

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
162 WASHINGTON AVENUE, ALBANY, NY
12231

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED
JUL 25 2005
MISCELLANEOUS
& STATE RECORDS

Town of Canandaigua

Local Law no. 3 of the year 2005

A local law amending Chapter 84, Sections 1 through 3; deleting Chapter 84, Sections 4 through 24; and adding new Sections 4 through 14; amending Chapter 105, Sections 302. N. and P.; amending Chapter 45, Section 45-4 Definitions; and, deleting Chapter 97, Uniform Watershed Law of the Town of Canandaigua Municipal Code of the Town of Canandaigua Municipal Code.

Be it enacted by the Town Board of the

Town of Canandaigua as follows:

Section 1: Chapter 84 Title.

Is hereby amended to read:

On-Site Wastewater Treatment Systems.

Section 2: Chapter 84, Section 84-1 Purpose.

Is hereby amended to read as follows:

The purpose of this chapter is to protect the public health and safety operations of public and private drinking water supplies by governing the materials, design, construction and installation of an on-site wastewater treatment system in the Town of Canandaigua, in accordance with the provisions the New York State Public Health Law, Section 201 (1) (1) and the New York State Uniform Fire Prevention and Building Code, as adopted by the Town Board.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

Section 3: Chapter 84, Section 84-2 Definitions.

Is hereby amended to read as follows:

The definitions of terms used in this Chapter are found in Chapter 45, Section 45-4 of the Town Code.

Section 4: Chapter 84, Section 84-3 Permit Required.

Is hereby amended to read as follows:

Every building in which plumbing fixtures are installed and all premises having sanitary drainage piping shall be connected to a public sewer, where available, or an approved private on-site wastewater treatment system in accordance with these provisions. It shall be unlawful for any person to construct, alter or extend an on-site wastewater treatment system within the Town of Canandaigua, unless a valid building permit has been issued by the Code Enforcement Officer pursuant to the provisions of Appendix 75-A of the New York State Department of Health (10 NYCRR) regulations.

Section 5: Chapter 84, Section 84-4 Disposal of Human Excreta.

Is hereby amended to read as follows:

- A. No human excreta or sewage shall be deposited, thrown, placed, or allowed to escape, seep or percolate into Canandaigua Lake or any Watercourse or roadside ditch within the Town of Canandaigua.
- B. No human excreta or sewage either raw or partially decomposed, such as may be dipped, pumped, or shoveled from the receptacle shall be buried in the soil in this Town.
- C. This prohibition shall not include land spreading of septage and sewage treatment plant sludge when the site is approved by New York State Department of Environmental Conservation, pursuant to law and regulation.

Section 6: Chapter 84, Section 84-5 Placement of Receptacles.

Is hereby amended to read as follows:

No receptacle of any kind shall be constructed, placed, maintained, or allowed to remain without the approval of and under the supervision of the Code Enforcement Officer pursuant to the regulations established herein.

Section 7: Chapter 84, Section 84-6 Placement, Construction and Inspection of On-Site Wastewater Treatment Systems.

Is hereby amended to read as follows:

- A. No element of an On-Site Wastewater Treatment Facility, which element is designed to allow an outward percolation of sewage shall be placed, located, maintained or allowed to remain within the watershed of Canandaigua Lake without following the regulatory procedures for notifying the Canandaigua Lake Watershed Inspector employed by the Canandaigua Lake Watershed Commission. Furthermore, no On-Site Wastewater Treatment System shall exist within 100 feet of any Watercourse, any where in the Town, unless approved by the New York State Department of Health and the system is adequately maintained in accordance with the approval conditions of the Town of Canandaigua, the New York State Department of Health and, where applicable, the Canandaigua Lake Watershed Commission.
- B. It shall be the duty of the owner, or owners, proposing to install or replace an On-Site Wastewater Treatment System to give written notice to the Code Enforcement Officer of their intention to so install or replace.

