

Warren County Board of Supervisors

RESOLUTION NO. 430 OF 2021

RESOLUTION INTRODUCED BY SUPERVISORS BRAYMER, MAGOWAN, FRASIER, BRUNO, LEGGETT, SMITH AND THOMAS

INTRODUCING PROPOSED LOCAL LAW NO. 7 OF 2021, ENTITLED “SEPTIC INSPECTION UPON TRANSFER”, AND AUTHORIZING PUBLIC HEARINGS THEREON

RESOLVED, that proposed Local Law No. 7 of 2021 entitled “Septic Inspection Upon Transfer”, attached hereto and made a part hereof, be, and the same hereby is, introduced before the Warren County Board of Supervisors, and in order to give interested members of the public the opportunity to be heard thereon, the Board of Supervisors shall hold two (2) public hearings on the matter of the adoption of said proposed Local Law No. 7 of 2021 which shall be held:

1. Through a special meeting of the Proposed Septic Inspection at Transfer Committee, to be held on November 17, 2021 at 7:00 p.m. at the Lake George Town Hall, 20 Old Post Road Lake George, NY 12845; and
2. During the next regular meeting of the Board of Supervisors, to be held on November 19, 2021 at 10:00 a.m. in the Supervisors’ Room at the Warren County Municipal Center 1340 State Route 9 Queensbury, NY 12845

and be it further

RESOLVED, that the Clerk of the Board of Supervisors be, and hereby is, authorized and directed to give notice of such public hearings in the manner provided by law.

**COUNTY OF WARREN
LOCAL LAW NO. 7 OF 2021**

SEPTIC INSPECTION UPON TRANSFER

BE IT ENACTED, by the Board of Supervisors of the County of Warren, New York, as follows:

SECTION 1. Title. This Local Law shall be known as “Septic Inspection Upon Transfer” Law.

SECTION 2. Statutory Authority. Enactment of this County Law is pursuant to powers vested in the Warren County Board of Supervisors pursuant to the provisions of New York State County Law, New York State General Municipal Law, New York State Home Rule Law, and New York State Public Health Law.

SECTION 3. Intent and Findings. The intent of this County Law is to protect groundwater, surface water bodies and soils from contaminating exposure to excess nutrients and pollutants. Warren County finds that due to inadequate design, maintenance or operation, all septic systems have the potential to contribute pollution and harmful nutrients to the waters of Warren County. In addition, such 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 Warren County.

SECTION 4. Applicability. This County Law shall apply to all developed real property that is located within two hundred fifty feet (250) of the mean high water mark of the water bodies specified in Appendix A and serviced by an Onsite Wastewater Treatment System (“OWTS”), regardless of the distance of the OWTS from the water body, unless exempted by section H of this County Law. This County Law shall not apply in the City of Glens Falls, which has its own sanitary code enforcement office and few, if any, properties without sewer service. This County Law shall not apply in the Towns of Bolton, Queensbury, and any other municipality that maintain and enforce local laws regarding septic inspections upon transfer of real properties by the time of the effective date of this County Law. The County Law shall not apply to any municipality whose governing body passes a resolution to opt-out and not be subject to the provisions of this County Law prior to its effective date.

SECTION 5. Compliance Required. Except where specifically exempted by the provisions hereof, or otherwise exempted by the application of a Federal or State law, this County Law shall apply to all conveyances of real property title 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 developed real property is located wholly or partially within Warren County, New York.

SECTION 6. Definitions. The following meaning shall be ascribed to the words or phrases specific to this County Law:

1. **Conveyance.** The transfer of ownership of real property by a deed instrument or by a testamentary instrument.
2. **Developed property.** Real property which has been altered from its natural state by the creation or addition of any buildings, structures, pavement, excavation, or other improvements.
3. **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 of 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.
4. **OWTS 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 Appendix 75-A and any local municipal requirements then in effect at the time of the permitted installation of the septic system.
5. **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 connection is not utilized at the developed real property. Also referred to in this Local Law as an OWTS.
6. **Wastewater.** Any water discharged through a plumbing fixture to include, but not limited to, sewage and any water or waste from a device (e.g. water softener brine) which is produced in the house or property.

