

# Local Law Filing

(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.

County  City  Town  Village  
(Select one.)

of CANANDAIGUA

Local Law No. \_\_\_\_\_ of the year 20 16

A local law TO AMEND TOWN CODE CHAPTER 202: ON-SITE WASTEWATER  
(Insert Title)  
TREATMENT SYSTEMS

Be it enacted by the TOWN BOARD of the  
(Name of Legislative Body)

County  City  Town  Village  
(Select one.)

of CANANDAIGUA as follows:

SEE ATTACHED

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

SECTION ONE. Legislative Intent. The legislative intent of the Town Board in enacting the following amendment to Town Code is to preserve and protect the quality of surface and groundwater in the Town of Canandaigua to the maximum extent allowable by mandating the adequate performance of on-site wastewater treatment systems. It is the intent of the Town Board to preserve and protect the health, safety, and welfare of the community in the Town of Canandaigua by regulating on-site wastewater treatment systems.

SECTION TWO. Town of Canandaigua Town Code Chapter 202 is hereby replaced in its entirety with the following:

CHAPTER 202  
ON-SITE WASTEWATER TREATMENT SYSTEMS LAW

Article 1 – Introductory Provisions

§ 202-1. Title

This local law shall be known as the “On-Site Individual Wastewater Treatment System Law of the Town of Canandaigua.”

§ 202-2. Applicability

This local law shall govern the treatment of sewage by regulating all on-site individual wastewater treatment systems (hereinafter referred to as an on-site wastewater treatment system).

§ 202-3. Purpose

The purpose of these regulations is to preserve and protect the quality of surface and groundwater in the Town of Canandaigua by mandating the adequate performance of on-site wastewater treatment systems to prevent health hazards and adverse impacts to the environment. Specifically, this law will ensure wastes disposed of by on-site wastewater treatment systems:

- (a) Do not pollute or contaminate any surface or groundwater source utilized for domestic drinking water supply or recreational purposes
- (b) Are not accessible to any carriers of disease

- (c) Do not give rise to a nuisance due to odor or unsightly appearance
- (d) Are not a source of nutrient pollution and do not contribute to excessive aquatic weed growth or harmful algal blooms.

§ 202-4. Authority

Enactment of this local law is pursuant to Article 2 of Municipal Home Rule Law, and Article 3 of the Public Health Law.

Article 2 – Definitions

§ 202-5. Words and Terms

In addition to the definitions contained in the New York State Public Health Law and Uniform Fire Prevention and Building Code, which are incorporated herein by reference, the following words and terms shall be defined as follows:

**ADEQUATELY FUNCTIONING** – shall mean an on-site wastewater treatment system inspected pursuant to this local law that is determined by the authority having jurisdiction as not posing a public health threat by virtue of above ground seepage or contamination of surface or ground water, and that meets the design standards as specified in Article 3 of this local law.

**AUTHORITY HAVING JURISDICTION** – shall be the Code Enforcement Officer, Health Officer, or other official(s) designated by the Town of Canandaigua Town Board, having the responsibility and authority to implement the provisions of this local law.

Enforcement authority for this law shall reside with the Town of Canandaigua Code Enforcement Officer.

**BEDROOM** – For the purpose of determining the size of an individual on-site wastewater treatment system, “bedroom” shall mean a room with certain features characteristic of bedrooms, general which include, but not limited to the following:

- (a) Reasonable access to a full bathroom on the same floor (or within a half floor if the house is a split level); or
- (b) Adequate means to close off the room for privacy; and/or
- (c) A minimum of seventy (70) – square feet in size.

**CERTIFIED INSPECTOR** – shall include the following:

- (a) Industry professional who has been trained and has successfully completed the 7.50 hour course for inspecting existing residential on-site wastewater

treatment systems and has received a Registration Number from the New York State Onsite Training Network (OTN) indicating such. In the event that the OTN stops registering inspectors, the authority having jurisdiction will work with the Watershed Inspector to administer a training program and publish a list of approved inspectors for the public.

- (b) Licensed Professional Engineer.
- (c) The authority having jurisdiction and
- (d) Canandaigua Lake Watershed Inspector.

**CHANGE OF USE** – shall mean a use of land with an associated building and on-site wastewater treatment system that is modified so as to likely cause an increase in hydraulic loading (e.g. – change from an existing commercial use to residential use; change of an existing residential use to commercial use; change of a commercial use to a different type of commercial use).

