

LOCAL LAW # 4 of 2019
TOWN OF BOLTON
A LOCAL LAW ENTITLED:
“BOLTON SEPTIC INSPECTION PROGRAM”

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF BOLTON AS FOLLOWS:

SECTION 1. TOWN OF BOLTON TOWN LOCAL LAW # 4 of 2019 is hereby enacted as follows:

A. Title: This Local Law shall be known as “Bolton Septic Inspection Program” (“**B-SIP**”).

B. Statutory Authority: Enactment of this Local Law is pursuant to powers vested in the Town Board for the Town of Bolton pursuant to the provisions of New York State Town Law, New York State General Municipal Law and New York State Public Health Law.

C. Intent and Findings: The intent of this Local Law is to protect groundwater, surface waterbodies and soils from contaminating exposure to excess nutrients and pollutants. The Town of Bolton finds that the occurrence of such excess nutrients and pollutants can be increased by the presence of inadequately functioning septic systems. Poorly maintained, aging or failing septic systems pose a threat to public health with particularly acute impacts upon the general public through contaminated drinking water and can create widespread negative environmental impacts impairing recreational opportunities and contaminating precious ecological resources within the Town of Bolton. In determining the areas of application of this Local Law, the Town finds that it is appropriate to include all developed real properties, situate within the municipality, serviced by an onsite wastewater treatment system.

D. Compliance Required: Except where specifically exempted by the provisions hereof, or otherwise exempted by the application of a federal or state law, this Local Law shall apply to all conveyances of real property by deed or testamentary instrument transferring ownership of a developed real property serviced by a septic system where those premises are not exclusively serviced by a municipal sewer line and the septic system servicing the real property is located wholly or partially within the Town of Bolton, Warren County, New York.

E. Definitions: The following meanings shall be ascribed to the words or phrases specific to this Local Law:

1. **Conveyance:** The transfer of ownership of real property by a deed instrument or by a testamentary instrument.

2. **Qualified Inspector:** A natural person, corporation or similar business entity who

- a) by authority, certification or license “in good standing” granted by the State of New York is a professional engineer, or septic system engineer/designer, or
- b) by current certification, training or licensing in the discipline(s) of septic system design, septic installation and/or septic inspection such inspector has been trained by the New York Onsite Wastewater Treatment Training Network, Inc. (OTN), or equivalent training recognized by the New York State Department of Health or the New York State Department of Environmental Conservation, or
- c) by current certification, training or licensing such inspector is qualified in the discipline of home inspections encompassing training in septic system inspections issued by the New York State Department of State, Division of Licensing Services, or
- d) by current certification, training or licensing in the discipline of septic system design or septic system inspections such inspector is approved or authorized by the New York State Department of Health or the New York State Department of Environmental Conservation.

3. **OSWT Inspection:** A professional assessment of an onsite waste water treatment system, occurring in advance of the transfer of ownership to real property by deed or testamentary instrument to a new owner being conducted by a Qualified Inspector for the purposes of determining a septic system’s substantial satisfactory performance in compliance with the applicable New York State Department of Health Schedule 75A and the Town of Bolton Sanitary Sewage Disposal Ordinance #36 requirements then in effect at the time of the permitted installation of the septic system.

4. **Septic system:** Any self-contained, underground, onsite wastewater devices or processes designed or installed for the collection and treatment of household, commercial or industrial effluents and/or sewage and where a municipal sewer service “hook up” is not utilized at the real property. Also referenced herein as an OSWT.

F. Inspection Prior to Conveyance of Real Property.

1. Prior to any conveyance of a developed real property in the Town of Bolton where the improved property utilizes an On-Site Wastewater Treatment System (OSWT), the OSWT shall be inspected by a Qualified Inspector who shall certify in a written report to the Planning Office (on a Town of Bolton Reporting Form), the pre-conveyance condition(s) of the inspected OSWT. The OSWT inspection shall first require a pre-inspection surcharge of the septic tank and absorption field with an average daily flow volume (i.e., flush all toilets, run all water for a period of time) to check the septic system for failure prior to pumping out, followed by a pre-inspection septic tank pump out by a contractor possessing a valid New York State Part 364 Waste Transporter Permit with valid authorization to transport septage. Further, all seepage pits and septic drainfield

distribution boxes (D-box) accepting effluent from a septic tank must be uncovered and opened by the property owner or their agent prior for the OSWT inspection. The pre-inspection septic tank pump out and OSWT inspection shall be arranged by the property owner as early in the real property conveyancing process as possible in order to secure an accurate and timely inspection of the OSWT with a required notification to the Town of Bolton Planning Office and to the third party transferee.