- C. It shall be the duty of the Code Enforcement Officer to notify the Office of the Canandaigua Lake Watershed Inspector of any application, or inspection of a new On-Site Waste Water Treatment System, repairs to an existing On-Site Wastewater Treatment System, or a complaint received about an existing On-Site Wastewater Treatment System within the watershed of Canandaigua Lake. It shall also be the duty of the Code Enforcement Officer to cause or to have conducted under his supervision such tests, at the expense of the applicant, including soil percolation tests and deep test holes in accordance with the requirements of New York State Public Health Law, Part 75-A, and its' supporting documents.
- D. Thereafter and prior to the commencement of such construction, the owner shall supply the Code Enforcement Officer with plans prepared by a design professional. The minimum design standard for an On-Site Wastewater Treatment System serving new residential development shall be the provisions of Appendix 75-A of the New York State Department of Health, Public Health Law, 201 (1) (1), entitled "*Wastewater Treatment Standards - Individual Household Systems.*"
- E. No construction of a new or a replacement On-Site Wastewater Treatment System shall be commenced until such time as there is issued by said Code Enforcement Officer a permit specifying that the type, capacity and location of each element of the system is in accordance with this Chapter.
- F. No element of an On-Site Wastewater Treatment System may be enclosed or buried from view after being placed until that element has been examined and approved by the on-site wastewater treatment system design professional. In addition, the design professional shall certify in writing to the Town Code Enforcement Officer that the system was installed in conformance with the approved plans and permit conditions and said design professional shall provide a record of the as built system to the Town.
- G. No owner or owners shall commence the construction of a new or replacement On-Site Wastewater Treatment System or any element thereof without first obtaining a permit pursuant to this Chapter.

- H. It shall be the duty and obligation of the owner, or owners, of an existing On-Site Wastewater System to present to the Code Enforcement Office upon request therefrom, evidence attested to by a design professional or an On-Site Training Network certified inspector as will adequately describe the type, capacity, and location of the elements of the existing system. Thereafter, the Code Enforcement Officer shall review such evidence and make such further investigation as he deems necessary to determine the adequacy of such system. Upon a determination that the existing system is inadequate, within sixty days thereafter, the owner, or owners shall supply the necessary plans and specifications in application for a permit to construct a new or replacement On-Site Wastewater Treatment System pursuant to this section. Extensions to this time period can be made by the Code Enforcement Officer upon the showing of a good faith effort by the applicant to have a design professional prepare these plans.
- I. Within six months after the issuance of a permit for the replacement of an existing On-Site Wastewater Treatment System, said replacement shall be completed.
- J. In the event that public sewers become available within the Town, all persons within the sewer district shall connect to public sewer system in accordance with the governing agency's jurisdiction for requiring connection to said public sewer service. No new, or replacement On-Site Wastewater Treatment System shall be allowed within an established sewer district. It shall be unlawful for any person within the sewer district to place, deposit or permit to be deposited any commercial, industrial, human or other wastewater within or upon the lands of the Town.
- K. When making repairs, or when replacing On-Site Wastewater Treatment Systems, the design professionals shall adhere to the requirements of Appendix 75-A, if possible. In instances where the requirements of Appendix 75-A can not be met, the plans must indicate said deficiencies, and approval of these deficiencies must be obtained from the Code Enforcement Officer.

L. The minimum design standards for commercial On-Site Wastewater Treatment Systems shall be in accordance with the New York State Department of Environmental Conservation, Article 17, Title 7, as may be amended from time to time.

Section 8: Chapter 84, Section 84-7 Exceptions to Restrictions and Limiting Distances.

Is hereby amended to read as follows:

Any exceptions to the restrictions and limitations of distance in these regulations regarding the proposed installation or continued maintenance of an On-Site Wastewater Treatment System will be allowed only upon the approval of plans by the New York State Department of Health and, if necessary, the New York State Department of Environmental Conservation. A copy of such approved plans and applicable written waiver must be submitted to the Code Enforcement Officer before commencement of work. Inspection shall be conducted as provided for elsewhere in this Chapter.

Section 9: Chapter 84, Section 84-8 Direct Discharge of Effluent.

