Clark*, 135 Ga. App. 875, 219 S.E.2d 577 (1975), the court declared that, under the Georgia and United States Constitutions, a private landowner has the right to drill a well or have a well drilled on their property subject only to a government's reasonable rules and regulations looking to the protection, safety and health of its citizens. Since Sandersville's ordinance did not have any safety or health basis, the ordinance was arbitrary and unconstitutional.

The Georgia Association of Groundwater Professionals was successful in having an anti-mandatory connection provision passed in 2007. The law prevents mandatory connection in certain circumstances.

West's Code of Georgia Annotated
Title 36. Local Government
Provisions Applicable to Counties and Municipal Corporations
Chapter 60. General Provisions

§ 36-60-17.1. Single-family residential owner or farm served by private well

(a) No county, municipality, or local authority shall require a single-family residential property owner or farm served by a private well to connect with or use water supplied by a public water system, except where necessary to preclude the use of water obtained from such private well that is demonstrably unfit for human consumption or other intended use; nor shall it require such single-family residential property owner or farm whose water lines are not connected with such public water system to pay any charge or fee for water supply services made available but not used.

(b) Nothing in subsection (a) of this Code section shall preclude the repair or maintenance of a well serving a single-family residence so as to meet the requirements for allowing continued use of the same by a single-family residential property owner or farm without connecting to a public water system or payment of charges or fees in accordance with subsection (a) of this Code section. Such repairs shall be the sole responsibility of such owner.

(c) Subsections (a) and (b) of this Code section shall not apply to:

(1) Any public water system having more than a total of 70,000 active service connection accounts or more than 200 such accounts per square mile of total area served;

(2) A public water system with respect to a single-family residential property owner or farm who has been mailed written notice to his or her address of record on the property tax rolls by the appropriate county, municipality, or local authority by certified mail of his or her right to opt out of connecting with such system and paying charges or fees for system services made available but not used, if such property owner did not notify the county, municipality, or local authority in writing on a form provided thereby of his or her decision to exercise that option within 45 days after mailing of such notice by the county, municipality, or local authority;

(3) Any project of a public water system for which revenue bonds have been validated, issued, and sold prior to January 1, 2008; or

(4) Any public water system funded primarily through a federal or state grant that contains stipulations in such grant requiring the county, municipality, or local authority to levy a charge or fee for water supply services made available but not used. For all state grants, loans, or contracts for services issued on and after July 1, 2007, no state grant, loan, or contract for services funding any project of a public water system shall contain any stipulations requiring a county, municipality, or local authority to levy a charge or fee for water supply services made available but not used or requiring a county, municipality, or local authority to require single-family property owners or farms to connect with or use water supplied by a public water system, except where necessary to preclude the use of water obtained from another source that is demonstrably unfit for human consumption or other intended use. For the purposes of this paragraph, a federal grant is defined as money provided directly to a county or municipality. Federal money provided to a revolving loan fund or to the Georgia Environmental Finance Authority or such other mechanism shall not be considered a federal grant. However, Georgia Code Ann. § 36-39-7 allows municipalities to mandate connection to water, gas and sewer lines when making street improvements.

Georgia adopted the International Plumbing Code, with mandatory connection.

HAWAII
No authority located.

Hawaii adopted the Uniform Plumbing Code, with no mandatory connection.

IDAHO

Idaho Code § 39-3635 allows mandatory sewer connection for "cottage site leases" if a line is within two hundred feet of the dwelling.

An Idaho court upheld a local health board's authority to compel connections to municipal sewer systems. In *Lindstrom v. District Board of Health Panhandle District*, 712 P.2d 657 (Idaho App. 1985), a homeowner filed for a permit to replace their damaged sewage disposal system with another filtration system on their property. The District Board of Health denied the permit relying in part upon state regulations. Instead, the Board ruled that the homeowners could contract to connect their sewer to an adjacent privately owned system which discharged its effluent into the municipally owned system.

"The state's vast and powerful interest to promote the public health, which includes the ability to regulate the sewage disposal systems and to require individuals to connect to municipal sewer lines, has long been recognized." *Id*. The court went on to note that "[T]he state's police power can compel actions and require individuals to expend funds in the interests of the public health and welfare." Additionally, in *Schmidt v. Village of Kimberly*, 256 P.2d 515 (Idaho 1953), an Idaho court held that, if the water and sewage system were privately owned and operated, unquestionably the municipality could by ordinance regulate the operation in the interests of public health, and, in so doing, require residents to connect with and use the system.

Idaho adopted the Uniform Plumbing Code, with no mandatory connection provisions.

ILLINOIS

In *Village of Algonquin v. Tiedel*, 345 Ill. App.3d 229, 802 N.E.2d 418, 280 Ill. Dec. 493 (2003), an Illinois appellate court found that a very general grant of authority allowed localities to mandate connection to public water. The court found "no meaningful distinction between mandatory sewer connections and mandatory water connections."

Two Illinois cases address mandatory sewer connection, and were cited by the court in *Tiedel. Buffalo, Dawson, Mechanicsburg Sewer Commission v. Boggs*, 128 Ill. App.3d 688, 470 N.E.2d 649, 83 Ill. Dec. 523 (1984) addressed financing concerns in construction of public sewer. An Illinois appellate court opined that "if property owners were permitted to refrain from connecting to the municipal sewer, serious problems would arise, not only in terms of health, but also as to 'the municipal financing of' a sewer system." In *City of Nokomis v. Sullivan*, 153 N.E.2d 48 (Ill. 1958), an Illinois court upheld mandatory sewer connections. "Because of the grave dangers to public health that are involved in the unsanitary disposition of human excrement, the power of municipalities to require property owners to discontinue the use of privies and to connect water closets with municipal sewer systems has consistently been sustained." *Id*., at 50.

Illinois adopted the Uniform Plumbing Code, with no mandatory connection provisions.

INDIANA

An Indiana court has addressed the issue of mandatory water connection ordinances in conjunction with street repairs. An ordinance authorizing the board of public works, when improvement of a street is desired, to require abutting owners to connect with water, sewer, and gas mains in the street, and assess the cost thereof, is not void as an unauthorized delegation of power by the common council, but invokes an exercise of power which the board already possessed as expressly given to it by statute and the power given to the common council to enact such ordinances. *Hobbs v. City of South Bend*, 142 N.E. 854 (Ind. 1924). Indiana courts also allow mandatory connection to sewer. *Wright v. Clay Tp. Regional Waste District*, 694 N.E.2d 1192 (Ind. Ct. App. 1998).

West's Annotated Indiana Code § 13-26-5-2(8) grants regional districts the authority to require connection to the district's sewer system if the sewer is within three hundred feet of a property line and the district gives notice to the land owner. Notably, the statute allows the district to recover its attorneys' fees and costs if the land owner refuses to connect and court action is required. West's Annotated Indiana Code § 13-26-5-2(9). Such a provision makes it extremely difficult for a land owner to challenge the ordinance.

Indiana adopted the International Plumbing Code, but opted out of 6.02.3, the mandatory connection provision.

IOWA

Iowa Code Annotated § 384.40 (West 2000) provides limited authority regarding mandatory water connection in the context of underground improvements. The statute states:

Title IX Local Government Subtitle 4. Cities
Chapter 384. City Finance Division IV. Special Assessment

§ 384.40 Underground improvements.

A city may include underground gas, water, heating, sewer, or electrical connections to the street or property line for private property as a part of the public improvement, or *a city may order the property owner to make, repair, or relocate such connections* by publication of a notice once each week for two consecutive weeks in the manner provided by section 362.3, and if the order is not complied with at the end of thirty days after the date of the first publication, the city may cause the work to be done and assess the cost against the property served by the connection. *(italics added)*

The Iowa Supreme Court has not ruled specifically on the issue of mandatory water connection ordinances. In *Seymour v. City of Ames*, 218 Iowa 615, 255 N.W. 874 (1934), the Iowa Supreme Court cited the precursor to Iowa Code Ann. § 384.40 and stated "under this section it is the duty of the city council by ordinance to fix the rules by which it will enforce its rights to compel the property owner to make the necessary sewer and water connections." *Id.*, at 877. This statement is not binding on future courts because it is dicta (not necessary in deciding the case at hand).

The Iowa Supreme Court upheld mandatory sewer connection authority in Lown v. City of Iowa Falls, 247 Iowa 558, 74 N.W.2d 594 (1956). The case involved an ordinance requiring connection to the city's sewer unless the property was more than 300 feet from the system and the lot contained at least 17,404 square feet.

Iowa has adopted the Uniform Plumbing Code, with no mandatory connection provision. However, Iowa Code Ann. § 137F.12 mandates connection to public water and sewer for food establishments and food processing plants "if such facilities are available".

KANSAS

There were no Kansas authorities located with respect to mandatory water connection ordinances. Kansas Attorney General's Opinion 2000-38, No. 00-38, 2000 WL 773732 (June 12, 2000), however, concluded that under Article 12 § 5 of the Kansas Constitution, a city may require residents to connect to a municipal water system. "Therefore, it is our opinion that [the city] may require all property owners to connect to the City's water system even in the absence of a known health hazard if the City is establishing the water system for public health, safety or welfare purposes." *Id. Note that Attorney General Opinions are not binding upon courts, but merely advisory.*

Kansas Statutes Annotated § 12-631 allows cities to require connection to public sewer for buildings located "near a sewer" or in a block within a sewer district if necessary to protect public health.

Kansas has adopted the International Plumbing Code, with mandatory connection, but local governments have discretion when adopting a plumbing code. Some local governments in Kansas have adopted the Uniform Plumbing Code, with no mandatory connection.