2. Any transfer of title by deed or testamentary instrument of any developed real property subject to this Local Law shall be considered incomplete and not in compliance with the requirements of this Local Law, until and unless:

(i) the owner/seller/transferor has obtained, from the Planning Office a Certificate of Satisfactory Septic Inspection constituting a written acknowledgment from the Town of Bolton demonstrating satisfactory compliance with this Local Law, or

(ii) the owner/seller/transferor has obtained a variance from any requirement imposed hereunder issued by the Local Board of Health in accordance with the provisions of this Local Law, or

(iii) the owner/seller/transferor has obtained a written approval for a deferral issued by the Planning Office in accordance with the provisions of this Local Law, or

(iv) the conveyance is exempt from the pre-closing real property conveyancing inspection requirements and the owner/seller/transferor qualifies within all applicable provisions for exemption as set forth in this Local Law.

3. It shall be violation of this Local Law not to substantially conform to the OSWT inspection requirements specified herein. “After the Fact” compliance in conformity with the requirements of this Local Law shall be the obligation of the new record of owner of the real property whereby in “good faith” and under circumstances of oversight, lack of notice or other legitimate reason a pre-closing septic system inspection and satisfactory result did not occur “ in good faith” prior to a real estate closing and transfer of title. Under such circumstances the new owner of the real property shall comply within the period of one hundred and twenty (120) days after notification from the Planning Office specifying all compliance requirements. Any willful or neglectful failure to timely complete an “after the fact” satisfactory compliance, conforming to the requirements of this Local Law shall constitute a violation.

4. Upon a satisfactory OSWT inspection, in accordance with the protocols set forth herein, the Planning Office shall issue in the name of the current property owner a written Certificate of Satisfactory Septic Inspection confirming that the OSWT has been inspected and the results of such inspection are in substantial conformity with the requirements of this Local Law. Issuance of such a written certification dated within three

years prior to the actual conveyance of the developed real property shall constitute presumptive proof of compliance with this Local Law.

5. The OSWT inspection standards shall conform to the specifications provided in the materials provided by the Town of Bolton Planning Office as approved by the Town Board and such forms shall be made available on the Town of Bolton Website and from the Planning Office. The following minimum standards shall apply to each OSWT inspection:

(i) A residential OSWT shall be in substantial compliance with the APPENDIX 75A of the New York State Department of Health Waste Water Treatment Standards for Residential onsite wastewater treatment systems and the Town of Bolton Sanitary Sewage Disposal Ordinance #36 in effect at the time of the permitted installation of the septic system.

(ii) Where required by law, an OSWT shall be in compliance with any New York State Pollutant Discharge Elimination System (SPDES) Permit or permit issued by New York State Department of Health issued for the real property.

(iii) All holding tanks shall be equipped with a float switch and high level shut off alarm located in a conspicuous place to indicate when a holding tank pump out shall be necessary. The high level alarm shall be connected to a solenoid water shut off valve and function as designed. A written copy of all holding tank pump out records shall be maintained by the property owner or the owner's agent and shall be available for Planning Office review and inspection;

(iv) For an aerobic treatment system or enhanced treatment unit (ETU), the new real property owner shall provide a signed copy of an updated service contract to the Planning Office no later than sixty (60) days after the conveyance of real property and copies of subsequent years' service contracts when requested by the Planning Office;

(v) Upon an OSWT inspection and where an OSWT is determined to be failing or inadequate, the Qualified Inspector shall notify the Planning Office and a written Notice of Violation and Order to Remedy shall be issued by the Planning Office and provided to the record owner of the real property. A compliance agreement between the Local Board of Health or its designee and the record owner, with an approval by the Town of Bolton's engineering consultant, demonstrating a plan to correct each OSWT failure or deficiency shall be required prior to the conveyance of real property. The cost of a Town engineer's review and report, in the furtherance of resolving a Notice of Violation and Order to Remedy shall be at the expense of the record owner of the property unless otherwise allocated between the parties to the real property conveyance. The Town of Bolton shall be entitled to reimbursement for the Town engineer's review and report in resolving a Notice of Violation and Order to Remedy prior to the issuance of any Town of Bolton certification of a satisfactory OSWT inspection.