Is hereby amended to read as follows:

- A. Any new or existing residential On-Site Wastewater Treatment System which provides for the treatment and direct surface discharge of treated On-Site Wastewater Treatment System effluent into the Lake or any watercourse shall be prohibited.
- B. Any surface discharge of effluent from any existing On-Site Wastewater Treatment System shall be prohibited.

Section 10: Chapter 84, Section 84-9 General Clause.

Is hereby amended to read as follows:

In addition to observing the foregoing requirements, all persons living on or visiting the watershed shall refrain from any act, though not heretofore specified, which may result in contamination of any portion of Canandaigua Lake or its watershed, or any other watershed within the Town. If any provision herein shall be in conflict with any other law, rule or regulation, the stricter shall apply.

Section 11: Chapter 84, Section 84-10 Enforcement.

Is hereby amended to read as follows:

- A. The Town Board hereby designates the Code Enforcement Officer as being that person chosen by the Town Board to enforce the provisions of this Local Law. Such Code Enforcement Officer and such deputies as are hereafter appointed shall serve at the pleasure of the Town Board. The deputies shall act under the supervision of the Code Enforcement Officer.
- B. The Code Enforcement Officer may request the assistance, advice and opinion of the representatives of the New York State Department of Health, the New York State Department of Environmental Conservation and the Canandaigua Lake Watershed Inspector.
- C. It shall be the duty of the Code Enforcement Officer to make regular and thorough inspections of the Lake, watercourses and watersheds for the purpose of ascertaining whether there is compliance with this Chapter. It shall be the duty of the Code Enforcement Officer to investigate all complaints regarding disposal of human, commercial, or industrial waste whether such complaint is received directly from the public or referred by the Board of Health. The Code Enforcement Officer shall have such further and extended duties with respect to the enforcement of this Chapter as may from time to time be delegated by the Town Board.

- D. If the Code Enforcement Officer shall find any violations of this Chapter, he shall have the authority to order the correction of such violation and where deemed necessary, order the cessation of all work being conducted. If the violation has not been corrected within 30 days, he shall have the authority to issue an appearance ticket charging the violation, mandating the person so served to appear before a Town Justice to answer said charges.
- E. In addition to the penalties provided by Law as set forth in herein, appropriate proceedings may be brought in the name of the Town to enjoin and restrain the continued violation of the Law.
- F. An application for a permit to construct or repair a On-Site Wastewater Treatment System shall be deemed a consent by the owners of the property to permit the Code Enforcement Officer to enter upon the premises without a search warrant to inspect the work which is the subject matter of the permit application.
- G. The Code Enforcement Officer may without fee or hindrance unto, examine, survey and conduct such tests as he deems appropriate in or upon all grounds, structures, buildings and places within the Town to ascertain compliance with this Chapter.
- H. The Code Enforcement Official, upon approval of the Town Board, may, in the name of the Town, institute proceedings in any Court of competent jurisdiction to enjoin the violation of this Chapter.
- I. In the event of a need for bona fide emergency repairs to any facility, the time periods herein set forth may be modified by the Code Enforcement Official. No work may be covered, however, until the appropriate inspections have been completed.

Section 12: Chapter 84, Section 84-11 Permit
Procedure

Is hereby amended to read as follows:

- A. All applications and notices pursuant to this Chapter shall be submitted in duplicate to the Code Enforcement Official, not less than 30 business days before any action or work is undertaken. Each application shall be accompanied by plans drawn by a design professional to scale, showing the actual dimensions and shape of the lot, the location and dimensions of each structure, the exact location of the domestic water supply, the nature of the water supply, and the exact location and dimension of all system components, required in accordance with Table Two of Appendix 75-A, of the On-Site Wastewater Treatment System. If the subject property contains or the adjacent property contains a watercourse or abuts the Lake, such application shall set forth the exact location of the watercourse and Lake in relation to the proposed On-Site Wastewater Treatment.
- B. The application shall include such other information as lawfully may be required by the Code Enforcement Officer as may be necessary to determine conformance with and provide for the enforcement of this Chapter.
- C. The Code Enforcement Officer shall have a period not to exceed 30 days to review such application. If the Code Enforcement Officer determines that such application complies with all applicable laws, rules and regulations, he shall issue the requested permit. If the application fails to comply with all applicable laws, rules and regulations, the Code Enforcement Officer shall deny the application in writing and advise the applicant of the deficiencies. A new application shall not be considered unless all previously listed deficiencies have been corrected. A new revised application shall comply with all applicable rules and regulations. The Code Enforcement Officer shall have a further period of 30 days to review the revised application.
- D. Any permit granted shall be prominently displayed upon the subject premises. Only work outlined and approved in the application process may be performed, and work not set forth in the permit shall not be performed.

