



**WESTBROOK CITY COUNCIL  
COMMITTEE OF THE WHOLE MEETING AGENDA  
MONDAY JANUARY 27, 2020 AT 6:00 PM  
WESTBROOK HIGH SCHOOL ROOM 114**



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Westbrook City Council's Committee of the Whole, chaired by Councilor David Morse, will meet on Monday January 27, 2020 at 6:00pm, immediately prior to a Special City Council meeting. The agenda items are as follows:

1. **Appeal of Sewer Commission Decision – Notice of Violation on Hawkes Street**



CLERK'S OFFICE



**Angela Holmes**  
*City Clerk & Registrar of Voters*  
2 York Street  
Westbrook, Maine 04092  
Phone: 207-591-8131  
Fax: 207-854-0635

January 10, 2020

Robert Moseley  
138 Hawkes Street  
Westbrook, ME 04092

Dear Mr. Moseley,

Westbrook City Council will hear your appeal of the Sewer Commission's decision to uphold your Notice of Violation on **Monday January 27, 2019**.

You will have an opportunity to present your appeal during a Committee of the Whole meeting scheduled for **6:00pm**. A Special City Council meeting will be held at **7:00pm**, immediately following the Committee meeting, at which time the Council will vote upon its decision.

The meetings will be held at Westbrook High School (125 Stroudwater Street), in Room 114.

Please let me know if you have any questions.

Sincerely,

Angela Holmes, CMC/CCM  
City Clerk & Registrar of Voters

cc: Katherine Kelley, Wastewater Manager  
Leah Rachin, Esq.



# City of Westbrook

## DEPARTMENT OF PUBLIC SERVICES & ENGINEERING

371 Saco Street

Westbrook, Maine 04092

(207) 854-0660

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To: Westbrook Sewer Commission  
From: Katherine Kelley (Wastewater Division)  
Subject: Sewer Incident – 138 Hawkes Street

To Whom It May Concern:

Over the past several months, we have been working with Robert Moseley at 138 Hawkes Street in an attempt to come to a resolution regarding his sewer connection from the sewer main to his house. Below is a discussion of the timeline of events.

On July 16<sup>th</sup>, 2019, EcoClean was brought in to investigate the sewer main on Hawkes Street due to the sink hole near 135 Hawkes Street. In viewing the video, we noticed the 138 Hawkes Street was disconnected from the sewer main. At this time, we believed that this sewer lateral was also causing another sink hole further down the street from the larger one at 135 Hawkes Street.

On September 6<sup>th</sup>, 2019, Mr. Moseley was sent a notice of violation for the separation of his sewer lateral from the main. Mr. Moseley came into the office after receiving the notice to discuss the situation and options available to him. He was informed of his option to file a claim with the City should he feel that this was a City error was advised to have his sewer line televised to make sure there weren't further issues with the line.

On September 30<sup>th</sup>, 2019, I was notified that Mr. Moseley had had his sewer line televised and located. It was then that the City discovered that the sink hole was not caused by his lateral. However, after measuring with a wheel and consulting the video again, it was confirmed that the City was correct that Mr. Moseley's sewer lateral was disconnected from the sewer main.

On October 2<sup>nd</sup>, 2019, a second notice of violation was sent. The section of the ordinance was incorrectly referenced. This reset his 90-day window to remedy his ordinance violation.

On October 7<sup>th</sup>, 2019, the City received a certified letter from Mr. Moseley appealing the notice of violation to the Westbrook Sewer Commission. Mr. Moseley has also submitted a FOAA request for any information pertaining to Hawkes Street in the past 15 years. The City Clerk is currently working to fulfill this request.

Supporting documentation for reference/verification will be attached to this letter.

Sincerely,  
Katherine S. Kelley, P.E.  
Wastewater Division Manager

Hawkes St  
Upstream MH: 101\_131  
Downstream  
Downstream MH: 101\_130  
Size: 8  
Vitrified Clay Pipe  
2019-07-16  
09:33  
Feet: 55.79 ft

-1.19 °  
698 mbar  
788 mbar  
53.80 ft

Separated Pipe  
from Main





# City of Westbrook

## DEPARTMENT OF PUBLIC SERVICES & ENGINEERING

2 York Street

Westbrook, Maine 04092

(207) 854-0638

Fax: 1-866-559-0642

### VIA CERTIFIED MAIL and U.S. Mail

### NOTICE OF VIOLATION

September 6, 2019

Robert E. Moseley  
138 Hawkes Street  
Westbrook, ME 04092

RE: Collapsed Lateral in the City Right-of-Way  
138 Hawkes Street (Map 33, Lot 59)

Dear Mr. Moseley,

You are hereby notified that you are in violation of the City of Westbrook Code of Ordinances Section 26-5 and 29-129 at 138 Hawkes Street in Westbrook, Maine. It has been found that your sewer lateral has disconnected from the main and collapsed causing a sink hole in Hawkes Street.