SECTION 7. Inspection Prior to Conveyance of Real Property:

1. Prior to any conveyance of developed real property where the property utilizes an On-site Wastewater Treatment System (“OWTS”), the OWTS shall be inspected by a Qualified Inspector who shall certify in a written inspection report to the Warren County Fire Prevention and Building Code Enforcement Department (referred to hereafter as the “Code Enforcement Department”), the pre-conveyance condition(s) of the inspected OWTS. The form for the written inspection report shall be available from the Code Enforcement Department. The Cost of the inspection shall be paid by the property owner.

2. The inspection report shall be on a form provided by the Code Enforcement Department shall include the following items:
 - a) The Location of the wastewater treatment system, including street address and tax map number of the developed real property.
 - b) A general description of the wastewater treatment system.
 - c) The dates of system construction and subsequent repairs or alterations to the system.
 - d) A list of the wastewater generating fixtures which discharge into the system, and the number of bedrooms on the property that are served by the OWTS.
 - e) A list of the distances from the property's seepage pits, leaching facilities from adjacent wells, and water bodies, if known.
 - f) For a system with a valid State Pollution Discharge Elimination System (SPDES) permit, a copy of the current permit.
 - g) Other information as may be necessary for the Code Enforcement Department to evaluate the written inspection report.
3. The OWTS inspection shall include a septic tank pump out by a New York State Department of Environmental Conservation registered septic hauler and all seepage pits and septic drain field distribution boxes accepting effluent from a septic tank must be uncovered and opened by the property owner or his or her agent prior to the inspection. The septic tank pump out and OWTS inspection shall be arranged by the property owner as early in the real property conveyance process as possible in order to secure an accurate and timely inspection of the OWTS.
4. The OWTS inspection shall utilize and conform to the rules, regulations, and standards promulgated by the New York State Department of Environmental Conservation and the New York State Department of Health, and the training materials for the New York On-site Wastewater Treatment Training Network, and where applicable the Adirondack Park Agency, pertaining to the construction, operation, maintenance, and inspection of residential and commercial on-site wastewater treatment systems. The following minimum standards shall apply to each OWTS inspection:
 - a) A residential OWTS 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 any local municipal requirements then in effect at the time of the permitted installation of the septic system.
 - b) Where required by law, an OWTS 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.
 - c) Where an OWTS has been determined after an inspection to be failing or inadequate, the Qualified Inspector shall notify the Code Enforcement Department the Code Enforcement Department shall issue a written notice of violation and order to remedy to the real property owner, a copy of said written notice of violation and order to remedy shall also be sent to the Town where the OWTS is located. A compliance agreement between the Code Enforcement Department and the record owner, demonstrating a plan to correct each OWTS failure or deficiency shall be required prior to the conveyance of real property. The remediation plan shall be prepared by the record owner of real property or the owner's designee, vendee or consultant. Implementation of the remediation plan may require state and/or local approval, including approval from the local Board of Health where the OWTS is located. In addition, implementation of the remediation plan may require a septic system that is designed by a licensed engineer per state and/or local requirements. Warren County Building Codes Department may engage an engineering consultant to review the remediation plan. The cost

- of an 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 County shall be entitled to reimbursement for the engineer's review and report in resolving a notice of violation and order to remedy prior to the issuance of any Certificate of Satisfactory Septic Inspection.
5. No transfer of title of any developed real property subject to this County Law shall be considered complete and in compliance with the requirements of this County Law, until and unless:
 - a) the owner/seller/transferor has obtained, from the Code Enforcement Department a Certificate of Satisfactory Septic Inspection demonstrating satisfactory compliance with this County Law, or
 - b) the owner/seller/transferor has obtained a variance from any requirement imposed hereunder issued by the County in accordance with the provisions of this County Law, or
 - c) the owner/seller/transferor has obtained a written approval for a deferral issued by the Code Enforcement Department in accordance with the provisions of this County Law, or
 - d) the conveyance is exempt from the pre-closing real property conveyance inspection requirements and the owner/seller/transferor qualifies within all applicable provisions for exemption as set forth in this County Law.
 6. It shall be a violation of this County Law not to substantially conform to the OWTS inspection requirements specified herein. After the fact compliance in conformity with the requirements of this County Law shall be the obligation of the new owner of record of the real property whereby in good faith and under circumstances of oversight, lack of notice or other legitimate reason a pre-closing OWTS inspection and satisfactory result did not occur prior to a real estate closing and transfer of title. Under such circumstances the new owner of the real property shall comply within one hundred twenty (120) days after notification from the County specifying all compliance requirements. Failure to comply with the requirements of this County Law shall constitute a violation.
 7. Upon receiving proof of a satisfactory OWTS inspection, Code Enforcement Department shall issue in the name of the current property owner a written Certificate of Satisfactory Septic Inspection confirming that the OWTS has been inspected and the results of such inspection are in substantial conformity with the requirements of this County Law. A copy of said Certificate of Satisfactory Septic Inspection shall also be sent to the Town where the OWTS is located. 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 County Law.