**CONVEYANCE OF REAL PROPERTY** - shall mean the transfer of the title of real estate from one to another, in the form of a deed or other legal instrument, filed in the Office of the Ontario County Clerk.

**DESIGN PROFESSIONAL** – shall mean a person licensed or registered in the State of New York and authorized by New York State Education law to design the systems described in 10 NYCRR Appendix 75-A.

**ENHANCED TREATMENT** – the biological and physical treatment of wastewater to reduce the amount of biochemical oxygen demand (BOD) and total suspended solids (TSS) of wastewater effluent prior to distribution to an absorption area.

**ENHANCED TREATMENT UNIT** – pre-manufactured structures that provide enhanced treatment of wastewater prior to discharge to a subsurface soil absorption area.

**FAILURE OF SYSTEM** – A condition existing within an on-site wastewater treatment system which prohibits the system from functioning in a sanitary manner and which results in the discharge of untreated or partially treated wastewater onto ground surface, into surface water, into groundwater, or which results in failure of building plumbing to discharge properly. Meeting any of the following criteria shall be defined as a failure:

- (a) Lack of a watertight pre-treatment vessel (i.e. septic or holding tank, aerobic treatment unit, etc.) prior to any subsurface treatment / leaching system.

- (b) Surfacing of sewage on the ground/lawn area of the system. There is a discharge of effluent directly or indirectly to the ground surface and ponding, surface outbreaks and saturated soils are frequently or seasonally observed over the leach field.
- (c) “Cheater” or direct pipe surface discharge (over an embankment, into a roadside ditch, or stream, etc.) to include surface discharge of greywater.
- (d) A dye test results in the presence of dye on the ground surface.
- (e) There is a back-up of sewage into the home, building or facility as a result of an overloaded or clogged leach field.
- (f) The septic tank requires pumping more than four times per year and/or sewage is observed running back into the septic tank from the leach field during pumping.

GREYWATER – all wastewater from a house or other building except from flush toilets or urinals.

HOLDING TANK – A water-tight tank that holds raw sewage and untreated effluent without an overflow.

LOCAL GOVERNING BODY – shall mean the municipal corporation charged with authority to act as the Local Board of Health as defined by the New York State Public Health Law.

MEAN HIGH WATER MARK FOR CANANDAIGUA LAKE – shall mean the location where the mean high water level of 689.40 feet above sea level intersects the adjacent parcel.

MINOR ALTERATIONS – shall mean routine maintenance and repairs to the on-site wastewater treatment system, including but not limited to the following: replacement of septic tank covers or baffles, replacement of distribution box covers, replacement of cracked pipes, pumping of the septic tank, and replacement of mechanical pumps and devices. “Minor alterations” shall not include replacement of a septic tank, distribution box, or any addition, alteration or rearrangement of water distribution or drainage piping. Like examples of “Minor alterations” not specifically listed in this definition shall be determined by the authority having jurisdiction.

NEW CONSTRUCTION – shall mean any building constructed or placed on an undeveloped site requiring the installation of an on-site wastewater treatment system and currently not utilizing the same, and/or substantial tear down and rebuild of an existing residence such that the work area exceeds 50 percent of the aggregate area of the existing building.

ON-SITE WASTEWATER TREATMENT SYSTEM PERMIT – shall mean a written permit issued by the authority having jurisdiction for the installation, operation, maintenance, or repair of an on-site wastewater treatment system.

ON-SITE WASTEWATER TREATMENT SYSTEM – shall mean a complete system of piping, watertight vessels, absorption fields, or other facilities for the on-site collection, transport and treatment of sewage.

SEWAGE – shall mean the combination of human and other waste with water which is discharged to the plumbing system, including the waste from a flush toilet, bath, shower, sink, lavatory, dishwashing or laundry machine, or the water-carried waste from any fixture, equipment or machine.

SUBSTANDARD SYSTEM – On-site wastewater treatment system that does not meet the design criteria specified in Article 3 of this local law but shows no evidence of failure.

#### Article 3 – General Regulations & Requirements

##### § 202-6. Prohibitions

- (A) It shall be unlawful to install, construct, alter, replace, enlarge, extend, or otherwise modify any on-site wastewater treatment system unless an on-site wastewater treatment system permit is issued by the authority having jurisdiction, except as specifically exempted in § 202-8 of this local law.
- (B) It shall be unlawful to change the use of real property, convey real property, expand a building or dwelling by one bedroom, or increase the building or dwelling square footage by greater than twenty-five (25) percent, or alter a building or dwelling such that the work area exceeds 50 percent of the aggregate area of the existing building without an inspection of the existing on-site wastewater treatment system by a Certified Inspector, pursuant to Article 4 of this local law.