G. Exemption and/or Deferrals. Certain conveyances of real property may be exempt from the provisions of this Local Law or deferred where circumstances so require, in the following situations and pursuant to the conditions identified below:

1. Where the real property to be conveyed is not intended to be inhabited, and the new owner plans to demolish each existing structure served by the existing OSWT an exemption or deferral may apply. In order to qualify for an exemption, a notarized affidavit signed by the purchaser shall be provided to the Planning Office certifying that:

(a) any existing dwelling on the real property will not be inhabited and each dwelling is to be demolished with no immediate plans to rebuild or

(b) the dwelling(s) on the real property will not be inhabited; will be demolished and rebuilt in conformity with current OSWT requirements. In the instance where a demolished property is intended to be rebuilt, and were a deferral is appropriate, such affidavit shall be submitted to the Planning Office accompanied by a project site plan application providing adequate detail sufficient to demonstrate a proposed compliant OSWT. The Town of Bolton, Local Board of Health may in a proper case require a security deposit to be provided by the record owner, in an amount sufficient to secure the future assurances of OSWT compliance. Such security shall be held in a non-interest bearing escrow account by the Town of Bolton to be released to the record owner of the real property upon conclusion of the demolition, or in the case of development, upon final inspection by the Town of Bolton approving the OSWT.

2. Upon a showing of “good cause”, a temporary deferral of the time requirements for an OSWT inspection or post inspection, repair or replacement may be authorized in writing by the Zoning Administrator due to winter weather conditions or other constraints. In order to qualify for such temporary deferral, a notarized affidavit from the proposed new property owner providing assurance of a complete and satisfactory OSWT inspection within six (6) months of the date of the conveyance of real property, or June 1, whichever occurs first, shall be filed with the Planning Office. The Town of Bolton Local Board of Health may in a proper case require a security deposit to be provided by the record owner, in an amount sufficient to secure the future assurances of OSWT compliance. Such security shall be held in a non-interest bearing escrow account to be released to the real property owner of record upon the completion of a timely and satisfactory OSWT inspection.

3. Where the real property with an OSWT system is being conveyed from a trustee in bankruptcy, a court appointed receiver, a court appointed referee or upon execution by a judgment creditor in a Sheriff’s sale , the new owner/purchaser or transferee, shall assume the obligations imposed by this Local Law and compliance shall be required within six months of the recording of the instrument of conveyance.

4. Where the Planning Office retains an existing OSWT Inspection record of the real property’s OSWT system having satisfied all of the requirements of this Local Law or a septic permit issued and approved and on file with the Town of Bolton Planning

Office evidencing satisfactory inspection or new installation within a period of three (3) years prior to the date of the proposed conveyance of the same property, an additional OSWT inspection shall not be required as a pre-requisite to any conveyance.

5. Where there is an existing OSWT on developed real property and the existing OSWT shall be terminated, providing that the developed real property is to be “hooked up” with an existing and available municipal sewer service, no OSWT Inspection shall be required upon the further requirement that the municipal sewer service hook up shall occur prior or simultaneously with the conveyance of the real property with the further requirement that the property owner shall undertake a prompt remediation and removal of existing OSWT components.

6. Upon a failure to complete any required OSWT inspection; or any failure to complete all OSWT repairs/installation requirements identified by the OSWT inspection within the time specified or any subsequent deadline extended in writing by the Planning Office, such circumstances, in the sole discretion of the Local Board of Health, shall constitute sufficient cause for the forfeiture of any security deposit held in escrow. Under such circumstances the Town may utilize security deposit funds to cover any expenses required to abate the conditions caused by such failure and such forfeiture of security deposit shall be in addition to all enforcement opportunities available to the Town of Bolton including all remedies available in law or equity.

H. Failure of OSWT. An OSWT Pre-closing Inspection of an existing OSWT shall be deemed a substantial failure and/or the OSWT shall be considered a substantially non-compliant OSWT where the standards for a compliant OSWT, as specified within, are deemed upon inspection to be unsatisfactory. A non-compliant or substantially unsatisfactory OSWT includes the following examples:

1. Lack of a pre-treatment vessel (e.g., no septic tank, no aerobic treatment unit, no ETU, etc.) prior to effluent discharge to any subsurface treatment (soil treatment area or absorption field);
2. Where there is a discharge of effluent directly or indirectly to the ground's surface, with surface breakouts, ponding or saturated soil areas;
3. Where there is a direct pipe surface discharge of grey water (into a drywell, over an embankment, into a roadside ditch or stream/tributary, etc.);
4. Where a dye test results in the presence of dye on the ground surface or found in an adjacent / downstream waterbody;
5. Where there is a backup of sewage into the dwelling building, septic tank or facility as a result of a system overload or malfunction, or a clogged soil treatment area;
6. Where the existing septic tank requires pumping more than four times per year and/or sewage, septage of effluent is observed upon inspection flowing back into the septic tank from the secondary treatment area during pump out;

7. The presence of a metal septic tank;
8. The presence of a cesspool, defined as a covered hole or pit used to receive untreated sewage from any occupied structure being utilized as a primary source of wastewater disposal;
9. The presence of a holding tank that discharges effluent to surrounding sub-surface areas.
10. Where a septic tank, seepage pit, enhanced treatment unit (ETU) or soil treatment area (STA) upon inspection is found to be discharging to any outlet.
11. Every substantial failure or substantial non-conformity with the requirements of New York State Department of Health Appendix 75A or the Town of Bolton Sanitary Sewage Disposal Ordinance #36.
12. Every substantial failure or substantial non-conformity with the requirements of a validly issued and current SPDES permit or New York State Department of Health approval permit.

