

HOUSE No. 3937

The Commonwealth of Massachusetts

PRESENTED BY:

James Arciero and James B. Eldridge

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing the Littleton Common Smart Sewer District in the town of Littleton.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>James Arciero</i>	<i>2nd Middlesex</i>	<i>6/17/2019</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>6/17/2019</i>
<i>Nina Nazarian</i>	<i>Town Administrator, 37 Shattuck Street, Littleton, MA 01460</i>	<i>6/17/2019</i>

HOUSE No. 3937

By Representative Arciero of Westford and Senator Eldridge, a joint petition (accompanied by bill, House, No. 3937) of James Arciero, James B. Eldridge and Nina Nazarian (by vote of the town) that the town of Littleton be authorized to establish the Littleton Common smart sewer district. Municipalities and Regional Government. [Local Approval Received.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act establishing the Littleton Common Smart Sewer District in the town of Littleton.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Notwithstanding any general or special law to the contrary, the town of
2 Littleton is hereby authorized to lay out, construct, maintain and operate a system or systems of
3 common sewers and drains in public or private ways for that part of its territory as it adjudges
4 necessary for the public convenience or the public health with such connections and other works
5 as may be required for a system or systems of sewerage and drainage, and sewage treatment and
6 disposal. The resulting sewer district shall be called the Littleton common smart sewer district.
7 The district shall be under the supervision and control of the board of selectmen, who shall act as
8 sewer commissioners of the town of Littleton. The sewer system shall initially be laid out as
9 depicted in the attached plan of the Littleton common smart sewer district and the properties that
10 may be initially included within the district are described in the attached list which includes the
11 assessor’s map and lot number, street address, owner of record as of February 28, 2019 and
12 approximate acreage of same. The sewer system and district may be expanded in the future by a

13 vote of the board of selectmen and approval by town meeting; provided, however, that the
14 process for including or excluding properties in the district shall conform to Sections 3 and 4,
15 below. The district shall be organized, governed, and modified as set forth in this Act. All land
16 and buildings on the properties included in the district shall be served by the town's Community
17 Water and Energy Resource Center, as well as all sewer pipelines, pump stations and treatment
18 and disposal facilities included in the Littleton common smart sewer project. Project phasing will
19 limit the timing of sewer service to a subset of the properties included in the district, to be
20 determined by the town of Littleton based, in part, on the relative need for sewer service and
21 elective residential and tax-exempt property owner decisions to opt in or out of the district.

22 SECTION 2. The board of selectmen, in their capacity as sewer commissioners, shall
23 have all the powers and perform the duties of sewer commissioners as set forth in section 4 of
24 chapter 40N of the general laws. The board of selectmen shall have the authority to adopt rules
25 and regulations for access to and use of the wastewater system, as well as for the establishment
26 of sewer betterment assessments, sewer connection fees, and user fees and other charges which
27 shall be paid by every person who may in the future be served by, or connects to the sewer
28 system, as appropriate. Said fees shall be reasonably related to the capital and operational costs
29 of the sewer system. Supervision of the operation of the Littleton common smart sewer district
30 shall be the responsibility of the director of the town of Littleton department of public works,
31 pursuant to section 69 of chapter 41 of the general laws.

32 SECTION 3. Properties that are abutting a private or public way in which a common
33 sewer will be laid may have the opportunity to connect to the sewer system and become part of
34 the Littleton common smart sewer district, as determined by the board of selectmen in
35 accordance with Section 5, below. All commercial and industrial properties that are given access

36 to the sewer system shall be required to connect and become part of the district. Single and two-
37 family residential properties and properties owned by a tax-exempt organization that are given
38 access to the sewer system shall have the opportunity to permanently opt out of connecting to, or
39 making use of, the sewer system. However, if a property owner opts out of the Littleton common
40 smart sewer district, that property shall not be permitted to rejoin the district in the future without
41 approval of the board of selectmen and town meeting. Sufficient time will be allowed for the
42 owners of improved eligible properties to determine whether to opt out of the connection to, or
43 use of, the Littleton common smart sewer district. The town of Littleton shall develop, adopt, and
44 enforce policies and procedures to provide the option to opt out of the Littleton common smart
45 sewer district. Such policies and procedures shall include, at a minimum, the following
46 requirements that must be met before a property can opt out of the Littleton common smart sewer
47 district:

48 (1) The property owner must demonstrate that the subject property is eligible to opt-out
49 for one of the following reasons:

50 (a) The property has a functioning onsite wastewater treatment and disposal system as
51 evidenced by a Title 5 Inspection Report that demonstrates (i) that the existing onsite wastewater
52 treatment and disposal system is fully compliant with current Title 5 (310 CMR 15.00)
53 requirements except for lot line setback requirements for septic tank and/or leaching systems;
54 and (ii) that the existing onsite wastewater treatment and disposal system is operating and in
55 acceptable condition; or

56 (b) The property has a functioning onsite wastewater treatment and disposal system as
57 evidenced by (i) documentation that demonstrates that the existing on-site wastewater treatment

58 and disposal system or repair of same was installed after December 31, 2017 and (ii) that the
59 existing onsite wastewater treatment and disposal system is operating and in acceptable
60 condition; or

61 (c) The property is devoid of structures, has no on-site wastewater treatment and disposal
62 system and is prevented from future development through a legally enforceable deed restriction
63 on any such future development in perpetuity or has been previously deemed unbuildable by the
64 Littleton building inspector, with or without access or connection to the sewer system, as
65 demonstrated by documentation establishing these facts.

66 (2) A property owner's decision to opt out must be in writing and must acknowledge that
67 the property owner understands that by opting out of the Littleton common smart sewer district,
68 the property will not ever connect to, or make use of, the sewer system.

69 SECTION 4. Notwithstanding the provision of sections 1, 14, 15 of chapter 83 of the
70 general laws to the contrary, the board of selectmen may establish policies and procedures
71 addressing the assessment of sewer betterments to all properties that are located within the
72 Littleton common smart sewer district.

73 SECTION 5. The board of selectmen shall have the sole discretion to determine which
74 property owners shall be added to the Littleton common smart sewer district, subject to the
75 approval of the Littleton town meeting. The board of selectmen shall also have the sole
76 discretion to determine the amount of wastewater treatment system capacity allocated to each
77 user of the system. Applications for connection shall be reviewed by a representative of the
78 board of health, a representative of the planning board, and the director of the department of
79 public works, or their designees, who shall present a recommendation to the board of selectmen

80 regarding said application. In making said recommendation, the representatives and director, or
81 designees, shall consider the overall existing use of the property as represented in the application,
82 and, but for a change in use of the property, the economic benefit afforded by approval of the
83 application, the amount of available wastewater treatment capacity, and such other factors as the
84 representatives and director, or designees, shall deem appropriate, or as may be directed by the
85 board of selectmen.

86 SECTION 6. Prior to or upon the start of construction of the sewer system, properties that
87 have been given access to the sewer system and have not officially opted out of the Littleton
88 common smart sewer district, shall be required by the board of selectmen, or other duly
89 authorized officer having charge of the maintenance and repair of the sewer system, to connect
90 such land to the sewer system within two years of the date that the sewer is “approved for use”
91 and a “notice of sewer availability” has been issued by the board of selectmen or other duly
92 authorized officer and received by the property owner. No property owner may postpone their
93 connection to the sewer system later than this date unless an application to postpone such a
94 connection has been approved by the board of selectmen in accordance with section 7, below.

95 Such approved postponements shall delay connection to the public sewer but shall not
96 entitle the property owner to defer any sewer betterment payment that is approved by the Town.

97 SECTION 7. Postponements for connection to the sewer system may be allowed in
98 limited circumstances where all of the following have been satisfied: (a) the property is part of
99 the Littleton common smart sewer district; (b) the property owner has submitted to the board of
100 selectmen a signed and notarized application for a sewer connection postponement citing one or
101 more of the following reasons: (i) the property owner has an existing on-site sewage treatment

102 and disposal system operating and in acceptable condition, as demonstrated in a recent (within
103 the previous 60 days) Title 5 Inspection Report, which shall be submitted with the application for
104 sewer connection postponement; or (ii) the property has an existing on-site sewage treatment and
105 disposal system that was installed after December 31, 2017 in compliance with all Title 5
106 requirements and required no variances, except for septic tanks and/or leaching facilities Lot line
107 setback requirements, as demonstrated by documentation from the Littleton board of health or
108 the Nashoba Associated Board of Health, that demonstrates that the date of installation and
109 certification of the system or system repair meets the requirements set forth above, and states
110 further that the system meets all such requirements. The board of selectmen shall develop
111 policies and procedures within 180 days of approval of this Act, including procedures to apply
112 for an application for sewer connection postponement and all additional requirements to permit
113 such applications.