KENTUCKY

Kentucky Revised Statute Annotated § 224A.180 (Banks- Baldwin 2000) requires mandatory water connection in circumstances involving default by government agencies. The relevant portion states:

Kentucky Revised Statutes Annotated Title XVIII. Public Health
Chapter 224A. Kentucky Infrastructure Authority.

§ 224A.180. Enforcement powers of authority in the event of default

(2) In addition to the powers conferred by subsection (1) of this section, the authority may, upon the occurrence of any event of default by such governmental agencies, mandatorily require the owner, tenant, or occupant of each and every lot or parcel of land which abuts upon a street or other public way containing a sanitary sewer or drinking water facility, and upon which lot or

parcel of land an improvement exists for residential, commercial, or industrial use, or where a sanitary sewer or drinking water facility is reasonably available to serve such improved lot or parcel of land, to forthwith connect such improvement to the sanitary sewer or drinking water facility and to cease to use any other means for the disposal of sewage, sewage waste, or other pollutants.

In addition, KRSA § 96.265 stops short of allowing mandatory water connection, but allows cities of the first class to require property owners to pay a proportionate share of the cost of extending a water line. The applicable portion of the statute is set forth below.

Baldwin's Kentucky Revised Statutes Annotated Title IX. Counties, Cities and Other Local Units
Chapter 96. Utilities in Cities
Waterworks in Cities of First Class

§ 96.265. Extension of service to persons not currently served; costs; assessments; apportionment warrants; liens

(4) The cost of property service connections from the water line extension to the property line as required shall be assessed against the individual lots or tracts to which such property service connections are furnished. The costs to be assessed for the property service connection shall be fixed by regulation of the board of waterworks based on its experience of costs for such work. No lot or tract owner shall be required to connect to the water line extension by reason of this section, but such failure to connect to the water line extension shall not exempt such lot or tract owner from its proportionate share of the costs as provided in subsection (2) of this section.

KRSA § 67A.893 allows urban counties to require all “benefited properties” to connect to public sewer.

The Kentucky Supreme Court has not ruled specifically on the issue of mandatory water connection ordinances. However, in *Barnes v. Jacobsen*, 417 S.W.2d 224 (1967), the Court of Appeals of Kentucky upheld a bond issue that included mandatory water and sewer connection within the regulation. Mandatory connection did not form the focus of the case, so the court did not comment on that issue. In *City of Louisville v. Thompson*, 339 S.W.2d 869, 872 (1960), the Kentucky Supreme Court ruled that a city ordinance that required each dwelling to be equipped with an inside bathroom, connected to hot and cold water and connected to the public sewer was reasonable under the general police power of the city.

Kentucky appears to have adopted the Uniform Plumbing Code with no mandatory connection provisions.

LOUISIANA

Louisiana Statute § 33:4041 enables municipalities and sewerage districts to compel connection to public sewer for property owners within 300 feet of the sewer line. The language of the statute appears to allow mandatory water connection in the same situation, but the provision is contained in the portion of the code addressing sewerage systems.

West's Louisiana Statutes Annotated Louisiana Revised Statutes
Title 33. Municipalities and Parishes Chapter 9. Sewage Disposal
Part II. Sewerage Systems
Subpart C. Connection with System

§ 4041. Compelling connection with sewerage system

Municipalities and sewerage districts having a public system of sewerage may compel the connection therewith by owners of premises within three hundred feet of the public sewer and **may compel owners to connect with water mains or provide other means for flushing purposes.** *(emphasis added)*

Caddo Parish Sewerage Dist. No. 7 v. Reeves, 649 So.2d 1236 (1995) and *Falgout v. St. Charles Sewerage Dist. No. 3*, 351 So.2d 1047, writ denied, 353 So.2d 1047 (1977) upheld this statute in connection with mandatory sewage hookup.

Fristoe v. City of Crowley, 142 La. 393, 76 So. 812 (1917), also supports mandatory sewer connection ordinances. "There being no Constitutional inhibition, the Legislature and the municipality had the right to impose upon the property owner the cost of connecting his premises with the public sewerage, and to impose a lien upon the property to secure the payment of the debt." *Id.*, at 398.

Louisiana has adopted the International Plumbing Code, with mandatory connection provisions.

MAINE

No Maine authorities were located with respect to mandatory water connection ordinances. A statute supports mandatory sewer connection ordinances. This provision states:
Maine Revised Statutes Annotated Title 30-A. Municipalities and Counties Part 2. Municipalities
Subpart 5. Health, Welfare and Improvements Chapter 161. Sewers and Drains
Subchapter I. General Provisions.

§ 3405 Sewer Connections

If required by municipal ordinance, the owner of each lot or parcel of land upon which a building has been constructed which abuts upon a street or public way containing a sewer shall connect that building with the sewer and shall cease using any other method for the disposal of

waste water. All such connections must comply with the applicable municipal ordinance, which may provide for a reasonable charge for making the connections.

Maine adopted the Uniform Plumbing Code, with no mandatory connection provisions.

MARYLAND

In *Board of Health of State of Maryland v. Crew*, 212 Md. 229, 129 A.2d 115 (1957), a property owner, on due process grounds, sought relief against an order requiring him to abandon his well. The Court of Appeals of Maryland held that the order was lawful. "The right of the State to require uniform compliance with reasonable standards designed to insure or tend towards the safeguarding of the public health by all, or selected groups of its citizens, is basic and firmly established even though compliance deprives the citizen of one or more of the bundle of rights that together comprise ownership or puts him to added expense.

The right has been approved judicially in a variety of exercises." *Id.*, at 235.

Maryland Environment Code Annotated (Md. Env. Code Ann.) § 9-223 (2001) allows mandatory water connection ordinances if the private well could "become prejudicial to the public health." The relevant portion states:

Maryland Environment Code Annotated Title 9. Water, Ice, and Sanitary Facilities Subtitle 2. Regulation by State
Part II. Water Supply Systems, Sewerage Systems, and Refuse Disposal Systems

§9-223. Connecting property with water supply system or sewer- age system; use of private sewage disposal system; privies and shallow wells for certain religious groups.

(a) In general – If a water supply system that serves the public or a sewerage system that serves the public is directly available to service any property on which there is a spring, well, cesspool, privy, sink drain, or private sewage disposal system that is or could become prejudicial to health or the environment, the Secretary may order that:

(1) The property be connected with the water supply system or sewage disposal system; and

(2) The spring, well, cesspool, privy, sink drain, or private sewage disposal system be abandoned in a condition that will prevent it from being used or harming health.

Md. Env. Code Ann. § 9-708 goes further and allows municipalities to require owners of "abutting property" to connect to public water systems.

West's Annotated Code of Maryland Environment
Title 9. Water, Ice, and Sanitary Facilities
Subtitle 7. Regulation by Municipalities and Political Subdivisions Part II. Regulation by Municipalities

§ 9-708. Municipal authority's and owners' duties

(a) A municipal authority shall:

(1) Construct and provide at its own expense for any water main or sanitary sewer constructed or established under Part II of this subtitle, a water service pipe or sewer connection that extends from the water main or sewer to the property line of each lot that abuts on a street or right-of- way in which the water main or sewer is laid; and

(2) When the municipal authority declares that a water main or sewer is complete and ready for use, notify each owner of abutting property that the owner shall:

(i) Connect all spigots or hydrants, toilets, and waste drains with the water main or sewer, within a reason- able time as determined by the municipal authority; and

(ii) Install adequate spigots or hydrants, toilets and waste drains if:
1. There are no fixtures or drains; or
2. The municipal authority believes that the existing fixtures or drains are improper or inadequate.

(b) To prevent any use of or any injury to the public health, each owner of property that is connected with a sewer shall abandon, close, and leave, in the manner that the municipal authority directs, any:
(1) Cesspool;
(2) Drain;
(3) Privy; or
(4) Well that is determined by the municipal authority to be polluted or a menace to health.

(c)
(1) After notice from the municipal authority, if a property owner in Frederick County fails to comply with the provisions of this section, the municipal authority may:
(i) Have any necessary connections made;
(ii) Cause any cesspool, drains, or privy to be closed and abandoned; and
(iii) Charge the property owner with the cost of the connection or closing or both.

(2) For purposes of this subsection, the costs:
(i) Are a lien against the affected property until paid; and
(ii) May be collected in the same manner as county or municipal taxes.

MD Code, Public Utilities, § 23-202(d) allows the Washington Suburban Sanitary Commission to require owners of property abutting the street or right-of-way in which a water or sewer is installed to connect if "a condition exists that appears to be a menace to the health of the occupants of the property or the occupants of a nearby or adjoining property", the Commission gives notice to the owner or occupant and the Commission determines the condition to be a menace.

The Court of Appeals of Maryland also upheld mandatory sewer connection as a valid exercise of legislative power in *Harlan v. Town of Bel Air*, 178 Md. 260, 13 A.2d 370 (1940).

Maryland adopted the National Standard Plumbing Code, with no mandatory connection provisions.

MASSACHUSETTS

No authority was located with respect to mandatory water connection. However, Massachusetts statutory and case law allow mandatory sewer connection.

Massachusetts General Laws Annotated, Chapter 83, § 3 allows cities and towns to require owners of property abutting a public way in which public sewer has been laid to connect to the public sewer.

The Massachusetts Superior Court ruled, in *Padden v. Town of West Boylston*, 17 Mass.L.Rptr. 19, 2003 WL 22699803 (Mass. Super. 2003), that a township could require mandatory connection to public sewer only if a rational connection exists between the mandatory connection ordinance and public health. The court ruled that the township and town's Board of Health lacked authority for the particular mandatory connection ordinance because no public health rationale existed and voided the ordinance. Accord, *Town of Uxbridge v. Travers*, 19 Mass.App.Ct. 951, 473 N.E.2d 218 (1985).

