

## VILLAGE OF SPECULATOR

### LOCAL LAW 2 of 2024 PROVIDING FOR THE REGULATION, MANDATORY INSPECTIONS OF AND REPLACEMENT OF CERTAIN ONSITE WASTEWATER TREATMENT SYSTEMS (OWTS)

***BE IT ENACTED BY BOARD OF TRUSTEES OF THE VILLAGE OF SPECULATOR AS FOLLOWS:***

**ARTICLE 1. Local Law 2 of 2024 is hereby enacted as follows:**

**Title.**

This Law shall be known as "Mandatory Septic Inspection Program."

**§1. STATUTORY AUTHORITY.**

This enactment is pursuant to Article 7 of the New York State Village Law, Article 3 of the Public Health Law and by the Municipal Home Rule Law of the State of New York.

**§2. FINDINGS AND INTENT.**

The intent of this Local Law is to better protect water bodies from exposure to excess nutrients and pollutants by better ensuring that onsite wastewater treatments systems proximate to such water bodies are functioning properly. The Village of Speculator finds that the occurrence of such nutrients and pollutants is increased by the presence of inadequately functioning septic systems proximate to water bodies. 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 Village and, in some limited cases, even rendering drinking water unsafe.

**§3 COMPLIANCE REQUIRED.**

Applicability/Wastewater Inspection Program Area. This Local Law shall apply to all real property located within the overlay district created by Local Law 4 of 2023. Therefore, this law shall apply to all lands which are partially or wholly within 250 feet of the mean-high water mark of Lake Pleasant, Lewey Lake and Whitaker Lake. Overlay district maps indicating these areas of Lake Pleasant, Whitaker Lake and Lewey Lake are included in the attached Appendices A, B and C.

**§4 PROHIBITIONS.**

No person shall own, operate, or maintain a Wastewater Treatment System that is failing as set forth more fully in this Local Law.

**§5 SYSTEMS EXEMPT FROM THE WASTEWATER TREATMENT SYSTEM INSPECTION PROGRAM.**

- A. The following properties and wastewater treatment systems are exempt from the Wastewater Treatment System Inspection Program in this Local Law:
  - 1. Any property located inside the Wastewater Inspection Program Area, but which is serviced by a tank and any absorption area located entirely outside the Wastewater Inspection Program Area (overlay district).
  - 2. Any property which is connected to and serviced by the Village of Speculator's Wastewater Treatment System.
- B. Persons claiming an exemption under this section shall bear the burden of demonstrating that all the requirements for an exemption are met.

**§6 MANDATORY SEPTIC INSPECTION.**

- A. Inspections under this Local Law shall be required once every ten (10) years.
- B. For all real property subject to this Local Law utilizing an on-site wastewater treatment system (OWTS), the OWTS must be inspected by a NYS Professional Engineer or an individual that is properly authorized and licensed by the State of New York (Agent) to undertake septic inspections. The inspection shall include a septic tank pump out by a New State Department of Environmental Protection (NYSDEC) registered septic hauler and all seepage pits and septic drainfields, 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. A report of such an inspection must be provided to the Code Enforcement Officer and must contain sufficient detail so that the Code Enforcement Officer can confirm that the inspection requirements of this Local Law have been complied with. The property owner shall retain all qualified inspectors. Mandatory septic inspection work sheets are defined in §6D. The septic system inspections will be pass/fail.
- C. Upon the receipt of a satisfactory inspection report ("pass") and in accordance with the protocol set forth in §6D below, the Code Enforcement Officer shall issue to the property, a letter determination confirming either that the inspection report demonstrates compliance with or unlawful deviation from the provisions of this Local law.
- D. The OWTS inspection shall utilize the Village of Speculator Septic Inspection Request Form (Appendix D), and the OWST Inspection Report (Appendix E) all of which shall be available in the Office of the Village Code Enforcement Officer. All complete System Inspection Report Forms will be filed with the Village's Code Enforcement Officer. The following minimum standards shall apply to each inspection:
  - (1) All septic tanks and holding tanks must be within 250 gallons of the minimum volume requirement; minimum volume includes bedrooms, rooms used for sleeping, Jacuzzi tubs and garbage grinders;

- (2) Septic tank shall be equipped with a float switch with a 50% high-level alarm located in a conspicuous place to indicate when pump out is necessary and a water shut off device. A copy of the pump out records shall be provided with the inspection report.
  - (3) For an aerobic treatment system or enhanced treatment unit (ETU), the owner must send a signed copy of an updated service contract to the Village Code Enforcement Officer within 6 months after the implementation of this law.
  - (4) If the OWTS is determined to be failing or inadequate, a written notice of violation may be issued. An approved compliance agreement to correct the violation would then need to be obtained from the Village Code Enforcement Officer.
- E. Temporary Exemption. The following property owners shall be exempt from the provisions of this Local Law in the following situations and pursuant to the terms identified below:
- (1) A failure of the septic system is found, but due to winter and freezing conditions, the repair to an existing OWTS cannot occur and/or a new OWTS cannot be installed. In order to qualify for this temporary exemption, a notarized affidavit from the property owner to complete the installation or repair of the septic system within six months from the date of inspection, or June 1, whichever comes first, must be filed with the Village Code Enforcement Officer. A check payable to the Village of Speculator in the amount of one-hundred (\$100.00) will be held in a non-interest-bearing account and shall be released upon the completion of the repair or installation of a new septic system and a satisfactory OWTS inspection by the Village's Code Enforcement Officer.
  - (2) There is a record of the property's OWTS having passed inspection within the last ten (10) years, or a new septic system has been installed in the last ten(10) years.
  - (3) Failure to complete the inspection, obtain the permit or complete all repairs/installations identified in the preceding subsections within the time provided or any subsequent deadline established by the Village of Code Enforcement Officer will result in forfeiture of any monies held in escrow and the Village may use such funds toward abating the conditions caused by violations of this Local Law.
- F. Failure of OWTS. Failure of an existing OWTS occurs when the standards for lawful OWTS as set forth in the Department of Health Regulations 10 NYCRR Part 75, including 10 NYCRR Appendix 75-A 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 or absorption field;

