

LOCAL LAW NO.: \_\_ OF 2018

A LOCAL LAW ENACTING CHAPTER 137 ENTITLED "SEPTIC INSPECTION UPON PROPERTY TRANSFER" TO THE QUEENSBURY TOWN CODE

***BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF QUEENSBURY AS FOLLOWS:***

**SECTION 1.** Queensbury Town Code Chapter 137, "Septic Inspection Upon Property Transfer" is hereby enacted as follows:

**§ 137-1. Title.** This Chapter shall be known as "Septic Inspection Upon Property Transfer."

**§ 137-2. Statutory Authority.** Enactment of Chapter 137 of the Queensbury Town Code is pursuant to Article 16 of the Town Law and Article 3 of the Public Health Law.

**§ 137-3. Findings and Intent.** The intent of this Chapter is to better protect waterbodies from exposure to excess nutrients and pollutants. The Town of Queensbury finds that the occurrence of such nutrients and pollutants is increased by the presence of inadequately functioning septic systems proximate to waterbodies. In addition, such septic systems are more likely to be a threat to public health with particularly acute impacts upon the general public through impairing and contaminating precious ecological resources of the Town of Queensbury and rendering drinking water unsafe. In determining the geographic scope of this Chapter, the Town further finds that it is desirable and efficient to rely upon the zoning district boundaries of the Town of Queensbury Waterfront Residential (WR) zone as properties within this zoning district are proximate to waterbodies within the Town. As to waterbodies not surrounded or adjacent to such zoning district, such properties are zoned in such a manner that has adequately protected and will continue to protect such waterbodies and additional regulation is not currently needed in such areas at this time

## **§ 137-4. Compliance Required.**

### **A. Applicability.**

This Local Law shall apply to conveyances of real property located wholly or partially in the Waterfront Residential Zone, as defined in the Town Code, occurring on September 1, 2018, and thereafter.

### **B. Property Transfer Inspections.**

1. Prior to all conveyance of real property in the Town of Queensbury Waterfront Residential (WR) Zone where the property utilizes an On-site Wastewater Treatment System (OWTS), the OWTS must be inspected by the Town of Queensbury Building and Codes Enforcement Office (herein referred to as the Building and Codes Enforcement Office). The inspection shall include a septic tank pump out by a NYSDEC registered septic hauler and 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 to inspection. The property transfer inspection and pump out shall be arranged by the property owner as early in the conveyance of real property process as possible in order to obtain an accurate and timely assessment of the OWTS. The property owner must make arrangements with the Building and Codes Enforcement Office to schedule the inspection no less than forty eight (48) hours advance notice and shall coordinate with the septic hauler to be on site simultaneously. The cost of the inspection, as set forth in the Town's Fee Schedule Ordinance, shall be paid to the Town of Queensbury prior the inspection.

2. No such conveyance shall take place pursuant to this Chapter until and unless 1) the owner/seller has obtained from the Building and Codes Enforcement Office, a letter of acknowledgement demonstrating satisfactory compliance with this Section; 2) the owner/seller has obtained a variance/waiver from the Town Board in accordance with this Chapter; or 3) the conveyance is exempt from the property transfer inspection requirements and the owner/seller compliance with all applicable provisions for exemption set forth in this Chapter.

3. As used herein, the term “conveyance of real property” shall mean the transfer of the title of real estate, in the form of a deed or other legal instrument, whether recorded in the Office of the Warren County Clerk. It shall be violation of this law not to have the property inspected prior to the conveyance of real property.

4. The Building and Codes Enforcement Office will issue to the property owner a letter of acknowledgment demonstrating compliance with this Section following inspection if 1) the OWTS complies with all applicable design standard requirements set forth in Town Code Chapter 136, this Chapter, Appendix 75-A and the NYSDEC Design Standards, and is functioning adequately or 2) the OWTS is a Preexisting System pursuant to Chapter 136 of this Code and the system inspection was satisfactory pursuant to the New York Onsite Wastewater Treatment Training Network (OTN) System Inspection Site Report evaluation.