- E. The On-Site Wastewater Treatment System may not be used until all the completed work has been certified by the design professional, reviewed to the satisfaction of the Code Enforcement Officer and a Certificate of Compliance on all applications.
- F. The Town Board hereby establishes a fee for the administration of this Site Development Permit procedure. Said fee shall be contained in the Town of Canandaigua Fee Schedule and may be amended.

Section 13: Chapter 84, Section 84-12 Penalty.

Is hereby amended to read as follows:

The violation of any provision of this Chapter shall be deemed an offense, except that for the purpose of conferring jurisdiction upon Courts, such violation shall be deemed a misdemeanor. Each separate violation shall be punishable by a fine not to exceed \$250.00, and/or imprisonment for a period not to exceed sixty (60) days. Each day's continued violation shall be deemed a separate offense.

Section 14: Chapter 105, Section 302. N. of the Town of Canandaigua Town Code, is hereby amended to read as follows:

- N. If the use of any lot or building involves the disposal of sewage or wastewater and public sewers are not available, an approved On-Site Wastewater Treatment System for the same shall be installed in accordance with the regulations and standards set forth in Chapter 84 of the Code of the Town of Canandaigua. Said System shall at all times be maintained on such lot or be in lawful connection therewith to a public sewer. Certification of approval for the installation of On-Site Wastewater Treatment Systems shall be obtained from the Town Code Enforcement Officer prior to the start of construction.

Section 15: Chapter 105, Section 302. P. of the Town of Canandaigua Town Code, is hereby amended to read as follows:

- P. On-Site Wastewater Treatment Systems shall be designed by a Registered Design Professional, installed and maintained in accordance with approved plans and the procedures and standards set forth in Chapter 84 of the Town of Canandaigua Town Code.

Section 16: Chapter 45, Section 45-4 Definitions, of the Town of Canandaigua Town Code, is hereby amended to read as follows:

Section 45-4 Definitions, is hereby amended by adding the following definitions of terms:

"Adequately Functioning On-Site Wastewater Treatment System" shall be a system which meets all of the following conditions:

- a. The septic tank has operational inlet and outlet baffles.
- b. The septic tank is water tight, allowing no inflow of groundwater, or leaking of septage through the walls, floor, or roof of the tank.
- c. The distribution box is evenly distributing septic tank effluent to each absorption trench.
- d. Effluent is not surfacing on the ground at any location.
- e. The absorption field is not directly short circuiting effluent into any well, water course, or water body.
- f. The absorption field is never subject to flooding, or ponding of water on its surface.
- g. All pipes for conveying effluent to the absorption field are water tight.
- h. The system is capable of handling the design hydraulic load without backup of waste into the house.
- i. The system is not subject to hydraulic loads exceeding the original design capacity.
- j. Where an aerobic treatment unit is present, the unit must have a current operation and maintenance contract with the manufacturer's representative, and shall have been inspected by the representative in accordance with manufacturer's specifications for maintenance.

"Bedroom" means:

- a room with certain features characteristic of bedrooms;
- a room with a minimum of 70 square feet in size; and
- a room which meets emergency egress requirements set forth in the New York State Building Code.

