

TOWN OF ARIETTA
LOCAL LAW #1 OF 2021

A LOCAL LAW REQUIRING SEPTIC SYSTEM INSPECTIONS
UPON PROPERTY TRANSFERS

Be it enacted by the Town Board of the Town of Arietta as follows:

Section 1. Title

This Local Law shall be known as "Arietta Septic Inspection Law."

Section 2. Statutory Authority

Enactment of this Local Law is pursuant to powers vested in the Town Board of the Town of Arietta pursuant to the provisions of New York State Town Law, New York State General Municipal Law and New York State Department of Health.

Section 3. 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 Arietta finds 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 Arietta. 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 On-site Wastewater Treatment System (OWTS).

Section 4. Compliance Required

1. Applicability.

This Local Law shall apply to conveyances of real property located wholly or partially in the Town of Arietta.

2. Property Transfer Inspections.

- a) Prior to any conveyance of real property in the Town of Arietta where the property utilizes an On-site Wastewater Treatment System (OWTS), the OWTS must be inspected by the Town of Arietta Building and Codes Enforcement Office (herein referred to as the Building and Codes Enforcement Office) or a vendor approved by the Town of Arietta 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.

- b) 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 **or a vendor approved by the Town of Arietta 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 Arietta prior the inspection.

c) No such conveyance shall take place subject to this Local Law until and unless

1) The owner/seller has obtained a letter of acknowledgement from the Building and Codes Enforcement Office demonstrating satisfactory compliance with this Section;

2) The owner/seller has obtained a variance/waiver from the Town of Arietta Code Enforcement Office in accordance with this Local Law; or

3) The conveyance is exempt from the property transfer inspection requirements and the owner/seller complies with all applicable provisions for exemption set forth in this Local Law.

d) 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, Lease, or Bill of Sale or other legal instrument, whether or not recorded in the Office of the Hamilton County Clerk. "Real property" shall include the transfer of mobile homes wherein an OWTS is located on the property. It shall be violation of this law not to have the property inspected prior to the conveyance of real property.

e) Upon satisfactory inspection in accordance with the protocol set forth in this Local Law, the Building and Codes Enforcement Office will issue to the property owner a letter of acknowledgment confirming that the OWTS is functioning properly.

f) The OWTS inspection shall utilize the New York On-site Wastewater Treatment Training Network (OTN) materials, including the *07N 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:

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

2. 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;

4. If the on-site 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.

3. Exemption from Property Transfer Inspection.

The following conveyances of real or personal 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

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.

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

4. There is record of the property's OWTS having passed Town inspection within the last three (3) years.

5. 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 in the imposition of the fines described in Section 6.

4. Failure of OWTS.

Failure of an existing OWTS inspection occurs when the standards for lawful OWTS as prescribed by the New York State Health Department or the local board of health are not met as determined by the Code Enforcement Officer or a vendor approved by the Town of Arietta Building and Codes Enforcement Office. 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.

5. Access to Parcel for Inspection.

Whenever an OWTS inspection has been undertaken pursuant to this Local Law, the Town of Arietta 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.

Section 5. Review

Appeals from determinations of the Building and Codes Enforcement Office or a vendor approved by the Town of Arietta Building and Codes Enforcement Office and/or requests for variance/waivers from the provisions of this Section must be sought from the Town of Arietta ZBA within 60 days.

1. 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.

2. In evaluating appeals from determinations of the Building and Codes Enforcement Office or a vendor approved by the Town of Arietta Building and Codes Enforcement Office, the ZBA 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. In the event additional information is needed, the ZBA 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.

3. In regard to any request for variance or waivers, such Applications will be governed by the procedure set forth in the Town Code of the Town of Arietta. The Enforcement Office 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.

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

Section 6. Notice of Violation and Penalties

1. 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.

2. 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.

3. 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 7. 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 8. Effective Date

This Local Law shall take effect immediately upon filing with the New York State Secretary of State.