On September 5<sup>th</sup>, 2019, staff were on Hawkes Street to fill a sink hole created on Hawkes Street by a neighboring sewer connection. At the same time, it was noticed that a sink hole was seen in the area where your sewer connection is located. Upon further inspection through a closed-caption television inspection, we found that your sewer connection has separated from the sewer main causing a sink hole in the City right-of-way approximately 55 feet from the upstream manhole. Pictures of the failure are available upon request.

Westbrook Code of Ordinances Section 26-5 states that, "Every building intended for human habitation shall be provided with suitable and sufficient sanitary facilities for the use of the occupants thereof." With a broken sewer lateral, the building is not provided with a suitable and sufficient sanitary facility and could lead to further violations with the Code Enforcement Office.

Failure to remedy this illicit discharge in a 90-day period may result in a court action against you and you may be required to pay a fine. Title 30-A M.R.S.A. Subsection 4452 establishes a fine of \$100-\$2,500 for each violation of the Ordinance (a separate fine may be assessed for each day a violation continues). The City will seek an order for corrective action, a substantial fine, plus it's attorneys' fees and costs in such an action.

As permitted by Section 29-123 of the City of Westbrook Code of Ordinances, an appeal of this Notice of Violation may be taken to the Zoning Boards of Appeals within thirty (30) days of the date of this order, by submitting an application to the Zoning Board of Appeals, a written statement of the relief requested and why it should be granted. If you fail to appeal this decision, you may lose ability to contest this notice of violation in any subsequent proceedings.

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Please contact the Department of Engineering and Public Services at 371 Saco Street in Westbrook, Maine or by phone at 854-0660 if you have any questions concerning this violation or to make arrangements to bring your property into compliance. A list of the licensed contractor's in Westbrook is also available, since you will need to dig within the City right-of-way. Your address also needs to be updated through City Hall.

SIGNED,

A handwritten signature in black ink that reads "Katherine S. Kelley". The signature is written in a cursive style with a large initial 'K'.

Katherine S. Kelley, P.E.  
Wastewater Division Manager

CC: Eric Dudley, Director of Engineer & Public Services  
Daniel Vaughan, Wastewater Supervisor  
Linda Gain, Planning & Code Enforcement Coordinator



# City of Westbrook

DEPARTMENT OF PUBLIC SERVICES & ENGINEERING

2 York Street

Westbrook, Maine 04092

(207) 854-0638

Fax: 1-866-559-0642

**VIA CERTIFIED MAIL and U.S. Mail**

## **NOTICE OF VIOLATION**

October 2, 2019

Robert E. Moseley  
138 Hawkes Street  
Westbrook, ME 04092

RE: Collapsed Lateral in the City Right-of-Way  
138 Hawkes Street (Map 33, Lot 59)

Dear Mr. Moseley,

You are hereby notified that you are in violation of the City of Westbrook Code of Ordinances Section 26-5 at 138 Hawkes Street in Westbrook, Maine. It has been found that your sewer lateral has disconnected from the main and is not suitably sealed to prevent contamination of the surrounding area.

On September 5<sup>th</sup>, 2019, staff were on Hawkes Street to fill a sink hole created on Hawkes Street by a neighboring sewer connection. A sink hole was noticed further up the street. Upon further inspection through a closed-caption television inspection, we found that your sewer connection has separated from the sewer main in the City right-of-way approximately 55 feet from the upstream manhole, though is not yet creating a sink hole that can be seen at the pavement level.

Westbrook Code of Ordinances Section 26-5 states that, "Every building intended for human habitation shall be provided with suitable and sufficient sanitary facilities for the use of the occupants thereof." With a separated sewer lateral, the building is not provided with a suitable and sufficient sanitary facility and could lead to further violations with the Code Enforcement Office, should the connection continue to deteriorate.

Failure to remedy this illicit discharge in a 90-day period may result in a court action against you and you may be required to pay a fine. Title 30-A M.R.S.A. Subsection 4452 establishes a fine of \$100-\$2,500 for each violation of the Ordinance (a separate fine may be assessed for each day a violation continues). The City will seek an order for corrective action, a substantial fine, plus it's attorneys' fees and costs in such an action.

