

LOCAL LAW FILING

New York State Department of State
Division of Corporations, State Records and Uniform Commercial Code
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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 of Middlesex
Village

Local Law No. ____ of the year **2019**

A local law **"Adopting an On-Site Wastewater Treatment System Law"**
(Insert Title)

Be it enacted by the **Town Board** (Name of Legislative Body)

County
City
Town of Middlesex as follows:
Village

Section 1. The Town of Middlesex hereby adopts an On-Site Individual Wastewater Treatment System Law to read as follows:

On-Site Individual Wastewater Treatment System Law

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ARTICLE 1
Introductory Provisions

1.1 Title

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

1.2 Applicability

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

1.3 Purpose

The purpose of these regulations is to preserve and protect public health and the quality of surface and groundwater in the Town of Middlesex 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 water 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 in streams, lakes, and other bodies of water

1.4 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

2.1 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 - An on-site wastewater treatment system that meets the design standards specified in Article 3.2 of this local law and shows no evidence of failure.

AUTHORITY HAVING JURISDICTION - Shall be the Code Enforcement Officer, Health Officer, or other official(s) designated by the Town of Middlesex or other regulatory agency, having the responsibility to implement and enforce the provisions of this local law. Within the Canandaigua Lake Watershed, the authority having jurisdiction shall also include the Canandaigua Lake Watershed Inspector, who is designated by the Canandaigua Lake Watershed Commission and who shall have the joint responsibility to implement the provisions of this local law. The Canandaigua Lake Watershed Inspector will work in partnership with the Town of Middlesex. Final determinations and enforcement authority of this law shall reside with the Town of Middlesex.

BEDROOM AND/OR BEDROOM EQUIVALENT – For the purpose of determining the size of an individual on-site wastewater treatment system, “bedroom and/or bedroom equivalent” shall mean a room with certain features characteristic of bedrooms, generally which include, but not limited to the following:

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

BUILDING - Any structure having a roof supported by columns or by walls and intended for the shelter, housing or enclosure of persons, animals, property or business activity. See also "dwelling" and "structure".

CANANDAIGUA LAKE – The location where the mean high water level of Canandaigua Lake of 689.40 feet above sea level intersects the adjoining parcel. Distance measurements from Canandaigua Lake shall be a horizontal distance and shall be measured from the closest location.

CERTIFIED INSPECTOR – Shall include a registered OTN Inspector, or licensed Professional Engineer.

CHANGE OF USE - 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 - The transfer of the title of real estate, in the form of a deed or other legal instrument, filed in the Office of the Yates County Clerk, which involves

none of the transferors of such deed or other legal instrument remaining in possession of such real estate. Non-arm's-length transfers of title, transfers of an interest in title where one or more of the transferors remain in possession of such real estate and transfers of title to a spouse and/or one or more children, including transfers from a transferor's estate, shall not be considered a conveyance of real property under this law.

DESIGN PROFESSIONAL - 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 10NYCRR Appendix 75-A* per NYSDOH Fact Sheet "Need for Licensed Design Professionals – Residential Onsite Wastewater Treatment Systems" dated January 2004, as amended.

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

1. Lack of a watertight pre-treatment vessel (i.e. septic or holding tank, aerobic treatment unit etc.) prior to any subsurface treatment / absorption system.
2. There is a discharge of effluent directly or indirectly to the ground surface and ponding, surface outbreaks or saturated soils over the absorption area.
3. "Cheater" or direct pipe surface discharge (over an embankment, into a roadside ditch, or stream etc.) to include surface discharge of grey water.
4. A dye test results in the presence of dye on the ground surface.
5. There is a back-up of sewage into the home, building or facility as a result of an overloaded or clogged absorption area.
6. The septic tank requires pumping more than four times per year and/or sewage is observed running back into the septic tank from the absorption area during pumping.
7. The absorption area is located within 100 feet of Canandaigua Lake and the bottom of the leach line invert is at or below the ten year flood elevation (690.00 feet).
8. The access lid of a holding tank, Enhanced Treatment Unit or Pump Tank is located within 100 feet of Canandaigua Lake and is at or below the ten year flood elevation (690.00 feet)

GREY WATER - All wastewater from a building except from flush toilets and urinals.

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

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

MINOR ALTERATIONS - 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.