Massachusetts appears to have adopted the Uniform Plumbing Code.

MICHIGAN

A recent Michigan Court of Appeals ruling grants broad authority to home rule cities to mandate connection to public water. *City of Gaylord v. Maple Manor Investments*, 2006 WL 2270494 (Mich. App. 2006). Homeowners brought legal action against the city, objecting to an ordinance that required connection to public water for any houses, buildings or other structures on property located within 200 feet of a public water line. The ordinance required that existing wells be sealed and abandoned upon connection to public water.

The homeowners had existing wells and argued that the wells provided a safe and reliable source of water. The law- suit included claims of lack of authority, substantive due process and regulatory takings.

In upholding the ordinance, the court found that home rule cities possess extraordinarily broad authority. In addition, the court found no distinction between water and sewer when considering public health. The ordinance therefore, promoted public health.

In *Butcher v. Grosse Ile Township*, 387 Mich. 42, 194 N.W.2d 845, 4 ERC 1018 (Mich. Mar. 9, 1972), however, the Michigan Supreme Court held that a township may not require that property be connected to an available sanitary sewer without a specific finding that an existing private sewage system is a health hazard. *Bingham Farms v. Ferris*, 148 Mich. App. 212, 384 N.W.2d 129 (1986) approves mandatory sewer connection.

Michigan Compiled Laws Annotated § 333.12752 voices a public policy disapproving of private septic tanks as a threat to the public health, safety and welfare. The statute requires connection to public sewer "at the earliest, reason- able date" for the "protection of the public health, safety, and welfare and necessary in the public interest which is declared as a matter of legislative determination."

Michigan adopted the International Plumbing Code, but opted out of Section 6.02.3, the mandatory connection provision.

MINNESOTA

In *State v. Waughtal*, No. C5-92-2400, 1993 WL 328750 (Minn. Ct. App. Aug. 25, 1993), a property owner was charged with a misdemeanor for failing to connect to township water. The owner challenged the mandatory connection ordinance on the grounds that it was unconstitutional by violating his right to privacy and constituted a taking without just compensation. The court upheld the ordinance and refused to rule on the takings claim since it was a criminal action. "Given the minimal intrusion involved, we conclude that the ordinance is justified. We do not find the means adopted by the township to accomplish its purpose particularly offensive or unusual." *Waughtal*, at 4.

In *Nubbe v. City of Waverly*, Court File No. 86-CV-17-2582 (Dist. Ct. Tenth Jud. Dist. 2018), the court upheld the City of Waverly's ordinance that prohibits installation of a private well within city limits on any lot that has "reasonable access to city water". However, the court allowed the water well in question to be installed since all legal requirements to construct the well had been completed prior to institution of the ban. The well contractor and land owner have appealed the ruling, arguing that the ordinance is preempted by state law regulating well construction.

Minnesota adopted the Uniform Plumbing Code, but amended Section 311. To mandate connection to public water when "accessible...unless otherwise permitted", and to public sewer where connection is "feasible". Minnesota Rules, part 4714.0311
Work for Minnesota
Uniform Plumbing Code

MISSISSIPPI

In *Lepre v. D'Iberville Water & Sewer District*, 376 So.2d 191 (Miss. 1979), the Supreme Court of Mississippi upheld a mandatory water connection ordinance. The court validated the ordinance saying, "it would have to be proved that this police power had been manifestly transcended or abused, before the Court could set aside or declare void this ordinance and this legislation which was intended to promote the public health. This Court feels that the matter compelling property owners to connect to water lines is clearly within the authority of the rule-making body." *Id*., at 194. The Court also noted that "[T]hose persons who had their own wells had sufficient remedies to attempt to enjoin the proceedings, if they were so inclined, and they had opportunity to voice their opinions, and objections by exercising the strongest power they had – their own vote." I*d*., at 192.

More recently, the Mississippi Attorney General opined that the City of Gulfport could not adopt an ordinance making it a misdemeanor to fail or refuse to connect to the city's municipal water system. Office of the Attorney General, State of Mississippi, Opinion No. 2010-00512, 2010 WL 4105479 (Miss.A.G., September 17, 2010). Although mandatory connection and charging fees for water services where available even when not utilized, criminal charges are not allowed.

The court also upheld mandatory sewer connection in *Croke v. Southgate Sewer District*, 857 So.2d 774 (2003). The ordinance was attacked in this case as an unconstitutional taking of private property for public purposes without just compensation.

Miss. Code Ann. § 19-5-173 allows counties to compel connection to public sewer. Miss. Code Ann. § 21-19-1 provides similar authority to municipalities.

Mississippi adopted International Plumbing Code, but local governments have some discretion.

MISSOURI

Missouri law explicitly protects a landowner's right to a private well. This provision was strengthened in 2018 by explicitly listing potable water systems as protected, and by adding the right to us rainwater collection systems.

Vernon's Annotated Missouri Statutes
Title XL. Additional Executive Departments Chapter 640. Department of Natural Resources
Landowner's Water Rights to Private Water Systems
§ 640.648. Private water and ground source systems

1. Notwithstanding any law to the contrary, all Missouri landowners retain the right to have, use and own private water systems and ground source systems, including systems for potable water, anytime and anywhere including land within city limits, unless prohibited by city ordinance, on their own property so long as all applicable rules and regulations established by the Missouri department of natural resources are satisfied. All Missouri landowners who choose to use their own private water system shall not be forced to purchase water from any other water source system servicing their community.

2. Notwithstanding any law to the contrary, all Missouri landowners retain the right to have, use, and own systems for rainwater collection anytime and anywhere on their own property, including land within city limits.

In addition, Missouri case law protects a landowner's right to a private septic system. In *Moats v. Pulaski County Sewer District No. 1*, 23 S.W.3d 868 (Mo. 2000), the Missouri Court of Appeals, Second District, found that the Missouri Clean Water Act preempted a sewer district's connection mandate. The court struck down the mandatory connection provision.

Missouri has adopted the International Plumbing Code. However, local governments retain discretion.

MONTANA

In *Town of Ennis v. Stewart*, 247 Mont. 355 (1991), property owners were convicted for refusing to connect their residences to town water pursuant to an ordinance. The Montana Supreme Court upheld the conviction saying "[A]llowing some citizens to forgo connection to such a system indefinitely or until a health threat is imminent may make such a system unaffordable to the community and thereby defeat the purpose of preventing potential health problems before they arise." *Id.*, at 362.

The Montana Code grants local governments with self-government powers broad, general authority. Montana Code § 7-1-101. As evidenced by the *Ennis* case, this authority included mandating connection to public water systems.

Montana has adopted the Uniform Plumbing Code.

NEBRASKA

Nebraska Revised Statutes § 15-709 allows improvement districts within cities of the first class to compel connection to public water and sewer when streets are to be paved.

Nebraska Revised Statutes of 1943 Chapter 15. Cities of the Primary Class Article 7. Public Improvements
§ 15-709. Streets; improvements; utility service connections; duty of landowner. 2015 amendment

The city council may order the owner of lots abutting on a street that is to be paved to lay sewer, gas and water service pipes to connect mains. If the owner fails to lay such pipes, after five days' notice by publication in a newspaper of general circulation in the city, or in place thereof by personal service of such notice, as the council in its discretion may direct, the council may cause the sewer, gas, and water service pipes to be laid as part of the work of the improvement district, and assess the cost thereof on the property of such owner as a special assessment. Such assessment to pay the cost of the pavement or improvements in the improvement district shall be collected and enforced as a special assessment.

In *Eckstein v. Lincoln*, 202 Neb. 741 (1979), the Nebraska Supreme Court held that, despite the existence of a mandatory connection ordinance, the mere possibility of the plaintiffs' wells becoming contaminated was not enough to justify an absolute prohibition against their use for domestic purposes. The Court noted that an owner's right to use his property is subject to "reasonable regulation, restriction, and control by the state in the legitimate exercise of police powers. The test of legitimacy is the existence or a real and substantial relationship between the exercise of those powers in a particular manner, and the peace, public health, public morality, public safety, or the general welfare or the city." *Id*., at 744.

Nebraska law specifically allows primary cities to impose mandatory sewer connection, with no stated limitations. Nebraska Revised Statutes § 15-238.

Nebraska adopted the Uniform Plumbing Code, but local governments retain some authority.

NEVADA

Nevada statute § 268.4102 permits mandatory water connection ordinances where unsatisfactory water systems exist. The first statute listed refers to cities and towns, while the second applies to counties and townships.

Nevada Revised Statutes Annotated
Title 21. Cooperative Agreements by Public Agencies; Planning and Zoning; Development and Redevelopment Cities and Towns Chapter 268. Powers and Duties Common to Cities and Towns Incorporated under General or Special Laws Health, Safety, and
Morals

§ 268.4102. Requiring users of certain water systems to connect into system provided by public utility or public entity; assessment of costs of connection

1. If the state board of health determines that:

(a) A water system which is located within the boundaries of a city and was constructed on or after July 1, 1991, is not satisfactorily serving the needs of its users; and

(b) Water provided by a public utility or a municipality or other public entity is reasonably available to those users, the governing body of that city may require all users of the system to connect into the available water system provided by a public utility or a municipality or other public entity, and may assess each lot or parcel served for its share of the costs associated with connecting into that water system. If the water system is being connected into a public utility, the public utilities commission of Nevada shall determine the amount of the assessments for the purposes of establishing a lien pursuant to NRS 445A.900.