- (C) It shall be unlawful to use or maintain any on-site wastewater treatment system that is not adequately functioning.
- (D) It shall be unlawful to engage in any activities or permit any conditions which would interfere with the proper operation of on-site wastewater treatment systems. It is specifically prohibited to construct or place buildings, to install paving, to plant trees or shrubs, or regrade or place fill, to allow crossing by vehicles, to install above ground pools, or to install driveways or parking areas over sanitary treatment fields.
- (E) It shall be unlawful to discharge anything but sewage into an on-site wastewater treatment system. Surface and subsurface water including roof, cellar, foundation and storm drainage shall not be discharged into an on-site wastewater treatment system and shall be disposed of so as to in no way affect the proper functioning of the system.

#### § 202-7. Design Standards for New and Existing On-Site Wastewater Treatment Systems

- A. All on-site wastewater treatment systems shall be designed by a Licensed Design Professional per NYSDOH Fact Sheet B-1. The Licensed Design Professional shall have the right to contract with the Ontario County Soil and Water Conservation District through its Uniform Inspection Procedures Program for site and soil appraisals.
- B. Individual Household Systems With Design Loads Less Than 1,000 Gallons Per Day. Any installation, construction, alteration (except minor alterations as defined in this Chapter), replacement, enlargement, extension, repair, or other modifications of an on-site individual household wastewater treatment system with a design load of less than 1,000 gallons per day shall be designed and built according to the requirements of this local law and the requirements, as they may from time to time be amended, of the New York State Department Of Health (NYSDOH) Standards for Sewage Disposal for Individual Household Systems. These design requirements are found in Appendix 75-A of Part 75 of Title 10 of the New York Code of Rules and Regulations (10 NYCRR).

- C. Intermediate-Sized Sewerage Systems. Any installation, construction, alteration (except minor alterations as defined in this Chapter), replacement, enlargement, extension, repair or other modification of an intermediate sized sewerage system with design loads equal to or greater than 1000 gallons per day, shall be designed and built according to the requirements of this local law and the requirements, as may be from time to time amended, of the New York State Department of Environmental Conservation (NYSDEC) Standards for Sewage Disposal for Intermediate-Sized Sewerage Facilities. Those design requirements are found in NYSDEC manual “New York State Design Standards for Intermediate Sized Wastewater Treatment Systems.”
- D. Supplemental Design Standards for New and Existing On-Site Wastewater Treatment Systems. The minimum design basis allowed is 130 gallons per day per per bedroom for all non-shoreline (“upland”) properties, and 150 gallons per day per bedroom for all Canandaigua Lake shoreline properties. The size of the house shall be considered along with the number of bedrooms for design loading purposes, as follows:
1. Minimum design: 2 bedrooms (10 NYCRR Appendix 75-A)
  2. 2 bedrooms or up to 1200 square feet of heated living space shall be designed as a 2 bedroom design load.
  3. 3 bedrooms or 1201-2250 square feet of heated living space shall be designed as a 3 bedroom design load.
  4. 4 bedrooms or 2251-3300 square feet of heated living space shall be designed as a 4 bedroom design load.
  5. 5 bedrooms or 3301-4050 square feet of heated living space shall be designed as a 5 bedroom design load.
  6. More than 5 bedrooms or greater than 4050 square feet of heated living space – 110 gallons per day per additional bedrooms shall be added to the design load.
  7. Final determination of design loading shall be made by the Authority Having Jurisdiction.

#### § 202-8. Exemptions

- A. Minor alterations to on-site wastewater treatment systems shall not require an on-site wastewater treatment system permit provided such repairs are made to replace existing conditions in need of repair, and are done in a safe and sanitary manner, and are made in accordance with the standards issued by the NYSDOH or the NYSDEC.
- B. Replacement of septic tanks and distribution boxes shall require an on-site wastewater treatment system permit but do not need to be designed by a Licensed Design Professional provided such repairs are made to replace existing conditions, and are in accordance with the standards issued by the NYSDOH and the NYSDEC. All alterations to the absorption field shall require an on-site wastewater treatment system permit and a design completed by a Licensed Design Professional.