5. The OWTS inspection shall utilize the New York Onsite Wastewater Treatment Training Network materials, including the *OTN System Inspection Request Form*, *Findings Worksheet* and *Site Report (Inspection Findings)* all of which shall be available in the Building and Codes Enforcement Office. The following minimum standards shall apply to each inspection:

a. All septic tanks must be within two hundred fifty (250) gallons of the minimum volume requirement;

b. All holding tanks shall be equipped with a float switch and high level alarm located in a conspicuous place to indicate when pump out is necessary. A copy of pump out records shall be submitted during the inspection prior to conveyance of real property;

c. For an aerobic treatment system or enhanced treatment unit (ETU), the new owner must send a signed copy of an updated service contract to the Town within thirty (30) days after the conveyance of real property;

d. If the onsite wastewater treatment system is determined to be failing or inadequate, a written Notice of Violation will be issued. An approved compliance agreement to correct the violation must be obtained prior to conveyance of real property;

e. If the property was the subject of a letter of acknowledgement from the Building and Codes Enforcement Office within 12 months prior to the conveyance, the provisions of this Section have been met and no additional inspection shall be necessary to comply with this Section.

**C. Exemption from Property Transfer Inspection.** The following conveyances of real property shall be exempt from the provisions of this law in the following situations and pursuant to the terms identified below:

1. The property to be sold or transferred will not be inhabited, and the new owner plans to demolish the existing structure. In order to qualify for the exemption, a notarized affidavit must be submitted to the Building and Codes Enforcement Office stating that a) the dwelling will not be inhabited and that it will be demolished with no immediate plans to rebuild or b) the dwelling will not be inhabited, it will be demolished and rebuilt in which case the Affidavit shall be accompanied by a site plan including adequate detail to demonstrate a lawful OWTS together with a check payable to the Town of Queensbury in the amount of Two Thousand Dollars (\$2,000). Such funds will be held in a non-interest bearing escrow account and will be released in the former case, upon issuance of a Demolition permit and, in the latter case, upon issuance of a Certificate of Occupancy from the Building and Codes Enforcement Office.

2. An OWTS inspection was not able to be completed prior to the conveyance of real property due to inclement weather. In order to qualify for the exemption, a notarized affidavit from the new property owner to complete the requisite OWTS inspection within six (6) months of the date of the conveyance of real property, or June 1, whichever comes first, must be filed with the Building and Codes Enforcement Office. A check payable to the Town of Queensbury in the amount of Two Thousand Dollars (\$2,000) will be held in a non-interest bearing escrow account and shall be released upon the completion of a satisfactory OWTS inspection from the Building and Codes Enforcement Office.

3. During the OWTS inspection, a failure of the septic system was determined. Due to winter and frozen conditions, the repair to an existing OWTS could not occur or a new OWTS could not be installed before the conveyance of real property. In order to qualify for the exemption, a notarized affidavit from the new property owner to complete the installation or repair of the septic system within six (6) months from the date of the conveyance of real property, or June 1, whichever comes first, must be filed with the Building and Codes Enforcement Office. A check payable to the Town of Queensbury in the amount of Two

Thousand Dollars (\$2,000) will be held in a non-interest bearing escrow account and shall be released upon the completion of the repair or installation of a new septic system and a satisfactory OWTS inspection from the Building and Codes Enforcement Office.

4. Failure to complete the inspection, obtain the permit or complete all repairs/installations identified in the preceding paragraphs of this section within the time provided or any subsequent deadline established by the Building and Codes Enforcement Office will result in forfeiture of the moneys held in escrow and the Town may use such funds toward abating the conditions caused by each such violation of this Chapter.