West's Nevada Revised Statutes Annotated
Title 20. Counties and Townships; Formation, Government and Officers
Chapter 244. Counties: Government Health and Safety

§ 244.3655. Requiring users of certain water systems to connect into system provided by public utility or public entity; assessment of costs of connection

1. If the state board of health determines that:

(a) A water system which is located in a county and was constructed on or after July 1, 1991, is not satisfactorily serving the needs of its users; and

(b) Water provided by a public utility or a municipality or other public entity is reasonably available to those users, the board of county commissioners of that county may require all users of the system to connect into the available water system provided by a public utility or a municipality or other public entity, and may assess each lot or parcel served for its proportionate share of the costs associated with connecting into that water system. If the water system is being connected into a public utility, the public utilities commission of Nevada shall determine the amount of the assessments for the purposes of establishing a lien pursuant to NRS 445A.905.

"Water system" in this statute means any privately owned public water system which serves at least 15 service connections that are used by residents throughout the year or regularly serves at least 25 residents throughout the year. The term does not include a public utility which serves more than 25,000 persons.

The State Engineer may also require any exempt well drilled after July 1, 1981 to be plugged and connect to public water if water can be furnished to the site by a local government or public utility. Nevada Revised Statutes § 534.180. Nevada has adopted the Uniform Plumbing Code, but local governments have some authority.

NEW HAMPSHIRE

New Hampshire amended its laws in 2002 to protect the rights of landowners to have private wells. Revised New Hampshire Statutes § 362:4., Subparagraph V. provides that so long as a property owner has a lawfully located and constructed well and sewage system, the property owner may not be compelled to connect to public water.

Revised Statutes Annotated of the State of New Hampshire
Title XXXIV. Public Utilities
Chapter 362. Definition of Terms; Utilities Exempted

§ 362:4 Water Companies, When Public Utilities.
***

V. No property owner shall be required to connect to a municipal corporation furnishing water, provided such property owner can demonstrate the ability to comply with the requirements of RSA 485-A:29 and RSA 485-A:30-b.

The referenced code sections provide requirements for location and construction of wells.

In contrast, Revised New Hampshire Statutes § 147:8 requires connection to public sewer if within one hundred feet of any building that will be occupied as a dwelling house, office, store, shop, theater, public hall, sleeping apartment or tourist cabins. Local governments may increase the distance requirement or grant waivers from compliance.

New Hampshire adopted the International Plumbing Code, with mandatory connection provisions.

NEW JERSEY

Local ordinances requiring mandatory water hookups have been upheld in New Jersey. In *Kusznikow v. Township Council of Township of Stafford*, 32 N.J. Super. 323, 730 A.2d 930 (1999), the Superior Court of New Jersey upheld a mandatory water connection ordinance. See also *Stern v. Halligan*, 158 F.3d 729 (3d Cir. 1998) in the federal courts section.

New Jersey Statutes Annotated § 26:3-31 allows local boards of health "to compel any owner of property along the line of any sewer to connect his house or other building therewith."

New Jersey adopted the National Standard Plumbing Code, with no mandatory connection provisions.

NEW MEXICO

A recent case, *Stennis v. Santa Fe*, 140 N.M. 517, 143 P.2d 756 (2006), upheld a mandatory connection ordinance in Santa Fe, relying on the home rule authority of the city. The Court of Appeals of New Mexico so found despite the fact that the State Engineer had granted a permit for the well.

The Santa Fe ordinance provides that "[a]ll domestic well applications within the city's municipal water service area... shall be denied if the applicant's property boundary is with- in two hundred (200) feet of a water distribution main." Stennis contended that the city lacked authority to pass the ordinance. The court disagreed, holding that the city's home rule authority allowed the city broad powers. The court further ruled that the ordinance was not preempted by the permit granted by the State Engineer or state law.

Another case provides tenuous support, at best, for the lack of mandatory authority power in New Mexico for non-home rule local governments. The New Mexico Antitrust Act, West's New Mexico Statutes Annotated § 57-1-2, prohibits monopolies in any part of trade or commerce within the state. In *City of Sunland Park v. Macias*, 134 N.M. 216, 75 P.3d 816 (N.M. 2003), the Court of Appeals of New Mexico struck down a mandatory connection provision contained in a county's revenue bond ordinance. The court found that the provision violated the state Antitrust Act.
West's New Mexico Statutes Annotated § 73-21-16 gives water and sanitation districts the power, "for health and sanitary purposes", to compel the owners of inhabited property within a sanitation district to connect their property with the sewer system of the district.

New Mexico has adopted the Uniform Plumbing Code, with no mandatory connection provisions.

NEW YORK
New York does not have a statute expressly granting municipalities authorization to enact mandatory water connection ordinances, except where roads are being paved. New York Town Law §§ 198 and 201 (McKinney 2000), however, grants broad general powers to water and sewer districts. The relevant portions state:

Town Law
Article 12. District and Special Improvements

§ 198. Powers of town boards with respect to improvement districts
The town board of every town, except as otherwise provided by law, shall have authority to and may exercise the following powers with respect to improvement districts, heretofore or hereafter established, subject to the provisions of this article:

3. Water districts.
(a) Construction of system. After a water district shall have been established, the town board may construct, maintain, extend, repair and regulate water works, wells, reservoirs, or basins for the purpose of supplying the inhabitants of any water district in such town, with pure and wholesome water for domestic and commercial uses, and for protection against fire...

§ 201. Sewer and water connections
Whenever the town board shall have established one or more sewer or water districts, or both, the town board shall adopt a resolution or ordinance prescribing how sewer or water connections shall be made therein.

Section 201 also allows mandatory connection prior to the paving of "highway[s] in which sewer or water mains have been laid".

There is no New York case law directly challenging mandatory hook up ordinances.

New York adopted the International Plumbing Code, with mandatory connection. In addition, the state added language requiring installation by a registered well driller.

NORTH CAROLINA

North Carolina General Statute § 160A-317 (2000) authorizes cities to require connections to water and sewer services. The relevant section states:

North Carolina General Statutes Annotated Chapter 160A. Cities and Towns.
Article 16. Public Enterprises Part 1. General Provisions

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

(a) Connections. – 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.

This statute, along with the state police power statute (N.C. Gen. Stat. § 160A-175(2000), has been used by the North Carolina courts in upholding mandatory city water connection ordinances. In *Blevins v. Denny*, 114 N.C.App. 766, 443 S.E.2d 354 (1994), residents sued their town seeking a declaration requiring the town to operate a water and sewer system without requiring residents to connect to the system. The town counterclaimed against the residents for noncompliance with the order. The Appeals Court found in favor of the town stating "we find that defendant Town was performing a governmental function when it passed the ordinance mandating connection to the water and sewer system, and that therefore, the Town is immune from tort liability." *Id*., at 770.

North Carolina General Statute § 153A-284 grants similar water and sewer mandatory connection authority to counties.
West's North Carolina General Statutes Annotated Chapter 153A. Counties
Article 15. Public Enterprises
Part 2. Special Provisions for Water and Sewer Services

§ 153A-284. Power to require connections
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. In the case of improved property that would qualify for the issuance of a building permit for the construction of one or more residential dwelling units or commercial establishments and where the county has installed water or sewer lines or a combination thereof directly available to the property, the county may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected.

In addition, North Carolina General Statute § 130A-55(16) a. gives a sanitary district board authority to mandate owners of developed property to connect to the sanitary district's water system if the lines are within a "reasonable distance". Water and sewer authorities hold similar power under North Carolina General Statute § 162A-6(a)(14d). Local governments and authorities may include provisions within contracts with each other requiring owners of developed property to connect to water lines within a "reasonable distance". North Carolina General Statute § 162A-14(2).

However, in 2016 the North Carolina legislature passed a provision providing for relief from mandatory connection in certain circumstances. North Carolina General Statute § 87-97.2. applies to landowners with undeveloped or unimproved property "located as to be served by a public water system", or developed or improved property "located so as to be served by a public water system" where the public water system has not yet installed lines "directly available" to the property, or if the public water system cannot otherwise provide water when desired to the property. The provision provides that the landowner may receive a permit for a private drinking water well unless (1) the private drinking water well has failed and cannot be repaired; (2) the property is located in an area where well water is contaminated or likely to be contaminated due to nearby contamination; or, (3) the public water system is being assisted by the Local Government Commission. Another exception allowed water systems building or expanding in 2016 to mandate connection, but that provision expired.

The 2016 provisions also included North Carolina General Statute § 87-97.1. This section allows landowners to obtain a permit for an irrigation water well whether the property is connected to a public water supply or not. The well cannot be interconnected to the public water system and can only be used for irrigation or other nonpotable purposes. The provision also does not apply to public water systems being assisted by the Local Government Commission.

The Court of Appeals of North Carolina ruled against the City of Lumberton in a case involving authority to mandate connection outside of City limits. *City of Lumberton v. United States Cold Storage, Inc.*, 631 S.E.2d 165 (2006). Although North Carolina law allows so-called "extra-terratorial jurisdiction," the court found that the ordinance in question failed to authorize mandatory connection outside of the city limits.

The North Carolina Supreme Court upheld a mandatory sewer ordinance in *McNeill v. Harnett County,* 327 N.C. 552, 398 S.E.2d 475 (1990). Residents filed suit, claiming the ordinance violated due process protections. The court found no violation.

North Carolina adopted the International Plumbing Code, but deleted the mandatory connection provisions.

NORTH DAKOTA

North Dakota Code § 40-28-01 provides authority for towns to enact mandatory water connection ordinances. The statute states:

North Dakota Century Code Title 40. Municipal Government

§ 40-28-01 Connections with sewers and other mains – Service connections.