NEW CONSTRUCTION - 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 building such that the work area exceeds 50 percent of the aggregate area of the existing building (level 3 alterations– 2010 Building Code of New York State).

ON-SITE WASTEWATER TREATMENT SYSTEM PERMIT - A written permit issued by the authority having jurisdiction.

ON-SITE WASTEWATER TREATMENT SYSTEM - A complete system of piping, watertight vessels or other facilities for the on-site collection, transport and treatment of sewage.

OTN INSPECTOR – 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 Onsite Wastewater Treatment 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.

SEWAGE - The combination of human and household 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 standards specified in Article 3.2 of this local law but shows no evidence of failure.

TEN YEAR FLOOD ELEVATION – An elevation of 690.00 feet above sea level.

WORK AREA - That portion or portions of a building consisting of all reconfigured spaces as indicated on the construction documents. Work area excludes other portions of the building where incidental work entailed by the intended work must be performed and portions of the building where work not initially intended by the owner is specifically required by this code.

ARTICLE 3
General Regulations, Design Standards and Requirements

3.1 General Regulations

1. 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 Section 3.3 of this local law.
2. It shall be unlawful to change the use of real property or any building thereon, convey real property, expand a building or dwelling by increasing the number of bedrooms and/or bedroom equivalents, or increase the building or dwelling square footage by greater than twenty-five (25) percent of the square footage, 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.
3. It shall be a violation of this law to use any on-site wastewater treatment system that is in failure.
4. On-site wastewater treatment systems with the absorption area located within 200 feet of Canandaigua Lake shall also comply with section 3.4- Requirements of Substandard Systems.
5. There shall be no activities or conditions permitted which would interfere with the proper operation of on-site wastewater treatment systems. It is specifically prohibited to construct or place anything that would impact the absorption area including but not limited to: buildings, structures, paving, trees or shrubs, fill, the parking or crossing by vehicles, above ground pools, driveways or parking areas.
6. 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 the on-site wastewater treatment system and shall be disposed of so as to in no way affect the proper functioning of the system.
7. All new on-site wastewater treatment systems or modifications to existing on-site wastewater treatment systems shall be designed by a Design Professional. The 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.

3.2 Design Standards to Meet the Requirements of this Local Law

1. New York State Department of Health's *Appendix 75-A of Part 75 of Title 10 of the New York Code of Rules and Regulations (10NYCRR)* for systems with a design load of less than 1000 gallons per day

2. New York State Department of Environmental Conservation's "New York State Design Standards for Intermediate Sized Wastewater Treatment Systems- March 5, 2014" for systems with a design load equal to or greater than 1000 gallons per day.

3. In addition to the New York State design standards, the following standards shall also be met for all dwellings:

- a. The minimum design of the system shall be based on 130 gallons/day/bedroom and/or bedroom equivalent for all on-site wastewater treatment systems greater than 200 feet from Canandaigua Lake.
- b. The minimum design of the system shall be based on 150 gallons/day/bedroom and/or bedroom equivalent for all on-site wastewater treatment systems located wholly or partially within 200 feet of Canandaigua Lake.
- c. The size of the house shall be considered along with the number of bedrooms and/or bedroom equivalent for design loading purposes, as follows:
 - i. Minimum design: 2 bedrooms (Appendix 75-A)
 - ii. 2 bedrooms and/or bedroom equivalents or up to 1200 square feet of heated living space shall be designed as a 2 bedroom design load
 - iii. 3 bedrooms and/or bedroom equivalents or 1201-2250 square feet of heated living space shall be designed as a 3 bedroom design load
 - iv. 4 bedrooms and/or bedroom equivalents or 2251-3300 square feet of heated living space shall be designed as a 4 bedroom design load
 - v. 5 bedrooms and/or bedroom equivalents or 3301-4050 square feet of heated living space shall be designed as a 5 bedroom design load
 - vi. More than 5 bedrooms and/or bedroom equivalents or greater than 4050 square feet of heated living space – 110 gpd per additional bedrooms and/or bedroom equivalents shall be added to the design load
 - vii. Final determination of design loading shall be by the authority having jurisdiction.

3.3 Exemptions

1. Minor alterations to on-site wastewater treatment systems shall not require anon-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.