I. Access to Parcel for Inspection. Whenever an OSWT inspection has been undertaken pursuant to this Local Law, the Town of Bolton upon reasonable notice and during regular business hours, unless required by emergency circumstances, shall be presumed to be authorized by the real property owner to enter the premises in order to determine compliance with this Local Law.

J. Administrative Review. Appeals of any written determination of any Town of Bolton public official or their agents and/or requests for a variance from the strict application of the requirements of this Local Law shall be considered by Town of Bolton Town Board as the Local Board of Health. A variance application shall be made in a timely manner and an appeal from a determination of any Town of Bolton public official shall be timely when submitted in writing to the Town Clerk within sixty (60) days of the determination appealed from.

1. Administrative appeal from a determination of a public official and/or an application for a variance from the strict application of the requirements of this Local Law shall be presented in writing to the Local Board of Health and the applicant shall state the grounds for the relief sought. Each administrative appeal from a determination of a public official and/or an application for a variance addressed to the Local Board of Health shall be served upon the Town Clerk and the Planning Office within the time limits specified herein. No fee shall be imposed upon the submission of such Administrative appeal or application for variance.

2. In evaluating appeals or requests for variances from the requirements of this Local Law, the applicant shall be required to demonstrate by a preponderance of the evidence that the enforcement of any specific provision of this Local Law imposes a practical difficulty or undue hardship upon the applicant's real property. The Town Board

constituted as a Local Board of Health shall conduct a public hearing, upon notice to all owners of record owning real property within five hundred feet of the subject property, and upon conclusion of such hearing consider all relevant information, including any evidence or information submitted by the applicant, all relevant environmental impacts, any relevant information obtained from the Planning Office, and any comments from the public and recommendations from the consulting town engineer. In the event additional information is required, the Local Board of Health may direct a subsequent inspection of the OSWT at issue, in which case the applicant shall not be required to provide any additional municipal inspection fee.

3. Upon any appeal or a request for variance from the requirements of this Local Law, such applications presented to the Town Board, constituted as a Local Board of Health, shall require a public hearing to be conducted upon ten (10) days published public notice, and when conducted, take into consideration the age of the existing OSWT, whether the system appears to be satisfactorily functioning, its proximity to any waterbody, watercourse or stream, the circumstances concerning the appeal, or upon request for variance, any undue hardship to the property owner, the effect, if any, upon nearby real properties, the practical difficulties in strictly complying with the requirements of the Local Law, comments from the general public, recommendations of the Town's engineering consultant and all other matters relevant to the issue as determined by the Local Board of Health.

4. A decision of the Town Board constituted as a Local Board of Health shall be considered a "final determination" subject to further appeal in any court of competent jurisdiction as an Article 78 Proceeding.

5. Duties imposed upon owners of real property by the application of this Local Law shall not be considered delegable or transferable to any third party unless expressly provided for herein or consented to by a resolution of the Local Board of Health.

K. Notice of Violation and Penalties

1. A person who shall fail to comply with an obligation imposed by this Local Law or with any provision specified by this Local Law, shall be entitled to a Notice of Violation and Order to Remedy to be issued to the real property owner of record by the Planning Office specifying the OWTS compliance issues and mandating compliance within a reasonable specified period of time.

2. In the event that any real property owner or occupant of the real property is issued a Notice of Violation and Order to Remedy, or a subsequent real property owner is deemed to be in violation of this Local Law, in either case, each specific allegation of a failure to comply shall constitute a separate violation.

3. Each offense against any provision of this Local Law shall constitute a separate violation, punishable by a fine not to exceed Five Hundred Dollars (\$500.00). Each week

any violation continues after service of a Notice of Violation and Order to Remedy upon the responsible person(s) such offense shall constitute a separate violation when separately charged.

SECTION 2. Severability

Where any clause, sentence, paragraph, subdivision, section, or part of this Local Law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, and such adjudication shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this Local Law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

SECTION 3. Effective Date

This Local Law **shall be deemed take effect** in accordance with the requirements of law.