The governing body of a municipality, when it shall deem it necessary, by resolution, may require the owners of all property abutting on any street, avenue, or alley to construct or cause to be constructed, at the expense of and as a charge against the property fronting on such street, avenue, or alley, the connections from any sewer, water main, gas main, steam or other pipe, wire cable, conduit, or other service connection pipe or wire under the surface of such street, avenue, or alley to a point inside of the curb line on either or both sides of such street, avenue, or alley at such intervals along the whole length thereof as may be necessary to supply and serve each lot, part of lot, or parcel of land in accordance with the municipal ordinance governing the laying and construction of such connections. A resolution may be adopted pursuant to this section requiring the service connection to be made at the time of the laying and construction of the sewer, main, pipe, cable, conduit, or wire, as a part of the contract for laying and constructing the same, or at any subsequent time.

North Dakota adopted the Uniform Plumbing Code, with no mandatory connection provisions.

OHIO

Ohio Revised Code § 6119.06 (West 2000) provides general authority that could possibly require water connections.

In addition, Ohio Revised Code § 729.06 (West 2000) authorizes mandatory connections in the event of street repairs or as a sanitary regulation.

The general statute reads in part:

Title LXI. Water Supply – Sanitation Ditches Chapter 6119. Regional Water and Sewer Districts

§ 6119.06 Rights, powers, and duties.

Upon the declaration of the court of common pleas organizing the regional water and sewer district pursuant to section 6119.04 of the Revised Code and upon the qualifying of its board of trustees and the election of a president and a secretary, said district shall exercise in its own name all the rights, powers, and duties vested in it by Chapter 6119. of the Revised Code, and, subject to such reservations, limitations and qualifications as are set forth in this chapter, such district may:

(AA) *Require the owner of any premises located within the district to connect the owner's premises to a water resource project determined to be accessible to such premises and found to require such connection so as to prevent or abate pollution or protect the health and property of persons in the district.* Such connection shall be made in accordance with procedures established by the board of trustees of such district and pursuant to such orders as the board may find necessary to ensure and enforce compliance with such procedures; *(italics added)*

The limited statute reads in part:

Title VII. Municipal Corporations
Chapter 729. Assessments – Sidewalks; Sewers

§ 729.06 Installation of sewer and water connections may be required; notice; assessment of cost and forfeiture.

In addition to the power conferred upon municipal corporations under section 727.01 of the Revised Code to levy and collect special assessments, the legislative authority of a municipal corporation may require the installation of sewer or water connections and assess the cost thereof as provided in this section.

Whenever the legislative authority of a municipal corporation deems it necessary, in view of contemplated street paving or as a sanitary regulation, that sewer or water connections or both be installed, the legislative authority shall cause written notice thereof to be given to the owner of each lot or parcel of land to which such connections are to be made, which notice shall state the number and the character of connections required.

An Ohio appellate court, in an unpublished opinion, held that Ohio localities hold express authority to pass mandatory water connection statutes. *Robertson v. Village of Mt. Gilead*, 2002 WL 105895 (Ohio App. 5 Dist. 2002) (unreported). The court cited Ohio Revised Code § 729.06 and two other Ohio laws pertaining to laying of pipes during road construction to uphold the ordinance. The case did not involve street construction or repair. One justice filed a strong dissent to the majority's conclusion that the right to a well is not a substantive right. In addition, in *Wyatt v. Trimble Township Waste Water Treatment District*, 1992 WL 329386 (Ohio App. 4 Dist. 1992), however, a case regarding connection fees, an appellate court noted that the powers granted to a wastewater treatment district in § 6199 are "very broad." Finally, another Ohio appellate court upheld a city ordinance it interpreted as prohibiting the installing of a new well

or use of existing well if public water was available. *City of Columbiana v. J&J Car Wash, Inc.*, 2005 WL 678750 (Ohio App. 7 Dist. 2005). In that case, a car wash owner wished to use a private well instead of hooking to public water. The court appears to have approved of the mandatory connection statute, stating that allowing private wells would negatively impact the "city's water supply and revenue."

Ohio Revised Code Annotated § 6117.51 allows the board of health of the health district within which a new public sewer construction project is proposed or located to pass a resolution stating that the reason for the project is to reduce or eliminate an existing health problem or a hazard of water pollution and then mandate connection to the public sewer. The Supreme Court of Ohio recently affirmed and expanded this authority in *Clarke v. Greene County Combined Health District*, 108 Ohio St.3d 427, 844 N.E.2d 330 (2006). The court ruled that this power was very broad, apparently not tied to public health. The same court also found that a municipality could require water system customers outside of the municipality to either agree to annexation into the municipality or face termination of water service. *Bakies v. City of Perrysburg*, 108 Ohio St.3d 361, 843 N.E.2d 1182 (2006).

Ohio adopted the International Plumbing Code, but deleted the mandatory connection provisions.

OKLAHOMA
No authority located.

Oklahoma adopted the International Plumbing Code, with mandatory connection provisions.

OREGON
No authority as to mandatory water connection was located.

Oregon Revised Statutes Annotated § 454.310 allows local governments, when constructing a sewage treatment plant, to require property owners in the affected area to connect to the treatment works. Oregon courts have limited this authority somewhat, by ruling that local governments may not mandate connection by property owners lying outside municipal boundaries. *City of Eugene v. Nalven*, 152 Or.App. 720, 955 P.2d 263, review denied 327 Or. 431, 966 P.2d 221 (1998).

Oregon adopted the Uniform Plumbing Code, with no mandatory connection provisions.

PENNSYLVANIA
Pennsylvania Statutes Annotated 8 Pa.C.S.A. § 2461 permits boroughs to enact mandatory connection ordinances. The statute reads:

Pennsylvania Statutes Annotated
Title 8 Boroughs
Chapter 24. Water Systems
Subchapter lA.7. Water Connections

§ 2461. Ordinances to require water connections

(a) General rule.--Council may, by ordinance, require any owner of property to connect with and use a water system of the borough or municipal authority or a joint water board in either of the following cases:

(1) Except as provided in subsection (b), if the property owner's principal building is located within 150 feet of a water system or any part or extension of the system.

(2) If the property owner's principal building has no supply of water which is safe for human consumption.

(b) Exception.--A property owner who after July 16, 2012, is subject to mandatory connection under subsection (a)(1) shall not be required to connect to the water system in accordance with subsection (a) if all of the following conditions exist:

(1) The water system or part or extension of the system that is within 150 feet of the principal building was in existence on July 16, 2012.

(2) The principal building has its own supply of water which is safe for human consumption.

(3) Prior to July 16, 2012, the property owner was not required to connect to the existing system.

(c) Backflow prevention.--A borough may require any owner of property to install and maintain a backflow prevention device based on the degree of potential hazard of the connected property in accordance with the Pennsylvania Construction Code and regulations promulgated under that act.

(d) Penalties.--A borough may assess penalties for the violation of ordinances pertaining to water connections or backflow prevention devices.

The mandatory hookup statute was cited in the case of *Herbert v. Commonwealth of Pennsylvania*, 159 Pa. Commw. 208, 632 A.2d 1051 (1993). In Herbert, the Borough of Stewartstown purchased the assets of a private water company and enacted an ordinance mandating that all private water wells to be declared "nuisances per se" and required landowners to connect to the public water system. The defendant refused to connect to the water system and continued to use his well. He was cited for being in violation of the ordinance and was convicted and appealed to the Commonwealth Court of Pennsylvania. In affirming the conviction of the lower court, the Commonwealth Court cited [P.S.] § 47461, noting that the statute "allows a borough to require that landowners attach their property to the public water service in such a way that it can conduct water to the property." *Id.*, at 213. The defendant's appeal to the Pennsylvania Supreme Court was denied.

Pennsylvania Statutes Annotated Title 53 § 57707 (2000) gives first class townships mandatory water connection authority, but not with respect to farms or industries with wells providing water for uses other than human consumption.

Purdon's Pennsylvania Statutes and Consolidated Statutes Annotated
Purdon's Pennsylvania Statutes Annotated
Title 53. Municipal and Quasi-Municipal Corporations Part IX. Townships of the First Class
Chapter 131. First-class Township Code Article XXVII. Water Supply and Waterworks
(a)Acquisition, Construction and Maintenance

§ 57707. Connection to water supply system
The commissioners may require that abutting property owners of a water supply system connect with and use the same except those industries and farms who have their own supply of water for uses other than human consumption. In case any owner of property except those previously excepted abutting such water system shall neglect or refuse to connect with and use said system for a period of ninety days after notice to do so has been served upon him by the commissioners, either by personal service or registered mail, said commissioners or their agents, may enter upon such property and construct such connection. In such case the commissioners shall forthwith, upon completion of the work, send an itemized bill of the cost of construction of such connection to the owner of the property to which connection has been made, which bill shall be payable forth- with, or the commissioners may authorize the payment of the cost of construction of connections in equal monthly installments; said installments shall bear interest at a rate not to exceed seven per centum per annum.

See also Pennsylvania Statutes Annotated Title 53 § 57708 (2000), which allows broad mandatory connection authority for water supply systems established or constructed by a municipal authority within a township of the first class. Another statute applies to Second-class Townships (53 P.S. § 67603). 27 P.S. § 3136 reinforces the ability of municipalities to mandate connection to public water by explicitly listing the power as not limited by a water resources law provision.