#### §202-9. Substandard Systems

- A. Substandard Systems shall be brought into compliance with Article 3 of this Local Law.
- B. On sites with topographic, physiographic, lot size or other limitations, the property owner shall utilize current technology and design methods to remedy failed or improperly functioning systems, provided that applicable standards from Article 3 of this local law, to the greatest extent possible, are complied with.
- C. The property owner shall request a waiver for any substandard system that cannot meet the standards specified in Article 3 of this local law by working with the authority having jurisdiction. In considering site limitations, the authority having jurisdiction shall take the following into consideration:
  - 1. Distance separations to surface water and groundwater wells in order to minimize pathogen, nutrient or other pollutant loading;
  - 2. The ability to utilize the latest technology and the ability to maintain that technology;
  - 3. The imminent health hazards resulting from a currently failed system;
  - 4. Existing lot line setbacks and area requirements as related to individual properties; and
- D. The extent to which the limitations are self-created.

## § 202-10. Maintenance of Enhanced Treatment Units and Holding Tanks

A. All Enhanced Treatment Units (ETUs) are required to have a service contract with a certified manufacturer's representative. Said service contract must provide for the following:

1. Annual inspections or inspections at intervals specified by the manufacturer, whichever is stricter;
2. Subsequent necessary adjustments by a certified manufacturer's representative for the life of the system;
3. Service contracts for ETUs shall include the cost of regular pumping, the frequency of which shall be recommended by a certified manufacturer's representative, based on the inspection of the system;
4. Within 10 days of an inspection, a written report shall be sent to the authority having jurisdiction and the Watershed Inspector which documents the results of the inspection and provides a written certification from the certified manufacturer's representative that the system is fully functional and operating properly and is under a service contract.

Failure to hold a service contract that meets these requirements, failure to complete the required inspections, failure to send the required inspection reports to the authority having jurisdiction and the Watershed Inspector, or failure to comply with the certified manufacturer's representative's maintenance schedule shall be a violation of this Chapter and is punishable according to Article 9 of this Chapter.

B. Holding Tanks – All holding tanks shall be equipped with a float switch and high level alarm (audible and visible) located in a conspicuous place to indicate when pump out is necessary, which will be maintained in good working order at all times. The owner shall have a contract for service with a NYSDEC permitted septage waste transporter to pump the holding tank as needed. A copy of all pump-out receipts are to be submitted to the authority having jurisdiction and the Watershed Inspector within 10 business days of the pumping. At no time will sewage discharge from the tank be allowed.

Article 4 – Requirements for New and Existing  
On-Site Wastewater Treatment System Inspections

§ 202-11. Inspections of New On-Site Wastewater Treatment Systems.

- A. Installation of an on-site wastewater treatment system shall be under the direct supervision of the Licensed Design Professional who was responsible for the design. The authority having jurisdiction and the Watershed Inspector have the right to observe any portion of the installation of the system.
- B. The applicant shall be prohibited from covering any component of the system without proper authorization. Any change of construction approved by the authority having jurisdiction shall be noted on the original drawings before the system is back filled. An additional review and approval shall not be required for any minor alterations to the designs already approved by the authority having jurisdiction. Major alterations to the designs approved by the authority having jurisdiction shall require review and approval by the authority having jurisdiction. Major changes shall include any changes to the absorption field and/or changes to the size or type of pretreatment tank.
- C. As-built plans shall be provided to the authority having jurisdiction and to the Watershed Inspector after installation of an on-site wastewater treatment system is completed.

§ 202-12. Inspections of Existing On-Site Wastewater Treatment Systems Within 200 Feet of Canandaigua Lake

- A. All parcels located within 200 feet of the mean high water mark for Canandaigua Lake shall receive an on-site wastewater treatment system inspection within five years of the adoption of this law and every five years thereafter by a Certified Inspector.
- B. Properties located within 200 feet of the mean high water mark of Canandaigua Lake that have not been inspected by the Watershed Inspector or Code Enforcement Officer since 1990 or for which the Watershed Inspector and Code Enforcement Officer do not have written records to document the length, type and location of leach fields; the size, type, location and structural integrity of the pretreatment tank; or the tie dimensions; then the system shall be inspected within 3 years of the adoption of this local law by the Watershed Inspector. Property owners whose systems have not been inspected or lack the required

written records shall receive written notification by the Watershed Inspector regarding the 3-year inspection period requirement.