As permitted by Section 26-39 of the City of Westbrook Code of Ordinances, an appeal of this Notice of Violation may be written to the sewer commission in the form of a letter within ten (10) days of the date of the written notice detailing the relief requested and why it should be granted. Said person shall be afforded a hearing on the matter before the commission. A further right of appeal shall lie to the city council if filed

S:\PACE\KATHERINE'S\Sewer\Letters to Property Owners\138 Hawkes Street – Collapsed Lateral.doxc

within ten (10) days from the date of the hearing before the sewer commission. If you fail to appeal this decision, you may lose ability to contest this notice of violation in any subsequent proceedings.

Please contact the Department of Engineering and Public Services at 371 Saco Street in Westbrook, Maine or by phone at 854-0660 if you have any questions concerning this violation or to make arrangements to bring your property into compliance. A list of the licensed contractor's in Westbrook is also available, since you will need to dig within the City right-of-way.

SIGNED,

A handwritten signature in black ink that reads "Katherine S. Kelley". The signature is written in a cursive, flowing style.

Katherine S. Kelley, P.E.  
Wastewater Division Manager

CC: Eric Dudley, Director of Engineer & Public Services  
Daniel Vaughan, Wastewater Supervisor  
Linda Gain, Planning & Code Enforcement Coordinator

October 7, 2019

Sewer Commission  
City of Westbrook  
2 York Street  
Westbrook, ME  
04092

Dear Sewer Commission,

I am writing this Letter of Appeal in response to a Notice of Violation dated Oct.2, 2019 from the City of Westbrook Department of Public Services and Engineering/Wastewater Division.

This letter contends that my “sewer lateral has disconnected from the main and is not suitably sealed to prevent contamination of the surrounding area” and that I have 90 days from Oct. 2 to remedy the situation or face potential fines of \$100 to \$2500 for each violation of the ordinance.

I believe that the initial step in this process needs to be the 100% confirmation that my sewer lateral is actually disconnected. During my initial discussion of this issue with Katherine Kelly of the Wastewater Division, there seemed to be some doubt regarding the accuracy of the city’s claim. In response to the assertion, I hired Caiazzo and Sons Plumbers to conduct a video inspection of my sewer lateral. According to the technician who conducted the inspection, my lateral was in good shape and he felt that it was connected to the main. Additionally, he noted that my lateral was connected to the main approximately 62 feet from the upstream sewer manhole, which is 7 feet from the point of connection of 55 feet identified by the city. Prior to moving forward, I believe that it is essential that my point of connection be accurately identified; Katherine admitted to me that the city did not have sewer tie card for my lateral, so confirmation is essential.

While there remains some disagreement regarding the details of where my lateral connects to the main, there are additional factors that I believe must be considered.

The first issue pertains to the overall condition of the Hawkes Street sewer main. According to the document “Combined Sewer Overflow Master Plan Update Study for Westbrook Maine”, dated December 2008 and prepared by Woodward and Curran of Portland, Maine, there were identified problems with the Hawkes Street sewer main dating back at least to 2008. In the document on Table 8.1, there is a line item (N407) that identifies that a leaky sewer on Stroudwater St. and Hawkes Street needs to be repaired and that the estimated cost is \$219,000. In Table A1.1, List of Potential CSO Abatement Projects, Project N407 is further characterized as the repair of leaky sewers on Stroudwater and Hawkes Streets (540 feet), (Note: Sewer is very deep). According to Katherine, the city conducted repairs to the main using UV CIPP sometime during 2013/2014; it is unclear whether this has been the sole repair work conducted on the sewer main since 2008; I have requested all records of work done on Hawkes Street in the past 5 years but have not yet been provided with those records.

There are some indications that there could still be an issue with the integrity of the Hawkes Street sewer main. Within an approximately 75 foot span, there are at least 2 additional issues reportedly associated with the sewer main: 135 Hawkes Street has also been identified as having disconnected from the main and there is an additional depression in the street that the city has associated with an abandoned sewer lateral, although it is unclear how the latter could contribute to the formation of the depression. The fact that all of these issues have transpired in a relatively short time span raises the question of causality and if there is a common link; there are additional factors that also need to be explored when attempting to determine the cause of these issues.