Several Pennsylvania cases affirm the right of a local government to mandate connection to public water. *Citizens v. Personal Water Rights v. Borough of Hughesville*, 815 A.2d 15 (2002); *Herbert v. Commonwealth of Pennsylvania,* 159 Pa. Commw. 208, 632 A.2d 1051 (1993); *Johnston v. Township of Plum Creek*, 859 A.2d 7 (Pa. 2004). The court in both *Sharp v. Conewago Township*, 833 A.2d 297 (2002) and *Vernon Township Water Authority v. Vernon Township*, 734 A.2d 935 (1999) struck down mandatory water connection ordinances. Both courts recognized the general validity of mandatory water connection ordinances but struck down an ordinance requiring mobile homes but not single family residences to connect (*Sharp*) or required connection in some areas but not others (*Vernon Township*). These cases indicate that the requirement must be uniform. The Commonwealth Court also affirmed a mandatory water connection ordinance in *Greenfield Township Municipal Authority v. D.R. Burket Trust*, 950 A.2d 522 (Pa. Common. Ct. 2008). Landowner had requested an exemption from the ordinance, claiming that the chlorine in the water would damage her health.

Pennsylvania courts also allow mandatory sewer connection *Matter of Chesapeake Estates Partnership*, 701 A.2d 313 (Pa. Commw. Ct. 1997), appeal denied, 555 Pa. 723, 724 A.2d 937 (1998).

Pennsylvania Law also allows mandatory sewer connection. Pennsylvania Statutes Annotated Title 53 § 14964 (Cities of the First Class); 53 P.S. § 57401 (First-class Townships); 53 P.S. § 67502 (Second-class Townships); 8 Pa. C.S.A. § 2051 § (Boroughs).

Pennsylvania has adopted the International Plumbing Code, with mandatory connection provisions.

RHODE ISLAND

The Supreme Court of Rhode Island upheld a mandatory water connection ordinance in *Mill Realty Associates v. Crowe*, 841 A.2d 668 (2004). The parcel is located in an area zoned as R-20 Residential in the Town of Coventry zoning ordinance. The ordinance provides for single-family dwellings with a minimum lot size of 20,000 square feet if the lot is serviced by a public water supply. If the lot is not serviced by a public water supply, the required minimum lot size for a single-family dwelling is 43,560 square feet. Mill Realty's parcel was 25,000 square feet and the court held that Mill Realty must connect to public water.

In *D'Ellena v. Town of East Greenwich*, 21 A.2 389 (R.I. 2011), the Supreme Court of Rhode Island upheld a requirement that the developer of a subdivision connect the subdivision to public water. However, the facts of that case indicated that the developer knew of the requirement, which was connected to an extension of time to record the subdivision plat and waived any objections.

Rhode Island has adopted the International Plumbing Code, with mandatory connection.

SOUTH CAROLINA

South Carolina Code § 44-55-1410 provides authority for counties to enact mandatory water connection ordinances. The statute states:

Code of Laws of South Carolina
Title 44. Health
Chapter 55. Water, Sewage, Waste Disposal and the Like
Article 15. Water and Sewer Facilities in Counties

§ 44-55-1410. Counties may operate water and sewer facilities.
(A) The governing body of each county of the State is authorized to acquire, construct, improve, enlarge, operate and maintain, within such county, facilities to provide water for industrial and private use and facilities for the collection, treatment and disposition of sewage, including industrial waste. No such facilities shall be provided by the county with- in the territory of any special purpose district or authority existing on March 7, 1973, authorized to provide such

facilities or within the corporate limits of any incorporated municipality without the consent of the governing body of such municipality, special purpose district, or authority, as the case may be. Nothing herein contained is intended to authorize the levy of taxes.

B) *Every county governing body is authorized to adopt regulations with respect to the use of its water and sewage facilities, including regulations requiring connection thereto of properties to which such facilities are available. (italics added)*

South Carolina Code § 5-31-2010 confirms the authority of municipalities to require all properties to which sewer is available to connect to the municipality's sewer system. The Supreme Court of South Carolina upheld the validity of a mandatory sewer ordinance in *City of Columbia v. Shaw,* 131 S.C. 464, 127 S.E. 722 (1925). Landowners alleged a due process violation.

South Carolina has adopted the International Plumbing Code, with mandatory connection provisions.

SOUTH DAKOTA

South Dakota Statute § 9-47-28 (2000) provides authority for mandatory water connection. The statute states:

South Dakota Statute § 9-47-28 (2000) §9-47-28

Connection of plumbing fixtures to public water supply system – Purchase or lease of preexisting private wells by municipalities – Exemption of first class municipalities
Each building in which plumbing fixtures are installed shall connect to a public water supply system if available. A public water system is available to a premise used for human occupancy if the property line of the premise is within two hundred feet of the system. A municipality may purchase, lease with purchase option, lease, or otherwise acquire from the owners, any preexisting private wells located within the municipality. The provisions of this section do not apply to municipalities of the first class. Nothing in this section requires any municipality to provide any municipal service outside of its municipal boundaries.

South Dakota Statute § 9-48-53 allows localities, except for first class municipalities, to mandate connection to public sewer "if available." Interestingly, the statute requires the locality to purchase, lease or condemn existing private systems, thereby mandating compensation. South Dakota Courts have upheld these statutes, finding that the statutes require the local governments to provide, and the homeowners to accept, public water and sewer under the conditions specified in the statute. *Verry v. City of Belle Fourche,* 1999 S.D. 102, 598 N.W.2d 544 (S.D. 1999).

In *Brant Lake Sanitary District v. Thornberry*, 2016 S.D. 66, 886 N.W. 2d 358 (S.D. 2016), The Supreme Court of South Dakota found that and ordinance requiring connection to the sewer line did not apply to landowners where the private septic system predated the ordinance. This finding was based on a clause in the ordinance exempting such properties from mandatory connection. The dissenting opinion argued that the exemption only applied to properties where the public sewer was "not available".

South Dakota has adopted the Uniform Plumbing Code, with no mandatory connection.

TENNESSEE

Tennessee statutes allow for mandatory water and sewer connections in certain circumstances. Tennessee Code § 7-32-120 allows municipalities to mandate water connection when making improvements financed by special assessments.

West's Tennessee Code Annotated
Title 7. Consolidated Governments – Governmental and Proprietary Functions
Municipal Functions
Chapter 32. Improvements by Special Assessment

§ 7-32-120. Water connection orders; contracts upon default
(a) Before making any of the improvements contemplated in this chapter, the legislative body shall have the power to order the owners of all abutting real estate to connect their several premises with water mains located in the streets or highways adjacent to their several premises; and upon default of the owners for thirty (30) days after such order to make connection, the city may contract for and make the connection afore- mentioned, at such distances, under such regulations, and in accordance with such specifications as may be prescribed by the legislative body; and the whole cost of each connection shall be assessed against the premises with which the connection is made. Any number of such connections may be included in one (1) contract, and the cost thereof shall be added to the final levy or assessment made against the property of each lot owner, as hereinbefore provided.

Mandatory sewer connection is enabled in broad circumstances.

Tennessee Code Annotated
Title 7. Consolidated Governments and Proprietary Property Functions
Municipal Functions
Chapter 35. Sewers and Waterworks
Part 2. Requirement of Sewer Connection

§ 7-35-201 Owners required to connect to municipal sewer Maintenance of sewer connections – Combined water and sewer charges – Security deposit – Delinquencies.

In order to protect the public health of persons residing within congested areas, and in order to assure the payment of bonds issued for sewer purposes, the governing body of every city, town and utility district, which has heretofore issued or shall hereafter issue bonds payable in whole or in part from revenues from sewer services provided within or without its borders, is authorized by appropriate resolution:

To require the owner, tenant or occupant of each lot or parcel of land which abuts upon a street or other public way containing a sanitary sewer and upon which lot or parcel a building exists for residential, commercial or industrial use, *to connect such building* with such sanitary sewer and to cease to use any other means for the disposal of sewage, sewage waste or other polluting matter; in addition to any other method of enforcing such requirement, a city, town or utility district also providing water services to such property may, within or without its borders, refuse water service to such owner, tenant or occupant until there has been compliance and may discontinue water service to an owner, tenant or occupant failing to comply within thirty (30) days after notice to comply; *(italics added)*

(1) To require the owner, tenant or occupant of each lot or parcel of land who is responsible for any connection to the sanitary sewer required under this section to properly maintain that portion of the connection that is located on the property of the owner, tenant or occupant; and in addition to any other method of enforcing such requirement, a city, town or utility district also providing water service to such property may, within or without its border, refuse water service to such owner, tenant or occupant until there has been compliance and may discontinue water service to an owner, tenant or occupant failing to comply within thirty (30) days after notice to comply;

Tennessee courts have affirmed this authority with respect to sewer. *Loggins v. Lightner*, 897 S.W.2d 698 (Tenn. Ct. App. 1994), appeal denied (March 20, 1995).

Tennessee adopted the International Plumbing Code, with mandatory connection.

TEXAS

No authority was found with respect to mandatory water connection in Texas.

Texas Statute § 214.013 provides municipalities broad authority to require connection to public sewer under all circumstances.

Texas adopted the International Plumbing Code, with mandatory connection.

UTAH

There was no Utah authority identified with respect to mandatory water connection ordinances.

In *Rupp v. Grantsville City*, 610 P.2d 338 (Utah 1980), however, the Utah Supreme Court upheld mandatory sewer connection ordinances. In *Rupp*, the court held that municipalities are granted broad powers for the protection of the health and welfare of their residents. "Inherent in the power to preserve and protect the health and welfare of municipal residents is the authority to adopt ordinances directed to the effectuation of that protection." *Id*., at 340. In addition, Utah Code § 10-8-38 allows cities, "[i]n order to defray the cost of constructing, reconstructing, maintaining, or operating a sewer system or sewage treatment plant" to "require connection to the sewer system if the sewer is available and within 300 feet of the property line of a property with a building used for human occupancy."

