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# TOWN OF PELHAM

## Office of the Selectmen

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Pelham, NH 03076

### **SHERBURNE ROAD AREA TEMPORARY GROWTH MANAGEMENT ORDINANCE**

**Adopted March 7, 2023**

**Extended for 1-year by vote of the BOS March 5, 2024 (expiring March 7, 2025)**

**Extended for 1-year by vote of the BOS February 11, 2025 (Expiring March 7, 2026)**

#### **SECTION I:      TITLE**

This Ordinance shall be known and may be cited as the Sherburne Road Area Temporary Growth Management Ordinance of the Town of Pelham, New Hampshire.

#### **SECTION II:      AUTHORITY**

This Sherburne Road Area Temporary Growth Management Ordinance is enacted pursuant to the authority granted under N.H. RSA 674:23, Temporary Moratoria and Limitations on Building Permits and the Approval of Subdivisions and Site Plans.

#### **SECTION III:      PURPOSE**

This Ordinance is adopted to temporarily limit the issuance of building permits for new buildings and to also impose a moratorium on proposed subdivision and site plan applications to promote and ensure the orderly development of land on and roads off of the *Sherburne Road area*, within the Town of Pelham, which includes the following properties: *beginning at Map 39, Lot 1-103 (to include Scenic View Drive) and including all Map 39 Lots on Sherburne Road to the west of Lot 1-103, including all Lots on Map 38 and all Lots on Map 32.* The aim of this ordinance is to promote public health, safety, and welfare of its residents, and for the following specific purposes:

- A. To provide the Pelham Water Commission adequate time to research and provide discovery and solutions on inadequate suitable water supply issues for land on and roads off the ***Sherburne Road area*** by and through independent contractors.
- B. To ensure for the existing and future population of the Town of Pelham, that essential clean water will be available and will have sufficient capacity and quality to accommodate new and future development in this Sherburne Road area.

#### **SECTION IV: FINDINGS OF FACT**

- A. Public health, safety, and welfare concern remains at the top of Sherburne Road and elsewhere in this area, with water, lack of water, repeated fracking, private and community wells running out of water and contaminated wells.
- B. According to the 2022 Pelham Water Commission's Water Survey, some of the residents on Sherburne Road, Nicholas Lane, Marie Drive, Applewood Road, McGrath Road, and Chardonnay Road have run out of water, have contaminated water and have more than one private well drilled with fracking and/or have no water at all. The Town's most recent 2019 Chardonnay Subdivision's community well has run out of water in June 2022 and the residents at 16 Nicholas Lane are currently displaced.
- C. The Planning Board's RSA 674:23, III (b) written findings that set forth the circumstances giving rise to the need for this ordinance are attached as Exhibit A.

#### **SECTION V: ENACTMENT**

The Town of Pelham Planning Board or Zoning Board of Adjustment shall not formally accept or act upon any site plan applications for land on and or roads off of the ***Sherburne Road area*** within the Town of Pelham for Residential Housing, Duplex Housing, Multi-Family Housing, Apartments, Condominiums or any Minor and/or Major subdivision applications as defined within the Pelham Zoning

Ordinance until the expiration of this temporary ordinance, or upon demonstration that any such land has suitable municipal water or Pennichuck Water supply is made available to properties subject to this Sherburne Road Area Temporary Growth Management Ordinance.

This interim ordinance shall apply to any building permit, subdivision or site plan application for Residential Housing, Duplex Housing, Multi-Family Housing, Apartments, Condominiums, for any subdivision of land for residential purposes and non-residential site plans, on any land located within the Sherburne Road area in Section III identified above.

#### **SECTION VI: EXPIRATION**

This interim ordinance shall remain in effect for a period of 365 days from the date of enactment.

The Town of Pelham Planning Board may repeal this Temporary Growth Management Ordinance sooner than the expiration date if, in its judgment and after appropriate public hearings, the usual circumstances requiring its enactment no longer apply and its repeal is justified by the availability of suitable water supplies.