SECTION 8. Exemption and/or Deferrals. Conveyances of developed real property may be eligible exempt of eligible for a deferral from the provisions of this County Law in the following situations identified below:

1. When the real property to be conveyed is not intended to be inhabited, and the owner plans to demolish each structure served by an existing OWTS, the property owner may receive an exemption from this Law. To qualify for an exemption under these circumstances the property owner (or purchaser) shall provide a signed, notarized affidavit to the Code Enforcement Department certifying that:

- a) any existing structure on the real property will not be inhabited and each dwelling shall be demolished with no plans to rebuild, or
 - b) the structure(s) on the real property will not be inhabited, will be demolished and rebuilt in conformity with current OWTS requirements. A copy of the building permit application providing adequate detail sufficient to demonstrate a proposed compliant OWTS must accompany the affidavit.
2. A temporary deferral of the time requirements for an OWTS inspection or post inspection, repair or replacement may be authorized in writing by the Code Enforcement Department due to winter weather conditions or other constraints. To obtain a temporary deferral, the new owner/transferee must submit an affidavit to the Code Enforcement Department a notarized affidavit promising to obtain a complete and satisfactory OWTS inspection within six (6) months after the date of the conveyance of the real property.
 3. Where the real property with an OWTS system is being conveyed from the County of Warren, 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 County Law and compliance shall be required within six (6) months after the recording of the instrument of conveyance.
 4. An OWTS inspection shall not be required as a pre-requisite to any conveyance when the Code Enforcement Department records contain an existing Certificate of Satisfactory Septic Inspection, or other OWTS inspection record of the developed real property's OWTS system having satisfied all of the requirements of this County Law, or a septic permit issued and approved and on file with the applicable local municipality 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.
 5. Where there is an existing OWTS on developed real property and the existing OWTS will be terminated, and the developed real property is to be connected to an existing and available municipal sewer service, and the municipal sewer service connection shall occur prior to or simultaneously with the conveyance of the real property, no OWTS Inspection shall be required and the property owner shall undertake a prompt removal of all existing OWTS components, and prompt remediation of the real property and structures so that the OWTS cannot be used in the future.
 6. Where there is an existing OWTS on developed real property that is located within two hundred fifty feet (250') of the mean high water mark of the water bodies specified in Appendix A, but the OWTS itself is located more than 250' from the mean high water mark of the waterbody, then an OWTS Inspection shall not be required provided that the property owner submits to the Code Enforcement Department a letter from a licensed engineer certifying that the OWTS is more than 250' from the mean high water mark of any waterbody specified in Appendix A.

Upon a failure to complete any required OWTS inspection; or any failure to complete all OWTS repairs/installation requirements identified by the OWTS inspection within the time specified or any subsequent deadline extended in writing by the Code Enforcement Department, the County may pursue all enforcement opportunities available to the County, including all remedies available in law or equity.

SECTION 9. Failure of OWTS. The inspected OWTS shall be deemed to be failing or be a substantial failure and/or the OWTS shall be considered a substantially non-compliant OWTS if the OWTS fails to meet the New York State Department of Health and/or New York State Department of Environmental Conservation standards for an OWTS of the kind inspected. A non-compliant or substantially unsatisfactory OWTS 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 water body;
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 local municipal regulations, such as if the size of the septic tank is less than 75% of the required capacity, or if a setback from the OWTS to surface waters, wells or buildings is less than 75% of the required distances;
12. Every substantial failure or substantial non-conformity with the requirement of a validly issued and current SPDES permit or New York State Department of Health approval permit.