2. Replacement of septic tanks and distribution boxes shall require anon-site wastewater treatment system permit but do not need to be designed by a Design Professional provided such repairs are made to replace existing conditions. All alterations to the absorption field shall require anon-site wastewater treatment system permit and a design completed by a Design Professional.

3.4 Requirements for Substandard Systems

1. Substandard systems with the absorption area located within 200 feet of Canandaigua Lake.
 - a. Substandard systems with the absorption area located within 200 feet of Canandaigua Lake shall be brought into compliance with the design standards of Article 3.2 of this local law within twelve months of the conveyance of real property and shall follow the procedures in Article 5.
2. Substandard Systems with the absorption area located within 200 feet of Canandaigua Lake with lot limitations: On parcels with existing substandard on-site wastewater treatment systems that have topographic, physiographic, lot size or other limitations that do not allow for meeting the design standards of Article 3.2, the authority having jurisdiction shall require the parcel owner to meet the design standards of Article 3.2 to the greatest extent possible within twelve months of the conveyance of real property.
 - a. The parcel owner shall follow the procedures in Article 5 to bring their on-site wastewater treatment system into compliance to the greatest extent possible. The authority having jurisdiction shall have the ability to grant a local waiver to the requirements of the law on substandard lots if the applicant can prove that they have met the requirements to the greatest extent possible. The authority having jurisdiction shall take the following into consideration when determining if the on-site wastewater treatment system meets the design standards of Article 3.2 to the greatest extent possible:
 - i. Previous approvals and/or specific waivers granted by NYS-DOH, or the Watershed Inspector
 - ii. Distance separations to surface water and groundwater wells in order to minimize pathogen, nutrient and/or other pollutant loading;
 - iii. The ability to utilize the latest technology and the ability to maintain that technology
 - iv. Existing lot line setbacks and area requirements as related to individual properties; and
 - v. The extent to which the limitations are self-created.
 - b. On previously developed sites with a substandard system, holding tanks may be utilized if the authority having jurisdiction deems it is the best available technology for the existing site conditions and limitations.
 - c. Once the authority having jurisdiction has determined that the substandard system meets the design standards of Article 3.2 to the greatest extent possible, the authority having jurisdiction shall provide the parcel owner with an on-site wastewater treatment system permit and a letter of acknowledgement stating that

the parcel owner is meeting the design standards of Article 3.2 to the greatest extent possible.

3. Substandard systems with absorption areas greater than 200 feet from Canandaigua Lake
 - a. Based on the system inspection, the authority having jurisdiction shall notify parcel owners in a written letter that their system is substandard. The letter will list all components of the system that are substandard. The property owner will **NOT** be required to upgrade the system unless it is in failure.

3.5 Maintenance of Enhanced Treatment Units and Holding Tanks

1. All Enhanced Treatment Units (ETUs) are required to have a service contract with a certified manufacturer's representative, which provides for annual inspections or inspections at intervals specified by the manufacturer, whichever is stricter, as well as subsequent necessary adjustments by a certified manufacturer's representative for the life of the unit. Within 10 days of an inspection, a written report, which documents the results of the inspection and provides a written certification from the certified manufacturer's representative that the unit is fully functional and operating properly and is under a service contract, shall be sent to the authority having jurisdiction. Failure to hold a service contract, complete the required inspections, send the inspection reports to the authority having jurisdiction, and/or complete the certified manufacturer's representative's maintenance schedule is a violation of this local law and is punishable according to Article 9 of this local law.

2. Holding Tanks – All holding tanks shall be equipped with a float switch and high level alarm (audible and visual) 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 records shall be submitted to the authority having jurisdiction. At no time will sewage discharge from the tank be allowed.

ARTICLE 4

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

4.1 Inspections of New On-Site Wastewater Treatment Systems

1. Installation of the on-site wastewater treatment system shall be under the direct supervision of a Design Professional. The authority having jurisdiction shall have the right to observe any portion of the installation of the system.

2. 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 alterations shall include any changes to the absorption field and/or changes to the size or type of pretreatment tank.

3. As built plans and construction certification by a Design Professional shall be provided to the authority having jurisdiction after installation is completed.

4.2 Inspections of Systems with the Absorption Area or Holding Tank Located within 200 Feet of Canandaigua Lake

1. All on-site wastewater treatment systems with an absorption area located wholly or partially within 200 feet of Canandaigua Lake or a holding tank located wholly or partially within 200 feet of Canandaigua Lake shall be required to have an on-site wastewater treatment system inspection completed every five years after the adoption of this law by a Certified Inspector.