§ 202-13. Additional Conditions Requiring Inspection of Existing On-Site Wastewater Treatment Systems. The authority having jurisdiction shall require an on-site inspection of an existing on-site wastewater treatment system for any of the following

circumstances:

A. Prior to a change of use. A property owner shall arrange for an on-site wastewater treatment system inspection before any change of use is undertaken on that property. The authority having jurisdiction shall determine whether the change represents an increased hydraulic loading to the system. In instances where a site plan approval, special use permit, or variance is required, the authority having jurisdiction shall incorporate the on-site wastewater treatment system inspection report into the review process of the appropriate Planning Board or Zoning Board of Appeals.

B. Prior to a conveyance of real property. A property owner shall arrange for an on-site wastewater treatment system inspection prior to any conveyance of real property. In addition, property owners may request a wastewater treatment inspection for real estate transactions or other certifications to lending institutions, purchase offer conditions of buyers of real property, or other request, or investigations. For conveyance of real property, the inspection must be completed at least 10 days prior to the transfer of title. The inspection report must be submitted to the authority having jurisdiction, the Canandaigua Lake Watershed Inspector (if within the Canandaigua Lake Watershed), the current owner, and the proposed new owner at least five (5) days prior to transfer of title.. It shall be a violation of this law to not have the property inspected prior to the deed transfer. If the required inspection does not occur prior to the conveyance of real property, then the authority having jurisdiction or the Canandaigua Lake Watershed Inspector will inspect the system, and charge the property owner for the reasonable costs of this service, in addition to any fines or penalties specified in this Chapter.

C. Prior to the expansion of a building or dwelling

(1) By one or more bedroom(s),

(2) Increase in the square footage of building or dwelling by greater than twenty-five (25) percent. , or

(3) Alterations to a building or dwelling such that the work area exceeds 50 percent of the aggregate area of the existing building.

D. Prior to any alterations made to an absorption field or any change in treatment system type.

#### § 202-14. Inspection Procedure

- A. All existing on-site wastewater treatment systems requiring an inspection pursuant to this local law shall be performed by a Certified Inspector in accordance with and utilizing the OTN System Inspection Findings Worksheet (Rev 01/13) or as updated).
- B. The authority having jurisdiction and the Watershed Inspector reserve the right to supervise any on-site wastewater treatment system inspection. The authority having jurisdiction and the Watershed Inspector will review all inspection reports. If either the authority having jurisdiction or the Watershed Inspector deem the inspection or the associated report to be inadequate or incomplete, the authority having jurisdiction or the Watershed Inspector will notify the property owner in writing. The system shall be re-inspected and an inspection report shall be sent to the authority having jurisdiction and the Watershed Inspector. The system shall be considered uninspected until an adequate inspection report is sent to the authority having jurisdiction and the Watershed Inspector.

#### § 202-15. Report of Findings

- A. Upon Completion of the inspection, the Certified Inspector shall document all procedures and furnish the owner with a report of findings. The report of findings must be made using the OTN System Inspection Findings Worksheet (Rev. 01/13 or as updated) at a minimum, or include all the information contained therein.
- B. All inspection reports must be filed with the authority having jurisdiction and the Canandaigua Lake Watershed Inspector within 30 days of the inspection's completion. Failure to submit the report to the authority having jurisdiction and the Watershed Inspector is considered a violation of this local law and is punishable according to Article 9 of this Chapter. The system shall be

considered uninspected until an adequate inspection report is sent to the authority having jurisdiction and the Watershed Inspector.

#### Article 5 – On-Site Wastewater Treatment System Permitting Procedures

##### § 202-16. Application Material

A. Applications for on-site wastewater treatment system permits shall be submitted by the property owner or a duly authorized agent, accompanied by the appropriate fee, to the authority having jurisdiction, and shall include the following information:

1. The name, address and telephone number of the property owner and applicant;
2. Specific location of the property on which the on-site wastewater treatment system is located or proposed as well as any properties serviced by the on-site wastewater treatment system, including the tax map number for said property or properties;
3. All plans shall be designed by a Licensed Design Professional showing the location of the proposed on-site wastewater treatment system and all wells, springs, other water supplies, buildings and watercourses within 500 feet of the proposed on-site wastewater treatment system, even if located on adjacent properties;
4. Evidence to demonstrate that there is no public sewer available into which the sewage can be discharged or that it is impractical to discharge sewage into a community sewerage system;
5. Evidence to demonstrate compliance with Article 3 of this local law;
6. Documentation of substantiating data relating to site conditions, percolation tests, deep hole data, and topography of land; and
7. An acknowledgement that the authority having jurisdiction may conduct such investigations, examinations, tests and site evaluations as it deems necessary to verify information contained in the application.