- (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 or absorption field;
- (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 subsurface 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.

## **§7 DESIGN, REPAIR AND REPLACEMENT OF OWTS.**

The design, repair, or replacement of any OWTS shall comply with the New York State Department of Health (NYSDOH) Residential OWTS System Design Handbook. The design, repair, or replacement of any OWTS shall be under the supervision of a licensed design professional (Professional Engineer, or a Registered Architect). All other applicable regulations shall be adhered to as required by the New State Department of Environmental Protection (NYSDEC) and the Adirondack Park Agency (APA).

## **§8 VARIANCES.**

**STANDARDS** – An owner who experiences practical difficulty or unnecessary hardship because of the literal interpretation of the provisions of the Village of Speculatory Local Law No. 2 may request a hearing by the Code Enforcement Officer and Board of Trustees. The Code Enforcement Officer and Board of Trustees may recommend a variance from the requirements of this Local Law 2, and if the Code Enforcement Officer and Board of Trustees finds that the essential purpose of these regulations, namely the protection of public health and water quality, will be accomplished even if the variance is created. The Code Enforcement Officer and Board of Trustees Variance Committee shall consider the following factors and make applicable findings:

1. Whether the use or activity to be authorized by the waiver or variance is in harmony with the purpose and intent of this Local Law.
2. Whether a substantial change will be produced in the general condition of the water quality or a substantial risk to groundwater quality or quantity will be created because of the variance.
3. Whether the hardship or difficulty can be alleviated by some other method that is feasible for the applicant to pursue.
4. Whether the variance requested is the minimum variance necessary to afford relief. To this end, the Variance Committee may recommend a lesser variance than that applied for.
5. Whether the hardship or difficulty has been created by the applicant.

## **§8 APPEALS.**

Appeals from determinations of the Code Enforcement Officer under Section 6(C) of this Law by any person aggrieved by such determination may be made to the Village Board of Trustees of the Village of Speculator in its capacity as the local Board of Health within 60 days of the issuance of such determination.

- A. Forms for such Appeals will be made available to the public in the office of the Village Code Enforcement Officer. Such forms must be properly filled out, signed, and submitted to the office of the Village Code Enforcement Officer with payment of the applicable fee as established by the Village Board.
- B. In evaluating appeals from determinations of the Village Code Enforcement Officer, the Village Board may consider whatever information it deems relevant, including any evidence or information submitted by the applicant and any information obtained from the Village Code Enforcement Officer or any Village engineering consultant. The Village Board may seek additional information from the applicant and/or the Code Enforcement Officer to aid it in reaching its determination.
- C. The Village Board may uphold the Code Enforcement Officer's determination, overturn the Code Enforcement Officer's determination, or modify the Code Enforcement Officer's determination including modifying any curative steps outlined by the Code Enforcement Officer. In addition, if the Village Board finds that the inspection report at issue demonstrated compliance with this Local Law, such a finding will result in:
  - 1) The owner not being obligated to cause a subsequent inspection to be made until the expiration of ten years, however this provision does not modify any inspection requirement that may exist in any other State, or Village Law, including Local Law 2 of 2024;
  - 2) Nullifying and rendering unenforceable any requirements placed on the owner as a result of an initial finding that the inspection "failed".

- D. The above remedies shall be exhausted by an aggrieved property owner or applicant prior to any judicial review.

**§9 NOTICE OF VIOLATION; PENALTIES FOR OFFENSES.**

If a property owner fails to complete an inspection required by this Local Law or fails to comply with any other provision of this Local Law, a Notice of Violation may be issued by the Village Code Enforcement Officer mandating the compliance with the inspection requirements and such Official or any designee of such Official shall have the authority to enforce the requirements of this Local Law. An offense against any provision of this Local Law shall constitute an offense, punishable by a fine not exceeding three hundred fifty dollars (\$350) or imprisonment for a period not to exceed six (6) months, or both for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than three hundred fifty dollars (\$350) nor more than seven hundred dollars (\$700) or imprisonment for a period not to exceed six (6) months, or both; and, upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than seven hundred dollars (\$700) nor more than one thousand dollars (\$1,000) or imprisonment for a period not to exceed six (6) months, or both. However, for the purpose of conferring jurisdiction upon Courts and judicial officers, violations of this Local Law shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each weeks' continued violation shall constitute a separate additional violation.