114 SECTION 8. The board of selectmen may enter into a payment deferral and recovery
115 agreement on behalf of the town of Littleton with the owner of a property that meets the
116 qualifications described herein and has been assessed a sewer betterment. In order to qualify for
117 the deferral and recovery agreement, the property shall have an existing onsite sewage treatment
118 system that is fully compliant with state regulations and meets the requirements established for
119 deferrals enumerated in Section 3 of this petition related to the onsite sewage treatment system.

120 The deferral and recovery agreement shall: (1) provide the deferral period, which shall
121 last no longer than ten years; (2) provide that the agreement shall terminate and the assessment
122 shall be due before the agreed term if title to the property is conveyed, the Title 5 system is
123 determined by the Littleton board of health to be a failed system, or the property is connected to

124 the sewer system; (3) provide that the property owner shall pay interest annually upon the
125 assessment from the time it was made; and

126 (4) include the written approval of any joint owner or mortgagee on the property.

127 The deferral and recovery agreement shall be recorded in the registry of deeds and shall
128 constitute a lien upon the property.

129 SECTION 9. Every decision by the board of selectmen, or duly authorized officer having
130 charge of the sewer system, permitting or denying a connection to the sewer system, shall be
131 made in writing. Any person aggrieved by such a decision may appeal said decision within 30
132 days of issuance pursuant to the provisions of Section 14 of chapter 30A of the General Laws.

133 SECTION 10. The board of selectmen may take by eminent domain pursuant to chapter
134 79 or chapter 80A of the general laws, or acquire by lease, purchase or otherwise, any lands,
135 sewer rights, and public or private rights of way or easements, located within the district and
136 necessary for accomplishing any purpose mentioned in this Act, and may construct such main
137 drains and sewers under or over any bridge, railroad, railway, boulevard or other public or
138 private way, or within the location of any railroad, and may enter upon and dig up any private
139 land, public or private way, or railroad location for the purpose of laying such drains and sewers
140 and of maintaining and repairing the same, and may do any other thing proper or necessary for
141 the purposes of this Act; provided however, that they shall not enter upon or construct any drain
142 or sewer within the location of any railroad corporation except at such time and in such manner
143 as they may agree upon with such corporation, or, in the case of failure to agree, as may be
144 approved by the department of public utilities, and that the manner in which all things done upon
145 any way shall be subject to the applicable bylaws and regulations of the town of Littleton.

146 Further, the board of selectmen or its employees or agents acting on behalf of the town of
147 Littleton may enter upon any land for the purpose of making surveys, test wells or test pits and
148 borings and may take or otherwise acquire the right to occupy temporarily any lands necessary
149 for the construction of any work or for any other purpose authorized by this Act, provided notice
150 is given and property is restored.

151

152 SECTION 11. All land taken or acquired under this act shall be managed, improved and
153 controlled by the board of selectmen in a manner as they shall consider as in the best interest of
154 Town in the operation of the sewer system.

155 SECTION 12. The board of selectmen shall have the benefit, without further acceptance
156 by Littleton town meeting, of the provisions of section 13B of chapter 80 of the general laws and
157 sections 16A to 16E, inclusive, and section 16G of chapter 83 of the general laws. Applications
158 for abatements in accordance with said section 16E of chapter 83 shall be made to the board of
159 selectmen within 30 days after the date of the demand.

160 SECTION 13. In carrying out the provisions of this Act, the town of Littleton shall not
161 discriminate against any person on the grounds of race, color, marital status, physical disability,
162 age, sex, sexual orientation, religion, ancestry or nation origin in any manner prohibited by the
163 laws of the United States, the commonwealth or the town of Littleton.

164 SECTION 14. Insofar as the provisions of this act are inconsistent with the provisions of
165 any general or special law, administrative order, or regulation, or any by-law, rule, regulation or
166 code of the town, other than rules and regulations or orders of the board of health or by-laws of

167 the town which require homes or facilities to be connected to the Littleton common smart sewer
168 district sewer system involuntarily, the provisions of this act shall be controlling.

169 SECTION 15. This act shall take effect upon its passage.