##### § 202-17. Administrative Review

A. The authority having jurisdiction shall not issue an on-site wastewater treatment system permit unless:

1. A plan is submitted by a Licensed Design Professional as required by this local law;
2. All permit fees have been paid;
3. The on-site wastewater treatment system complies with all specifications of state and local laws; and
4. Within the Canandaigua Lake Watershed, a letter of approval has been obtained from the Watershed Inspector.

B. When the authority having jurisdiction denies an application for an on-site wastewater treatment system permit, , the authority having jurisdiction shall furnish the applicant with a written notice of denial setting forth the reasons for such action within seven (7) working days.

§ 202-18. Fees. The fees for any permit or inspection performed pursuant to this Chapter shall be established by the Town Board on an annual basis, or at such other times that the Town Board deems appropriate.

§ 202-19. State or Other Agency Approvals. In addition to the approvals required herein, a review and approval by the New York State Department of Health (NYSDOH) or the New York State Department of Environmental Conservation (NYSDEC) and the Canandaigua Lake Watershed Inspector may be required.

#### Article 6 – Compliance and Reporting

§ 202-20. Access

A. The authority having jurisdiction shall be permitted by the property owner to make a physical inspection of the lands and premises for which an on-site wastewater treatment system permit or inspection has been requested, in order to determine that all of the requirements of this local law have been complied with.

B. The authority having jurisdiction upon complaint or show of cause, shall be permitted by the property owner to make a physical inspection of the lands and premises on which there is an existing or proposed on-site wastewater treatment system.

§ 202-21. Deficiencies and Corrections

A. Upon discovery of an on-site wastewater treatment system which is not in compliance with this Chapter, the authority having jurisdiction shall immediately

notify the property owner of the failure or substandard system through a written notice of violation. It shall be the responsibility of the Property owner to forward the notice of violation to other involved or interested property owners/renters. The notice of violation shall include the specific section of the law being violated, the components of the system that are not in compliance with the requirements of this law, if known, the action(s) necessary to correct the noncompliance, the date by which a permit must be obtained, and the timeframe in which corrective actions must be completed.

- B. The authority having jurisdiction shall, by written notice, order all work stopped on any on-site wastewater treatment system which is in violation of this Chapter. This written notice can be sent by mail, personally delivered, or posted in a conspicuous location on the property.
- C. Upon receipt of a Notice of Violation, the parcel owner shall be given thirty (30) days to obtain an on-site wastewater treatment system permit. A system in failure shall be corrected in six (6) months or less, and substandard systems on parcels within 200 feet of Canandaigua Lake shall be corrected in twelve (12) months or less.
- D. To correct a violation, the on-site wastewater treatment system shall be brought into compliance with the design standards identified in § 202-7 of this Chapter.

#### § 202-22. Failure to Complete Required Inspections

- A. Failure to complete required inspections is a violation of this Chapter and shall be punishable according to Article 9 of this Chapter. The authority having jurisdiction shall notify the property owner through a notice of violation of such failure.
- B. Failure to submit the required inspection reports to the authority having jurisdiction or to the Canandaigua Lake Watershed Inspector is a violation of this Chapter and shall be punishable according to Article 9 of this Chapter. The authority having jurisdiction shall notify the property owner through a notice of violation of such failure.

- C. Upon receipt of a Notice of Violation, the property owner shall be given thirty (30) days to complete and submit the required inspection report to the authority having jurisdiction.

#### Article 7 – COMPLAINTS

##### § 202-23. Notification

- A. Complaints shall be made to the authority having jurisdiction with supporting information that an on-site wastewater treatment system may be deficient (i.e., observed failure to ground water, surface water, or above ground seepage, odor, or otherwise creating a public nuisance).
- B. If after further investigation, the authority having jurisdiction has due cause, the authority having jurisdiction shall notify the property owner and the inhabitants of said parcel in writing, within seven (7) business days of receipt of the complaint or personal observation, that an inspection pursuant to Article 4 of this law is required. A copy of such notice shall be sent to the Town of Canandaigua Town Clerk.