2. If a parcel is located within 200 feet of Canandaigua Lake and the authority having jurisdiction does not have a stamped as-built drawings or other information satisfactory to the authority having jurisdiction showing the location of the absorption area or holding tank, then an on-site wastewater treatment system inspection shall be required during the first 5-year inspection cycle. This first inspection shall be completed by the Watershed Inspector. Parcel owners will be exempt from future five year inspection cycles if the absorption area or holding tank has been determined to be greater than 200 feet from Canandaigua Lake. The authority having jurisdiction will provide written documentation to the parcel owner that the absorption area or holding tank is greater than 200 feet from Canandaigua Lake.

3. The Watershed Inspector shall complete the first inspection for systems requiring inspections according to Section 4.2.1 of this local law that have not been inspected by the authority having jurisdiction since 1990 or do not have a stamped as-built drawing dated on/after 1990. The inspection or stamped as built drawing must have documented the length, type and location of absorption areas; the size, type, location and structural integrity of the pretreatment tank; and the tie dimensions. Parcel owners shall receive written notification by the Watershed Inspector regarding this requirement and will work with the Watershed Inspector to complete the inspection.

4. The Town and the Watershed Inspector shall determine a schedule for the 5-year inspection cycle, with inspections due on or before December 31 of each inspection cycle year. The Watershed Inspector shall be responsible for notifying parcel owners of the upcoming required inspection by January 15th of the inspection cycle year. The Watershed Inspector shall send a list of parcels requiring inspection to the Town for each inspection cycle year and will copy them on correspondence to those parcel owners.

5. Once the parcel owner is notified of the required inspection, the parcel owner will be responsible for arranging the inspection with a Certified Inspector.

6. If a system is inspected between 5-year inspection cycles, then the 5-year inspection cycle shall be reset for 5 years from the date of the most recent inspection.

4.3 Inspections of Existing On-Site Wastewater Treatment Systems Throughout the Town

1. The authority having jurisdiction shall require an on-site inspection of an existing on-site wastewater treatment system as follows:

- a. Prior to a change of use – The owner of the parcel shall arrange for an on-site wastewater treatment system inspection before any change of use is undertaken. 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 – The owner of the parcel shall arrange for an on-site wastewater treatment system inspection prior to the conveyance of real property. For conveyance of real property, the inspection must be completed at least 10 days prior to the transfer of property. The inspection report must be filed with the authority having jurisdiction, the current owner, and the proposed new owner prior to the transfer of property. It shall be a violation of this law to not have the property inspected prior to the conveyance of real property. If the required inspection does not occur prior to the conveyance of real property, then the authority having jurisdiction will inspect the system following the access procedures defined in section 6.1 of this local law.
- c. Prior to the expansion of a building or dwelling that will increase the number of bedrooms and/or bedroom equivalents, 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.
- d. Prior to any alterations made to the absorption field or any change in the treatment system type.

4.4 Inspection Procedure

1. 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).

2. The authority having jurisdiction reserves the right to observe any on-site wastewater treatment system inspection completed by a Certified Inspector following the procedures identified in Article 6.

3. The authority having jurisdiction will review all inspection reports within 30 days from when they are received. If the authority having jurisdiction deems the inspection or the associated report to be inadequate or incomplete, the authority having jurisdiction will notify the parcel owner by a letter within 30 days from when the report was received. The system shall be re-inspected and an inspection report shall be sent to the authority having jurisdiction. The system shall be considered uninspected until an adequate inspection report is sent to the authority having jurisdiction.

4.5 Report of Findings

1. 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 the OTN System Inspection Findings Worksheet (Rev. 01/13 or as updated).

2. All inspection reports must be filed with the authority having jurisdiction within 30 days of the inspection's completion, or by December 31 of the inspection cycle year as required by Section 4.2 of this law. Failure to submit the report to the authority having jurisdiction is considered a violation of this local law and is punishable according to Article 9 of this local law. The system shall be considered uninspected until an adequate inspection report is sent to the authority having jurisdiction.