The presence or absence of a closet shall not be determinative of whether a room is to be deemed a bedroom. In the absence of evidence that conclusively establishes that a room is not a bedroom, the room in question may be deemed a bedroom. Any proposed future rooms that possess the characteristics of a bedroom set forth above must be included for the purposes of determining the size of an On-Site Wastewater Treatment System.

"Aerobic Treatment Unit" means a system that provides for the biological decomposition of the organic portion of the wastewater by mechanical aeration of the wastewater.

"Board of Health" means the Town Board of the Town of Canandaigua, convened as a Board of Health pursuant to the provisions of New York State Town Law.

"Distance," for the purpose only of the term defined in Chapter 84 of the Town Code, shall be the shortest horizontal linear distance from the nearest point of a structure or object to the high water mark of Canandaigua Lake, the property line or the edge, margin, or top of a precipitous bank forming the ordinary high water mark of a Watercourse.

"Human Excreta" means feces, urine, or other human excretions.

"Lake" means Canandaigua Lake as bounded by its Mean High Water Mark of 689.41 MSL.

"New Construction" means any building or improvement to an existing building that will have an impact upon the sizing of an on-site wastewater treatment system i.e. any increase in the number of bedrooms). The term "New Construction" as defined herein applies only to the term as used in Chapter 84, On-Site Wastewater Treatment Systems, of the Canandaigua Town Code.

"New Residential Development" means any change to a residential structure, including but not limited to, new construction or tear-down and re-build of a residential structure.

"On-Site Wastewater Treatment System" means any approved units or system of units or devices designed to treat, purify, dissolve, and/or distribute excreta. The minimum standard of design and placement of every element of the On-Site Wastewater Treatment System shall be that standard which is found to be in conformance with the provisions of Appendix 75-A of the New York State Public Health Law 201 (1) (1), titled "*Wastewater Treatment Standards - Individual Household Systems.*"

"Receptacle" means privy pits, holding tanks, or other structures or containers for the storage of or disposal of human excreta, Commercial-Industrial Waste and/or Sewage, other than an On-Site Waste Water Treatment System as herein defined.

"Registered Design Professional" means an individual who is a registered architect (RA) in accordance with Article 147 of the New York State Education Law or a licensed professional engineer (PE) in accordance with Article 145 of the New York State Education Law.

"Watercourse" means a visible path through which surface water travels on a regular basis. Drainage areas which contain water only during and immediately after a rainstorm shall not be considered to be a watercourse.

"Watershed" means that body of land from which or through which water drains into a Watercourse.

Section 17: Chapter 97 of the Town of Canandaigua Town Code, "Uniform Watershed Law, is hereby deleted in its entirety.

Section 18: If any clause, sentence, paragraph, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgement shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgement shall have been ordered.

Section 19: This local law shall take effect immediately upon filing with the Secretary of State.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law number 3 of 2005 of the Town of Canandaigua was duly passed by the Town Board on July 18 2005, in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law number _____ of 2005 of the Town of Canandaigua was duly passed by the
On 2005, and was (approved) (not approved) (repassed after disapproval) by the and was deemed duly adopted on 2005, in
(Elective Chief Executive Officer*)
accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law number _____ of 2005 of the Town of Canandaigua was duly passed by the Canandaigua Town Board on _____ 2005, and was (approved) (not approved) (repassed after disapproval) by on _____ 2005. Such local law was
(Elective Chief Executive Officer*)
submitted to the people by reason of a (mandatory) (permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special) (annual) election held on _____ 2005, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law number _____ of 2005 of the Town of Canandaigua was duly passed by the Canandaigua Town Board on _____ 2005, and was (approved)(not approved)(repassed after disapproval) by the _____ on _____ 2005. Such local law (Elective Chief Executive Officer*) was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 2005, in accordance with the applicable provisions of law.

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- Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law number _____ of 2005 of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 2005, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law number _____ of 2005 of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 2005, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph above.


Clerk of the Town of Canandaigua

(Seal)

Date:

(Certification to be executed by Town Attorney.)

STATE OF NEW YORK
COUNTY OF ONTARIO

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.



Signature

Town Attorney
Title

Town of Canandaigua
Date:

7/21/05