#### Article 8 – VARIANCES

##### § 202-24. Variances

- A. Where practical difficulties, unnecessary hardships, and results inconsistent with the general purpose of this chapter or certain provision thereof are encountered, the property owner may request a variance from the requirements of this law from the Town of Canandaigua Zoning Board of Appeals.
- B. The Zoning Board of Appeals may grant a variance from the requirements of this law if the Zoning Board of Appeals finds the essential purpose of these regulations, namely the protection of public health and water quality, will be accomplished even if the variance is granted. The Zoning Board of Appeals shall consider the following factors and make applicable findings regarding:
  - (1) Whether the use or activity to be authorized by the waiver or variance is in harmony with the purpose and intent of this Chapter.
  - (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 as a result 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 Zoning Board of Appeals may recommend a lesser variance than applied for.
- (5) Whether the hardship or difficulty has been self-created by the applicant or property owner.

#### Article 9 – ENFORCEMENT

##### § 202-25. Violations

- A. In any instance where this Chapter is violated, the Town of Canandaigua may maintain an action or proceeding in the Town of Canandaigua Town Court, or any other court of competent jurisdiction, to compel compliance with the terms of this Chapter or to restrain by injunction, the violation of this Chapter.
- B. An application for an on-site wastewater treatment system permit shall be deemed a consent by the property owner to permit the authority having jurisdiction to enter upon the premises without a search warrant to inspect the work which is the subject matter of the permit application.
- C. If a property owner fails to complete an inspection required by this Chapter, or to allow access to the property for the required inspection, the authority having jurisdiction shall obtain an administrative search warrant, which may be issued by the Town of Canandaigua Town Justice Court, or any other court of competent jurisdiction, to complete the required inspection. The costs of this search warrant, including reasonable attorney fees, and inspection shall be the responsibility of the property owner.
- D. The Town Board (acting as the Town Board of Health) may schedule a hearing on an on-site wastewater treatment system that the authority having jurisdiction has determined to be in failure and has not been rectified by the property owner. In instances where the violation is deemed by the authority having jurisdiction to pose an imminent threat to public health, the Town Board may direct that the Town take corrective action and assess all costs and expenses incurred by the

Town in connection with the proceedings and correction of the violation upon the parcel.

#### § 202-26. Penalties

Any person or property owner who violates any provision of this Chapter shall be subject to a fine not to exceed the sum of \$1,000.00, or by imprisonment of not more than seven (7) days, or both. Each week such violation continues after notification to the person or property owner in violation shall constitute a separate violation. Such violation notice shall be served by certified mail, return receipt requested, or by personal delivery.

### Article 10 – MISCELLANEOUS PROVISIONS

#### § 202-27. Conflict of Law

In any case where a provision of this Chapter is found to be in conflict with a provision of any ordinance or local law, or with a provision of any statute, rule, regulation, or order of the State of New York, the provision which establishes the higher standard for the promotion of the health, welfare, and safety of the citizens of the Town of Canandaigua shall prevail. In any case where a provision of this Chapter is found to be in conflict with a provision of any other ordinance or local law existing on the effective date of this Chapter, which establishes a lower standard for the promotion of the health, welfare, and safety of the citizens of the Town of Canandaigua, the provision of this Chapter shall prevail.

#### § 202-28. Savings Clause

- A. The adoption of this Chapter shall not affect or impair any act done, offense committed or right accrued or acquired or liability, penalty, forfeiture or punishment incurred prior to the time this Chapter takes effect.
- B. The provisions of this Chapter shall be several, and if any clause, sentence, paragraph, subdivision, section or part of this Chapter shall be judged by competent jurisdiction as being invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined to the part thereof directly involved in the controversy in which such judgment shall have been rendered.

**SECTION THREE. Effective Date.** This local law shall take effect immediately upon filing with the Secretary of State of the State of New York.

**(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 No. \_\_\_\_\_ of 20 16 of the (County)(City)(Town)(Village) of CANANDAIGUA was duly passed by the TOWN BOARD on \_\_\_\_\_ 20 16, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*

**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 No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted *(Elective Chief Executive Officer\*)* on \_\_\_\_\_ 20  , in 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 No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_. *(Elective Chief Executive Officer\*)*

Such local law was 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 \_\_\_\_\_ 20 \_\_\_\_\_, 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 No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20 \_\_\_\_\_, 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 No. \_\_\_\_\_ of 20\_\_\_\_ 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 \_\_\_\_\_ 20\_\_\_\_, became operative.

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

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_, 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 county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: \_\_\_\_\_

(Seal)