3. The authority having jurisdiction shall have 30 days to review the inspection report and notify the parcel owner of their findings. If the authority having jurisdiction deems the inspection report adequate, the authority of jurisdiction shall notify the parcel owner by letter, stating that the inspected on-site wastewater treatment system is determined to be either adequately functioning, a substandard system, or in failure. The report of findings by the Certified Inspector shall be attached and maybe used to support the determination. (See Article 6.2 Deficiencies and Corrections)

ARTICLE 5

On-Site Wastewater Treatment System Permitting Procedures

5.1 Application Material

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

- a. The name, address and telephone number of the applicant;

- b. Specific location of the parcel on which the on-site wastewater treatment system is located or proposed, including the tax map number for said parcel;
- c. The number of bedroom and/or bedroom equivalents and the square footage of the building
- d. All plans shall be designed by a Design Professional showing the location of the proposed on-site wastewater treatment system and all wells, springs, other water supplies, buildings and watercourses within 200 feet of the proposed on-site wastewater treatment system, even if located on adjacent properties.
- e. 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;
- f. Evidence to demonstrate that the design complies with Article 3 of this local law
- g. Documentation of substantiating data relating to site conditions, percolation tests, deep hole data, and topography of land; and
- h. The authority having jurisdiction may conduct such investigations, examinations, tests and site evaluations to verify information contained in the application following the procedures identified in Article 6.

5.2 Administrative Review

1. The authority having jurisdiction shall not issue an on-site wastewater treatment system permit unless:
 - a. A plan is submitted by a Design Professional as required by this local law; all permit fees have been paid; that the plan complies with all specifications of state and local laws; and within the Canandaigua Lake Watershed, a letter of approval has been obtained from the Watershed Inspector.
2. When the authority having jurisdiction shall deny the application for an on-site wastewater treatment system permit, within seven (7) working days after taking such action, the authority having jurisdiction shall furnish the applicant with a written notice of denial setting forth in detail the reason for such action.

5.3 Fees

The fees for any permit or inspection performed pursuant to this local law shall be determined by resolution from time to time by the authority having jurisdiction.

5.4 State or Other Agency Approvals

In addition to 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

6.1 Access

1. On parcels for which an on-site wastewater treatment system permit or inspection has been requested by the parcel owner or parcel owner's agent, the authority having jurisdiction shall be permitted by the parcel owner to make a physical inspection of the lands and premises in order to determine that all of the requirements of this local law have been complied with.
2. When an inspection is required by Article 4 of this law, the authority having jurisdiction shall request the permission of the parcel owner to make a physical inspection of the lands, premises and/or buildings in order to determine that all of the requirements of this law have been complied with. If refused, the authority having jurisdiction shall apply to a court of competent jurisdiction for a search warrant.
3. The authority having jurisdiction, upon complaint or upon show of due cause, shall request the permission of the parcel owner to make a physical inspection of the lands, premises and/or buildings for which an on-site wastewater treatment system is believed to be a cause or potential cause of pollution or a health hazard. If refused, the authority having jurisdiction shall apply to a court of competent jurisdiction for a search warrant.

6.2 Deficiencies and Corrections

1. Upon discovery of an on-site wastewater treatment system which is in failure, the authority having jurisdiction shall immediately notify the parcel owner in writing of the failure through a Notice of Violation. It shall be the responsibility of the parcel owner to forward the Notice of Violation to other involved or interested parcel 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, the action that is necessary to correct the noncompliance, the date by which the permit must be obtained, the timeframe in which corrective actions must be completed.
2. The authority having jurisdiction shall, by written notice and/or posting, order all work stopped on any on-site wastewater treatment system, which is in violation of this local law.
3. Upon receipt of a Notice of Violation of a failed system that is directly discharging to the surface and/or surface water, the authority having jurisdiction shall order that the discharge be

terminated immediately and if the on-site system has a tank, the outlet shall be sealed and the tank used as a holding tank until the system is brought into compliance.

4. To correct a violation, the on-site wastewater treatment system shall be brought into compliance with the design standards identified in Article 3.2 of this local law.

5. Upon discovery of a substandard system with an absorption area within 200 feet of Canandaigua Lake, the authority having jurisdiction shall notify the parcel owner in writing through a Notice of Noncompliance. The Notice of Noncompliance 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, the action that is necessary to correct the noncompliance, and that the system shall be brought into compliance with this law within 12 months of the conveyance of real property as required by section 3.4.