SECTION 10. Access to Parcel for Inspection. The Code Enforcement Department, 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 County Law.

SECTION 11. Administrative Review. Appeals of any written determination of any County official or their agents and/or requests for a variance from the strict application of the requirements of this County Law shall be considered by the County Facilities Committee ("Committee") or, if said committee does not exist, then the committee responsible for oversight of the Code Enforcement Department shall consider appeals and requests for a variance from the strict application of this County Law.

1. An administrative appeal shall be presented within sixty (60) days after the determination to be appealed is issued. The written appeal or request for a variance shall state the grounds for the relief sought (note that this County Law is not intended to authorize the Committee to grant variances from the requirements of New York State Department of Health Appendix 75A or local municipal regulations). Each appeal and variance request submitted to the Committee shall be served upon the Code Enforcement Department by mail to: Administrator, Warren County Fire Prevention and Building Code Enforcement Department, Warren County Human Services Building, 1340 Route 9, Lake George, New York 12845. There is no fee for submitting an appeal or a request for a variance.
2. The Committee shall conduct a public hearing, upon ten (10) days public notice to all owners of record owning real property within five hundred feet of the subject property. Such notice shall be by first class mail and may include a notice sent by email.
3. The Committee shall consider all relevant information, submitted by the applicant, all relevant environmental impacts, any relevant information obtained from the Code Enforcement Department, and any comments from the public. The Committee may take into consideration the age of the existing OWTS, whether the system appears to be satisfactorily functioning, its proximity to any water body, watercourse or stream, the circumstances concerning the appeal, the effect, if any, upon nearby real properties, the practical difficulties in strictly complying with the requirements of the County Law, any undue hardship to the property owner and all other matters relevant to the issue as determined by the Committee.
4. In evaluating appeals or requests for variances, the applicant shall be required to demonstrate by a preponderance of the evidence that the enforcement of any specific provision of this County Law imposes a practical difficulty or undue hardship upon the applicant's developed real property.
5. If additional information is required, the Committee may direct a subsequent inspection of the OWTS at issue.
6. The Committee's decision shall be considered a final determination subject to further appeal pursuant to an Article 78 proceeding in any court of competent jurisdiction.
7. Duties imposed upon owners of real property by the application of this County 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 Committee.

SECTION 12. Notice of Violation and Penalties.

1. The Code Enforcement Department is authorized to administer and enforce this County Law. If an OWTS fails an inspection, the Code Enforcement Department shall issue in writing to the developed real property owner of record, a notice of violation and order to remedy the failing condition. Such notice and order shall specify the violation and grant such time as may be reasonably necessary to achieve compliance before a proceeding to compel compliance shall be commenced.
2. In the event that any developed real property owner or occupant of the developed 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 County Law, in either case, each specific allegation of a failure to comply shall constitute a separate violation.
3. Each violation of any provision of this County Law shall constitute a separate violation, punishable by a fine not to exceed Five Hundred Dollars (\$500.00). Each month any violation continues after service of a notice of violation and order to remedy upon the responsible

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person(s) such offense shall constitute a separate violation when separately charged. The civil penalties provided by this subdivision shall be recoverable in an action or proceeding commenced in the name of Warren County on its own initiative or at the request of the Administrator of the Department of Fire Prevention and Building Code Enforcement.

4. An action or proceeding in the name of Warren Count may be commenced in any court of competent jurisdiction to compel compliance with or restrain by injunction the violation of this local law. Such remedy shall be in addition to penalties otherwise prescribed by law.

SECTION 13. Severability. Where any clause, sentence, paragraph subdivision, section, or part of this County 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 County 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 14. Effective Date. This County Law shall take effect on June 1, 2022.

APPENDIX A
LIST OF WATER BODIES

1. Lake George
2. Schroon Lake
3. Schroon River
4. Brant Lake
5. Loon Lake
6. Lake Luzerne
7. Hudson River
8. Friends Lake