Although the city has not yet provided details regarding all construction that has taken place on Hawkes Street in the past 5 years, it does appear that there is not a complete awareness of the full scope of construction that has resulted in Hawkes Street being opened up in the past 5 years. When I asked Katherine if she could provide me with this information, she noted that construction had been limited to the repair of the sink hole caused by 135 Hawkes Street and the UV CIPP work done in 2013/2014. It should be noted, however, that there was extensive work done on Hawkes Street in the summer of 2017 when Portland Water District opened up large sections of the street to work on the water main, necessitating that all residents connect to a temporary water main that lined the street for almost 3 weeks. Some of the issues described above are located in precisely the areas where these repairs took place and it is possible that this work affected the integrity of the sewer main.

I believe that the above partial evidence clearly demonstrates that there is reason to be concerned that there is an issue with the Hawkes Street sewer main and that the 3 problems described above are likely the result of prior issues with the sewer main. I would like to expand my request for all pertinent information regarding work conducted on Hawkes Street to reach back to a 10-year period and to include detailed maintenance records of the Hawkes Street sewer main. Related to the latter request, Kathy informed me that the city was aware of issues 5 years ago related to the main and that as recently as 2 years ago, there was some indication that there were problems with the sewer lateral at 138 Hawkes. Unfortunately, she was unable to provide any evidence that either myself or the previous owner of the home had been informed of these growing problems.

In closing, based on the evidence provided above (and pending a review of all requested information), I am requesting that this Notice of Violation be rescinded and that the City of Westbrook conduct a detailed investigation to determine the state of the Hawkes Street sewer main. I am confident that nothing that I have done while residing at 138 Hawkes Street has contributed to this issue; I am equally confident that work done by the City of Westbrook and Portland Water District are the likely root cause of issues with my sewer lateral, the lateral at 135 Hawkes and the damage caused by the abandoned sewer lateral.