**D. Failure of OWTS.** Failure of an existing OWTS occurs when the standards for lawful OWTS as set forth in Chapter 136 and this Chapter are not met. While not exhaustive, some examples of a failing system include the following:

1. Lack of a pre-treatment vessel (i.e. septic tank, aerobic treatment unit, ETU, etc.) prior to effluent discharge to any subsurface treatment (soil treatment area or absorption field);
2. There is a discharge of effluent directly or indirectly to the ground's surface, with surface breakouts, ponding or saturated soils over the soil treatment area;
3. Direct pipe surface discharge of grey water (into a dry well, over an embankment, into a roadside ditch or stream/tributary, etc.);
4. A dye test results in the presence of dye on the ground surface or adjacent / downstream waterbody;
5. There is a backup of sewage into the home, building, septic tank or facility as a result of a septic tank overload or malfunction, or a clogged soil treatment area;
6. The septic tank requires pumping more than four times per year and/or sewage is observed flowing back into the septic tank from the secondary treatment area during pump out;
7. Presence of a metal septic tank that is undersized and/or corroded;
8. A cesspool, defined as a covered hole or pit used to receive untreated sewage from a house or building constructed as a primary source of wastewater disposal.

9. A holding tank that discharges effluent to surrounding sub-surface areas.
10. No septic tank, seepage pit, enhanced treatment unit or soil treatment area (STA) shall be permitted to discharge to any natural outlet or adjoining property.

**E. Access to Parcel for Inspection.** On properties for which an OWTS inspection has been requested by the owner or owner's agent pursuant to this Chapter, the Building and Codes Enforcement Office shall be permitted by the property owner to make a physical inspection of the lands and premises in order to determine compliance with this Chapter.

#### **§ 137-5. Review.**

Appeals from determinations of the Building and Codes Enforcement Office and/or requests for variance/waivers from the provisions of this Section must be sought from the Town of Queensbury Town Board as the Local Board of Health within 60 days.

A. Forms for such Appeals and/or requests for variance and waivers will be made available to the public in the Building and Codes Enforcement Office. Such forms must be properly filled out and must be submitted to the Building and Codes Enforcement Office with payment of the applicable fee as established by the Town Board.

B. In evaluating appeals from determinations of the Building and Codes Enforcement Office, the Town Board may consider whatever information it deems relevant, including any evidence or information submitted by the Applicant and any information obtained from the Building and Codes Enforcement Office and/or Town Engineer. In the event additional information is needed, the Town Board may direct a subsequent inspection of the OWTS at issue, in which case the Applicant will not be required to make any additional inspection payments.

C. In regard to any request for variance or waivers, such Applications will be governed by the procedure set forth in Town Code Section 136-44.1(c)(1)-(3). The Town Board should take into consideration all matters it deems relevant, including the age of the OWTS, whether it appears to be functioning, its proximity to any waterbody, its age, the circumstances concerning the request for variance or waiver and the hardship to the property owner in the event no variance or waiver is granted.

D. The above remedies shall be exhausted prior to any judicial review.

## **§ 137-6. Notice of Violation and Penalties**

A. If a property owner fails to complete an inspection required by this local law, or to allow access to the property for the required inspection, or if the property owner fails to comply with any other provision of this law, a Notice of Violation may be issued by the Building and Codes Enforcement Office mandating the compliance with the inspection requirements.

B. In the event the property owner in its capacity as grantor was issued a Notice of Violation and such violation continues for a period of six (6) months, the current property owner (or grantee) too shall be deemed to be in violation of this local law and may be subject to enforcement proceedings.

C. An offense against any provision of this local law shall constitute a violation, punishable by a fine not exceeding Nine Hundred and Fifty Dollars (\$950), or imprisonment for a term not exceeding 15 days, or both. Each week such violation continues after notification to the person in violation shall constitute a separate violation.

### **SECTION 2. Severability**

If 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, but 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 take effect immediately upon filing with the New York State Secretary of State.