6.3 Failure to Complete Required Inspections

1. Failure to complete required inspections and/or send the inspection reports to the authority having jurisdiction is a violation of this local law and is punishable according to Article 9 of this local law. The authority having jurisdiction shall notify the parcel owner through a Notice of Violation.

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

ARTICLE 7 Complaints

7.1 Notification

1. Complaints by individuals shall be made to the authority having jurisdiction with supporting information that an on-site wastewater treatment system may be in failure.

2. If after further investigation, the authority having jurisdiction has due cause, the authority having jurisdiction shall notify the parcel owner and the inhabitants of said parcel in writing, within seven (7) business days of receipt of the complaint or personal observation and shall request access to the property to further investigate the potential failure. A copy of such notice shall be sent to the Clerk of the local governing body.

3. The authority having jurisdiction will follow the procedures in Article 6 to gain access to the parcel and depending on the outcome of the investigation will follow the procedures established in this law to remedy any deficiencies.

ARTICLE 8

Appeals

8.1 Appeals for Failed Systems

On-site wastewater treatment systems in failure shall follow the standard procedures with the Code Enforcement Officer, the local Board of Health, and New York State Department of Health.

8.2 Appeals for Non-Failed Systems

1. Where practical difficulties, unnecessary hardships, and results inconsistent with the general purpose of this chapter or certain provisions thereof are encountered, the parcel owner may appeal the determination of the authority having jurisdiction to the Town Zoning Board of Appeals to request a variance from the requirements of this law.

2. 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 created. The Zoning Board of Appeals shall consider the following factors and make applicable findings regarding:

- a. Whether the use or activity to be authorized by the variance is in harmony with the purpose and intent of this law. The following items will be taken into consideration:
 - i. Previous approvals and/or specific waivers granted by NYS-DOH, or the Watershed Inspector
 - ii. Distance separations to surface water and groundwater wells in order to minimize pathogen, nutrient and/or other pollutant loading;
 - iii. The ability to utilize the latest technology and the ability to maintain that technology
 - iv. Existing lot line setbacks and area requirements as related to individual properties
- b. Whether a substantial change will be produced in the general condition of the water quality or a substantial risk to groundwater quality or quantity will be created because of the variance.
- c. Whether the hardship or difficulty can be alleviated by some other method that is feasible for the applicant to pursue.
- d. Whether the requested variance is substantial

- e. 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.
- f. The extent to which the hardship or difficulty has been self-created.

ARTICLE 9 Enforcement

9.1 Violations

1. In any instance where this local law is violated, the Town of Middlesex may maintain an action or proceeding in a court of competent jurisdiction to compel compliance with the terms of this local law, or to enforce a violation of this law or to restrain by injunction, the violation of this local law.
2. An application for an on-site wastewater treatment system permit shall include a section requesting consent by the parcel 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.
3. If a parcel owner fails to complete an inspection required by this local law, or to allow access to the parcel for the required inspection, the authority having jurisdiction shall obtain an administrative search warrant, which may be issued by a court of competent jurisdiction, to complete the required inspection.
4. 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 parcel 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. The Town Board shall ascertain the cost of such correction action and such cost shall be charged and assessed against the owner of the property. The expense so assessed shall constitute a lien and charge on the real property on which it is levied until paid or otherwise satisfied or discharged and shall be collected in the same manner and at the same time as other Town charges.

9.2 Penalties

Any person who violates any provision of this local law shall be subject to a fine not to exceed the sum of \$250 or by imprisonment of not more than fifteen (15) days, or both. Each week such violation continues after notification to the person in violation shall constitute a separate violation. Such violation notice shall be served by certified mail, return receipt requested, or by personal service.

Section 2. In any case where a provision of this local law 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 established the higher standard for the promotion of the health, welfare and safety of the citizens of the municipality shall prevail. In any case where a provision of this local law is found to be in conflict with a provision of any other ordinance or local law existing on the effective date of this local law, which established a lower standard for the promotion of the health, welfare and safety of the citizens of the Town of Middlesex, the provisions of this local law shall be deemed to prevail.

Section 3. The adoption of this local law 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 local law takes effect.

Section 4. 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 judgment 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 judgment shall have been ordered.

Section 5. This local law shall take effect immediately upon filing with the Secretary of State.