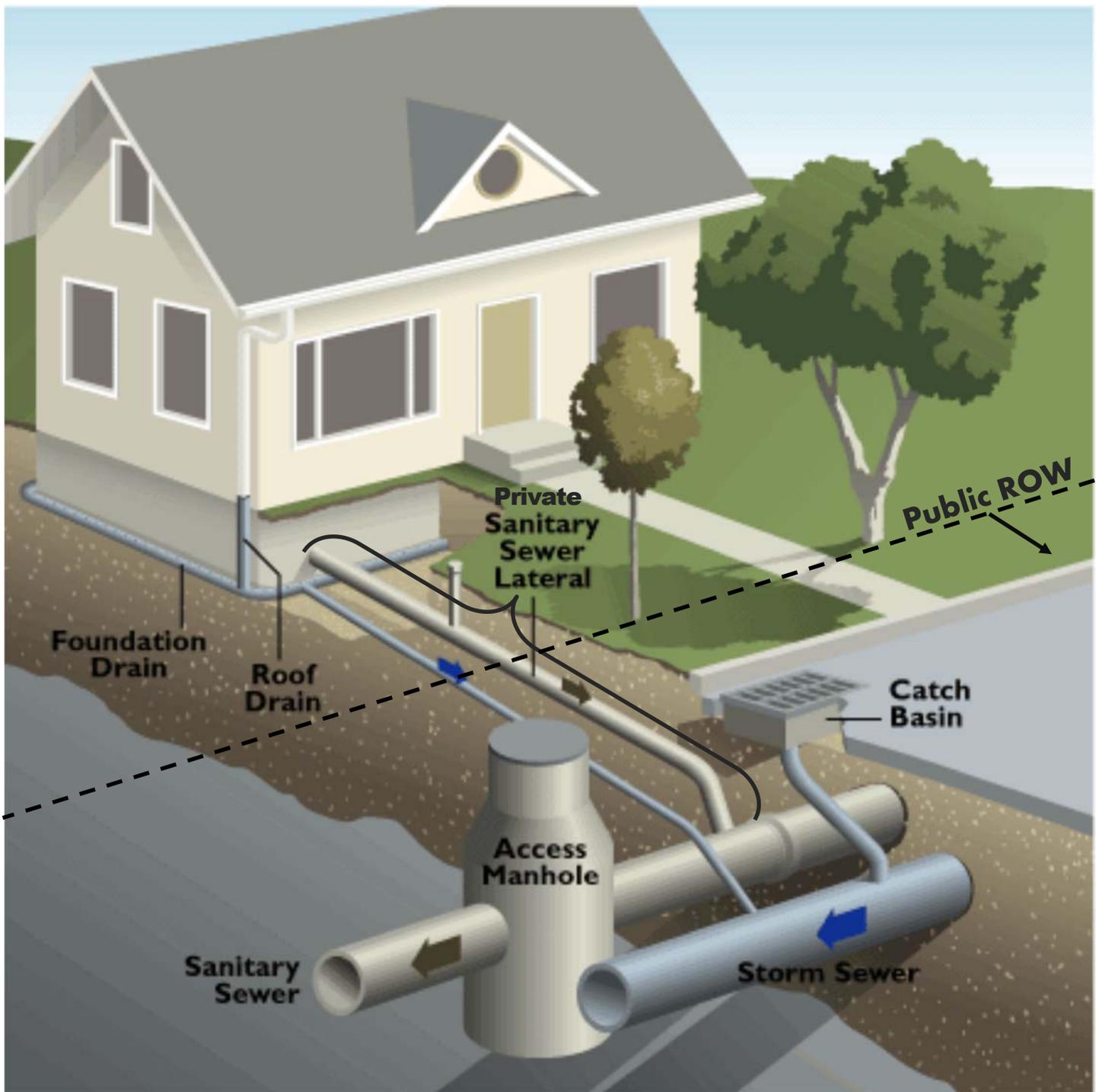
Sincerely,



Robert Moseley  
138 Hawkes Street  
Westbrook, ME  
04092

(207)-591-0602  
navymose2002@yahoo.com

# Typical Sewer Connection



Private sewer laterals are the responsibility of the property owner up to the public sewer main, even though part of it is in the public right-of-way per City of Westbrook Ordinance. This is the same for any utility like PWD or CMP where they are allowed to be in the public right-of-way but are responsible for their service.

December 2, 2019

City Council  
City of Westbrook  
2 York Street  
Westbrook, ME  
04092

Dear City Council,

This note is being sent in response to a Notice of Violation dated Oct.2, 2019 from the City of Westbrook Department of Public Services and Engineering/Wastewater Division and the subsequent appeal decision by the Westbrook Sewer Commission dated Nov. 25, 2019; I am writing to request a hearing with the City Council to discuss this case in more detail. I have included pertinent documents regarding this issue for you review.

Sincerely,



Robert Moseley  
138 Hawkes Street  
Westbrook, ME  
04092  
(207)-591-0602  
navymose2002@yahoo.com

October 7, 2019

Sewer Commission  
City of Westbrook  
2 York Street  
Westbrook, ME  
04092

Dear Sewer Commission,

I am writing this Letter of Appeal in response to a Notice of Violation dated Oct.2, 2019 from the City of Westbrook Department of Public Services and Engineering/Wastewater Division.

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Sincerely,

Robert Moseley  
138 Hawkes Street  
Westbrook, ME  
04092

(207)-591-0602  
navymose2002@yahoo.com

The Westbrook Sewer Commission met on Monday, November 25, 2019 to hear the appeal of Robert E. Moseley.

Mr. Moseley is the owner of property located at 138 Hawkes Street (Tax Map 33, Lot 59) (the "Property").

On October 2, 2019, Katherine Kelley, the City of Westbrook's Wastewater Division Manager, sent Mr. Moseley a Notice of Violation.

The Notice stated that Mr. Moseley's property was in violation of Section 26-6 of the City's Code of Ordinances (the "Code") because the sewer lateral for the Property had disconnected from the main sewer and was not suitably sealed to prevent contamination of the surrounding area.

The Commission has jurisdiction over this appeal under the provisions of Section 26-39 of the Code, which authorizes the Commission to hear appeals from notices of violation issued under the provisions of Section 26-38 of the Code. Because Mr. Moseley filed his appeal on October 7, the Commission determines that it was timely filed.

At its meeting, the Commission received evidence and testimony from Mr. Moseley, Michael Robin, Eric Dudley and Katherine Kelley.

Based upon that evidence and testimony, the Commission made the following determination:

The problem cited in the Notice of Violation is in the sewer lateral, which is the responsibility of the property owner under the Code. For this reason, the Commission upholds the Notice of Violation.

The Commission voted 2-0 (Reidman absent) to adopt this decision and findings and authorized Katherine Kelley to send the decision to Mr. Moseley, who agreed that it could be sent via email.

This decision may be appealed to the Westbrook City Council within 10 days of the date of the hearing (November 25, 2019). An appeal to the City Council is subject to the provisions of section 26-39(b) of the City Code.