Utah adopted the International Plumbing Code, with mandatory connection. The code is modified by adding that water wells must satisfy construction standards. The remainder of 602.03 is deleted.

VERMONT

Former Vermont Statutes Title 24, § 114 arguably authorizes the City of Burlington to require connection to public water. A portion of the statute stated that "[t]he city council may by ordinance prescribe the nature and character of connections between the water mains and lands and buildings to be supplied with water and what lands and buildings shall be so connected and when, under what circumstances, and in what manner...." This statute has been repealed. No other Vermont authority was located with respect to mandatory water connection.

Vermont law clearly allows mandatory sewer connection. Vermont Statutes Title 24. § 3616 allows mandatory sewer connection by municipalities. Vermont Statutes Title 24, § 3509 reinforces this authority with respect to owners abutting a public street or highway.

Vermont adopted the International Plumbing Code, with mandatory connection.

VIRGINIA

Virginia Code § 15.2-2143 (2000) authorizes cities and towns to enact mandatory connection ordinances. The relevant portion states:

Title 15.2. Counties, Cities and Towns Subtitle II. Powers of Local Government
Chapter 21. Franchises; Sale and Lease of Certain Municipal Public Property; Public Utilities
Article 5. Water Supply Systems Generally

§ 15.2-2143.Water supplies and facilities

Every locality may provide and operate within or outside its boundaries water supplies and water production, preparation, distribution and transmission systems, facilities and appurtenances for the purpose of furnishing water for the use of its inhabitants; or may contract

with others for such purposes and services. Fees and charges for the services of such systems shall be fair and reasonable and payable as directed by the locality. *Except in counties which are not otherwise authorized, a locality may require the connection of premises with facilities provided for furnishing water;* charge and collect compensation for water thus furnished; and may provide penalties for the unauthorized use thereof. *(italics added)*

Water and Wastewater Authorities may also require water and sewer connections. However, the landowner may continue to use a private well, but may be charged a connection fee, a front footage fee and a monthly nonuser service charge. The pertinent portion of the statute is listed below.

West's Annotated Code of Virginia Title 15.2. Counties, Cities and Towns
Subtitle IV. Other Governmental Entities
Chapter 51. Virginia Water and Waste Authorities Act Article 4. Financing

§ 15.2-5137. Water and sewer connections; exceptions
A. Upon or after the acquisition or construction of any water system or sewer system under the provisions of this chapter, the owner, tenant, or occupant of each lot or parcel of land (i) which abuts a street or other public right of way which contains, or is adjacent to an easement containing, a water main or a water system, or a sanitary sewer which is a part of or which is or may be served by such sewer system and (ii) upon which a building has been constructed for residential, commercial or industrial use, shall, if so required by the rules and regulations or a resolution of the authority, with concurrence of the locality in which the land is located, connect the building with the water main or sanitary sewer, and shall cease to use any other source of water supply for domestic use or any other method for the disposal of sewage, sewage waste or other polluting matter. All such connections shall be made in accordance with rules and regulations adopted by the authority, which may provide for a reasonable charge for making such a connection. A private water company which purchases water from a regional authority for sale or delivery to or within a municipality may impose a charge for connection to the water company's system in the same manner, and subject to the same restrictions, as an authority may impose for connection to its water system, subject to the approval of the State Corporation Commission.

B. Notwithstanding any other provision of this chapter, those persons having a domestic supply or source of potable water shall not be required to discontinue the use of such water. However, persons not served by a water supply system, as defined in § 15.2-2149, producing potable water meeting the standards established by the Virginia Department of Health may be required to pay a connection fee, a front footage fee, and a monthly nonuser service charge, which charge shall not be more than that proportion of the minimum monthly user charge, imposed by the authority, as debt service bears to the total operating and debt service costs, or any combination of such fees and charges. In York County and James City County, the monthly nonuser fee may be as provided by general law or not more than 85 percent of the minimum monthly user charge imposed by the authority, whichever is greater.

C. Notwithstanding any other provision of this chapter, those persons having a private septic system or domestic sewage system meeting applicable standards established by the Virginia Department of Health shall not be required under this chapter to discontinue the use of such system. However, such persons may be required to pay a connection fee, a front footage fee, and a monthly nonuser service charge, which charge shall not be more than that proportion of the minimum monthly user charge, imposed by the authority, as debt service bears to the total operating and debt service costs, or any combination of such fees and charges.

Finally, certain counties may enact mandatory water and/or sewer ordinances under Virginia Code § 15.2-2110. That code section is set out below. Since the last edition, Campbell County has been added to subsection A., Powhatan and Smyth Counties to subsection B.

West's Annotated Code of Virginia Title 15.2. Counties, Cities and Towns
Subtitle II. Powers of Local Government
Chapter 21. Franchises; Sale and Lease of Certain Municipal Public Property; Public Utilities
Article 2. General Provisions for Public Utilities

§ 15.2-2110. Mandatory connection to water and sewage systems in certain counties
A. Amelia, Botetourt, Campbell, Cumberland, Franklin, Halifax and Nelson Counties may require connection to their water and sewage systems by owners of property that may be served by such systems; however, those persons having a domestic sup- ply or source of potable water and a system for the disposal of sewage adequate to prevent the contraction or spread of infectious, contagious, and dangerous diseases shall not be required to discontinue use of the same, but may be required to pay a connection fee, a front footage fee, and a monthly nonuser service charge that shall not be more than that proportion of a minimum monthly user charge as debt service compares to the total operating and debt service costs.

B. Bland County, Goochland County, Powhatan County, Rockingham County, Smyth County, and Wythe County may require connection to their water and sewer systems by owners of property that can be served by the systems if the property, at the time of installation of such public system, or at a future time, does not have a then-existing, correctable, or replaceable domestic supply or source of potable water and a then-existing, correctable, or replaceable system for the disposal of sewage adequate to prevent the con- traction or spread of infectious, contagious and dangerous diseases. Such county may not charge a fee for connection to its water and sewer systems until such time as connection is required. However, Bland County, Smyth County, and Wythe County, in assuming the obligations of a public service authority, may assume such obligations under the same terms and conditions as applicable to the public service authority.

The provisions of this subsection as they apply to Goochland County shall become effective on July 1, 2002.

C. Buckingham County may require connection to its water and sewer systems by owners of property that can be served by the systems if the property, at the time of installation of such public system, or at a future time, does not have a then- existing or correctable domestic supply or source of potable water and a then-existing or correctable system for the disposal of sewage adequate to prevent the contraction or spread of infectious, contagious and dangerous diseases. Such county may not charge a fee for connection to its water and sewer systems until such time as connection is required.

In *McMahon v. City of Virginia Beach*, 221 Va. 102, 267 S.E.2d. 130 (1980), the Virginia Supreme Court examined the validity of a city ordinance requiring landowners, who have access to privately owned wells, to connect with the municipal water supply system when the ordinance does not require use of the city water. The residents contended that since they were not required to use the water, that the ordinance could not be justified on public health grounds. The residents further contented that the ordinance was in fact "an impermissible revenue-producing device." *Id*., at 107. The Court found that "the public health purpose alone sufficient to support the conclusion that the present ordinance constitutes a valid exercise of the City's police power." *Id*. *Weber City Sanitation Commission v. Craft*, 196 Va. 1140, 87 S.E.2d 153 (1955) also upheld a mandatory water connection ordinance in the face of a due process attack.

Two opinions of the Virginia Attorney General state that owners of private wells need not discontinue domestic use of the wells when connecting to public water under a mandatory connection provision. 1984-85 Va. Op. Atty. Gen. 443 (1985 WL 192093 (Va.A.G.)); 1979-80 Va. Op. Atty. Gen. 398 (1980 WL 101607 (Va.A.G.)). The federal courts section of this report also contains a case from Virginia.

Virginia has adopted the International Plumbing Code, with mandatory connection.

WASHINGTON

Washington state does not have a general mandatory water connection statute. Washington has enacted a limited connection statute under the Business Regulations portion of the state building code. Wash. Rev. Code Ann. § 19.27.097 (West 2000). The relevant portion states:

Revised Code of Washington Annotated
Title 19. Business Regulations – Miscellaneous Chapter 19.27. State Building Code

§ 19.27.097. Building permit application – Evidence of adequate water supply – Applicability – Exemption

(1) Each applicant for a building permit of a building necessitating potable water shall provide evidence of an adequate water supply for the intended use of the building. Evidence may be in the form of a water right permit from the department of ecology, a letter from an approved water purveyor stating the ability to provide water, or another form sufficient to verify the existence of an adequate water supply. In addition to other authorities, the county or city may impose

conditions on building permits requiring connection to an existing public water system where the existing system is willing and able to provide safe and reliable potable water to the applicant with reasonable economy and efficiency. An application for a water right shall not be sufficient proof of an adequate water supply.

The Washington courts have not addressed the issue of mandatory water connection ordinances.

Revised Code of Washington § 35.67.190 requires all property owners within the area served by a city or town sewer- age system to connect to the system.

Washington adopted the Uniform Plumbing Code, without mandatory connection.

WEST VIRGINIA

There was no West Virginia authority located with respect to mandatory water connection ordinances. West Virginia Code § 16-13A-9 permits mandatory sewer connection by Public Health Service Districts furnishing sewage facilities.

In addition, West Virginia Code § 8-18-22 grants municipalities broad authority to require connection to municipal sewer so long as the parcel abuts on any street, alley, public way or easement on which a municipal sewer is located, now or in the future. 2 Wash. Rev. Code Ann. § 19.27.097 (West 2000) Even if the owner refuses to connect, the municipality may charge the owner for sewage based on water consumption.