#### **SECTION VII: EXEMPT APPLICATIONS**

The provisions of this interim ordinance shall apply to all properties within the Sherburne Road area unless the property owner can demonstrate that the owner's property has either access to a fully suitable public water supply source, or that the owner can demonstrate that an existing lot or each proposed individual lot has sufficient water capacity and water quality to meet the proposed lot's land use water supply needs and requirements.

#### **SECTION VIII: CONFLICTS**

Where any provisions of this interim ordinance impose restrictions different than those imposed by any other provision of ordinances of the Town of Pelham, or any

other rule or regulation, or other provision of law, whichever provision is more restrictive or imposes higher standards shall control.

#### **SECTION IX: SEPARABILITY**

If any provision of this interim ordinance or the application thereof to any person or circumstances is adjudged invalid by a court or competent jurisdiction, such judgment shall not affect or impair the validity of the remainder of this interim regulation of the application thereof to other persons or circumstances.

Town of Pelham Planning Board Written Findings and Recommendations for Temporary Moratoria  
(RSA 674:23)

Pursuant to the RSA 674:23, the Pelham Planning Board finds that the legislative body of the Town of Pelham should adopt an ordinance establishing a moratorium on the issuance of building permits for new Single Family Residential Housing, Duplex Housing, Multi Family Housing, Apartment Housing and Condominium Housing and the granting of site plan and subdivision approvals for a period of one year on the “**Sherburne Road areas**”, within the Town of Pelham defined as beginning at Map 39 Lot 1-103 (to include Scenic View Drive) and including all Map 39 Lots on Sherburne Road to the west of Lot 1-103, and all Lots included on Map 38 and all Lots included on Map 32.

These findings are forward-looking. Applications that have been approved prior to the date of any ordinance adopted based on these findings are exempt from the proposed ordinance.

Based on information provided by the Pelham Water Commission and the 2022 Pelham Water Commission Survey, continued development will significantly impact the natural resources for the existing private wells and community wells of the Sherburne Road residents located within the “Sherburne Road area”.

Based on information provided by the Pelham Water Commission the “Sherburne Road areas” have been declared a hardship area within the Town of Pelham and deemed a Public Safety and Welfare Concern with water, lack of water, repeated fracking, private wells running out of water, community wells running out of water, contaminated wells and one family currently displaced from their home because they have no water

Due to the potential for the unplanned stress on the natural resources within the “Sherburne Road areas” the Pelham Planning Board recommends that any ordinance(s) adopted by the legislative body under the RSA 674:23 include the following:

- Establish a moratorium on the approval of site plans and subdivisions in the “Sherburne Road areas”, within the Town of Pelham, which includes the following properties:

**Beginning at Map 39 Lot 1-103 (to include Scenic View Drive) and including all Map 39 Lots on Sherburne Road to the west of Lot 1-103, and all Lots included on Map 38 and all Lots included on Map 32 for a period of one year.**

- Establish a moratorium on the issuance of building permits for new Single Family Residential Housing, Duplex Housing, Multi Family Housing, Apartment Housing and Condominium Housing for the “Sherburne Road areas” for one year.
- Building permits for lots created by subdivisions approved prior to the adoption of any ordinance based on these findings are exempt from this moratorium.
- Applications that have been approved prior to the date of the adopted ordinance are exempt from this moratorium.
- The Pelham Planning Board may repeal this temporary moratorium sooner than the expiration date if, in its judgment and after appropriate public hearings, the usual circumstances require its enactment no longer apply and its repeal is justified if the property owner can demonstrate that the owner’s property has access to a fully suitable public water supply source.
- The Pelham Planning Board shall work with the Pelham Water Commission in their continued efforts of research and discovery by and through independent contractors to provide a solution on the inadequate suitable water supply issues pertaining to the Sherburne Road area as described in Section III
- The Pelham Planning Board shall work with the Pelham Master Plan Subcommittee and Resilience Planning and Design, LLC in completion of the 2023 Pelham Master Plan