In *Kingmill Valley Public Service District v. Riverview Estates Mobile Home Park, Inc.*, 182 W.Va. 116, 386 S.E.2d 483 (1989), the West Virginia Supreme Court found that mandatory sewer connection under the state statute did not enact a taking of private property for public purposes with- out compensation. Plaintiff owned a mobile home park and was forced to abandon the private sewer system worth $33,700. The court came to the same conclusion in *Buda v. Town of Masontown*, 217 W.Va. 284, 617 S.E.2d 831 (2005), another mandatory sewer connection case.

West Virginia adopted the International Plumbing Code, with mandatory connection.

WISCONSIN

Wisconsin Statute § 281.45 permits mandatory water and sewer connection ordinances. It states:

Wisconsin Statutes Annotated Environmental Regulation Chapter 281.Water and Sewage Subchapter IV. Water and Sewage Facilities; Septage Disposal

§ 281.45. House connections

To assure preservation of public health, comfort and safety, any city, village or town or town sanitary district having a system of waterworks or sewerage, or both, may by ordinance require

buildings used for human habitation and located adjacent to a sewer or water main, or in a block through which one or both of these systems extend, to be connected with either or both in the manner prescribed. If any person fails to com- ply for more than 10 days after notice in writing the municipality may impose a penalty or may cause connection to be made, and the expense thereof shall be assessed as a special tax against the property. Except in 1st class cities, the owner may, within 30 days after the completion of the work, file a written option with the municipal clerk stating that he or she cannot pay the amount in one sum and asking that it be levied in not to exceed 5 equal annual installments, and the amount shall be so collected with interest at a rate not to exceed 15% per year from the completion of the work, the unpaid balance to be a special tax lien.

Wisconsin appears to have adopted the Uniform Plumbing Code, with no mandatory connection.

WYOMING

No authority with respect to mandatory water connection was located in Wyoming. However, Wyoming Statutes mandate that dwellings within Sanitary and Improvement Districts connect to the District's sewer system, if one has been established. WY ST § 35-3-123.

It is unclear as to what plumbing code Wyoming has adopted, if any. It appears that adoption is left to local governments.

The Federal Courts

Although mandatory connection remains a predominantly state law issue, federal law applies in some instances. Some landowners have attacked mandatory connection issues in federal courts based on the United States Constitution or federal antitrust laws. Courts in the Third, Fourth and Seventh Circuits have addressed the issue of mandatory water connection ordinances. Each of these circuits has upheld the validity of the ordinances in question.

In *Stern v. Haligan*, 158 F.3d 729 (3rd Cir. 1998), landowners sued their township regarding the constitutionality of an ordinance mandating that they connect their property to the municipal water supply. The U.S. District Court for the District of New Jersey ruled in favor of the township. The landowners appealed to the U.S. Court of Appeals for the Third Circuit. The Court of Appeals held that there was a rational basis for the ordinance and that the ordinance did not result in a compensable taking. The Appeals Court stated that "pure water is a precondition for human health, regulating the water supply is a basic and legitimate governmental activity." *Id.*, at 732.

In *Shrader v. Horton*, 626 F.2d 1163 (4th Cir. 1980), residents with a private water supply system approved by the Virginia Water Authority sued the county water and sewage authority and board of supervisors of the county to enjoin them from requiring plaintiffs to connect to a public water system at their own expense and also preventing them from using their existing water sources. The U.S. District Court for the Western District of Virginia held in favor of the township. In its opinion, the District Court cited *Weber City Sanitation Commission v. Craft*, 196 Va. 1140, saying "[T]he Virginia court held that the mandatory connection ordinance was a valid exercise of the state's police power. This court feels compelled to concur with the Virginia Supreme Court." Subsequently, the U.S. Court of Appeals for the Fourth Circuit upheld the ordinance, saying it did not constitute a "taking" without just compensation.

In *Durigan v. Sanitary District No. 4-Town of Brookfield*, 248 F.3d 1157 (7th Cir. 2001), a sanitary district ordered a homeowner to connect to the municipal water system. The owner preferred to use water from a private well and did not obey the order. The owner filed a pro se lawsuit against the district seeking relief from the order. The owner argued that the sanitary district's ordinance did not bear a rational relationship to its stated objectives; the district did not prove how mandatory connections prevented contamination of the water supply or why private wells posed a legitimate problem; and that a more equitable solution would be a requirement that residents periodically test their wells.

The U.S. Court of Appeals for the Seventh Circuit held that the town ordinance, which required a homeowner to connect to a town water system within two years after a water main was installed near his property, was rationally related to the ordinance's objectives. The court noted that land use "regulations satisfy substantive due process if they do not violate a specific constitutional guarantee and are rationally related to a legitimate governmental interest." *Id*.

The United States District Court for the Northern District of Ohio similarly rejected due process and equal protection claims in upholding mandatory water connection. *Myers v. Village of Alger*, 391 F.Supp.2d 615 (2005).

United States Supreme Court

The United States Supreme Court has not heard a challenge to a mandatory water connection ordinance. In *Hutchinson v. City of Valdosta*, 227 U.S. 303 (1913), the Court has, however, ruled that a particular mandatory sewer connection ordinance was constitutional. The courts in many of the state cases discussed above have used *Hutchinson* as a basis to uphold mandatory water connection ordinances at the state level. In *Hutchinson*, an ordinance was adopted requiring the owners of property on any street where sewer mains had been laid to install water-closets in their houses and connect with the main sewer pipe. The Court held that the ordinance was a valid exercise of the police power and did not restrict either due process or equal protection of the laws. "It is the commonest exercise of the police power of a State or city to provide for a system of sewers and to compel property owners to connect therewith." *Id.*, at 308.

APPENDIX 1

STATE STATUTES EXPLICITLY PROTECTING THE LANDOWNER'S RIGHT TO A PRIVATE WELL

MISSOURI
Vernon's Annotated Missouri Statutes
Title XL. Additional Executive Departments Chapter 640. Department of Natural Resources
Landowner's Water Rights to Private Water Systems

§ 640.648. Private water and ground source systems
Notwithstanding any law to the contrary, all Missouri landowners retain the right to have, use and own private water systems and ground source systems anytime and anywhere including land within city limits, unless prohibited by city ordinance, on their own property so long as all applicable rules and regulations established by the Missouri department of natural resources are satisfied. All Missouri landowners who choose to use their own private water system shall not be forced to purchase water from any other water source system servicing their community.

NEW HAMPSHIRE
Revised Statutes Annotated of the State of New Hampshire Title XXXIV. Public Utilities
Chapter 362. Definition of Terms; Utilities Exempted

§ 362:4 Water Companies, When Public Utilities
V. No property owner shall be required to connect to a municipal corporation furnishing water, provided such property owner can demonstrate the ability to comply with the requirements of RSA 485-A:29 and RSA 485-A:30-b. The referenced code sections provide requirements for location and construction of wells.

GEORGIA
West's Code of Georgia Annotated
Title 36. Local Government
Provisions Applicable to Counties and Municipal Corporations
Chapter 60. General Provisions

§ 36-60-17.1. Single-family residential owner or farm served by private well
(a) No county, municipality, or local authority shall require a single-family residential property owner or farm served by a private well to connect with or use water supplied by a public water system, except where necessary to preclude the use of water obtained from such private well that is demonstrably unfit for human consumption or other intended use; nor shall it require such single-family residential property owner or farm whose water lines are not connected with such public water system to pay any charge or fee for water supply services made available but not used.

(b) Nothing in subsection (a) of this Code section shall preclude the repair or maintenance of a well serving a single-family residence so as to meet the requirements for allowing continued use of the same by a single-family residential property owner or farm without connecting to a public water system or payment of charges or fees in accordance with subsection (a) of this Code section. Such repairs shall be the sole responsibility of such owner.

(c) Subsections (a) and (b) of this Code section shall not apply to:

(1) Any public water system having more than a total of 70,000 active service connection accounts or more than 200 such accounts per square mile of total area served;

(2) A public water system with respect to a single-family residential property owner or farm who has been mailed written notice to his or her address of record on the property tax rolls by the appropriate county, municipality, or local authority by certified mail of his or her right to opt out of connecting with such system and paying charges or fees for system services made available but not used, if such property owner did not notify the county, municipality, or local authority in writing on a form provided thereby of his or her decision to exercise that option within 45 days after mailing of such notice by the county, municipality, or local authority;

(3) Any project of a public water system for which revenue bonds have been validated, issued, and sold prior to January 1, 2008; or

(4) Any public water system funded primarily through a federal or state grant that contains stipulations in such grant requiring the county, municipality, or local authority to levy a charge or fee for water supply services made available but not used. For all state grants, loans, or contracts for services issued on and after July 1, 2007, no state grant, loan, or contract for services funding any project of a public water system shall contain any stipulations requiring a county, municipality, or local authority to levy a charge or fee for water supply services made available but not used or requiring a county, municipality, or local authority to require single-family property owners or farms to connect with or use water supplied by a public water system, except where necessary to preclude the use of water obtained from another source that is demonstrably unfit for human consumption or other intended use. For the purposes of this paragraph, a federal grant is defined as money provided directly to a county or municipality. Federal money provided to a revolving loan fund or to the Georgia Environmental Finance Authority or such other mechanism shall not be considered a federal grant.

WATER SYSTEMS COUNCIL®

National Programs Office
1101 30th Street, N.W. • Suite 500 • Washington, DC • 20007 • Phone: 202-625-4387
Fax: 202-625-4363 • www.watersystemscouncil.org
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