

**Long Lake Township
Grand Traverse County, Michigan
Ordinance 107**

**INSPECTION OF ON-SITE SEWAGE DISPOSAL SYSTEMS
AT THE TIME OF PROPERTY TRANSFER ORDINANCE**

AN ORDINANCE PURSUANT TO, ACT 246 OF PUBLIC ACTS OF 1945, AS AMENDED (NOW MCL 41.181) TO REQUIRE THE INSPECTION OF ALL ON-SITE SEWAGE DISPOSAL SYSTEMS (OSDS) UPON THE SALE, TRANSFER, OR CONVEYANCE OF PROPERTY SERVED BY THE OSDS; TO REPEAL ANY ORDINANCE OR PORTION THEREOF IN CONFLICT HEREWITH; AND TO PROVIDE FOR THE ADMINISTRATION OF THIS ORDINANCE

THE TOWNSHIP OF LONG LAKE ORDAINS:

Section 1. Title.

This Ordinance shall be known as the Long Lake Township Inspection of On-site Sewage Disposal Systems at the Time of Property Transfer Ordinance. Also, for brevity, this Ordinance may be called the Septic System TOT (Time of Transfer) Ordinance.

Section 2. Legislative Findings.

The Township Board finds that population growth in Long Lake Township as well as improperly maintained and aging residential septic systems increase the potential for degradation of groundwater and inland lakes within the Township. The Township, therefore, desires to protect these natural resources and finds that the following reports by the engineering and planning consulting firm of Williams & Works provide persuasive information regarding the need for this Ordinance: Time of Sale Septic System Inspection Program, dated February 1, 2008, and A Basis for the Time of Sale Inspection Program dated June 19, 2008. Those reports are incorporated into these Legislative Findings by reference.

Section 3. Purpose.

The Township is empowered by Act 246 of the Public Acts of 1945, as amended (being MCL 41.181), to adopt ordinances regulating the health, safety, and welfare of persons and property.

The purpose of this Ordinance is to protect public health and to prevent or minimize degradation of groundwater and/or surface water by improper or malfunctioning sewage disposal systems through the inspection of such systems at the time of the transfer or Sale of the property that is served by the sewage disposal system.

This Ordinance contains minimum standards and supplements the rules and regulations of the Michigan Department of Environmental Quality, the Grand Traverse County Health Department, and any Michigan or federal law or regulation regarding the subject matter of this Ordinance. Based on current law, this Ordinance imposes standards that are more restrictive than those required by federal, state or other local regulations.

Section 4. Definitions. As used in this Ordinance,

"Authorized Agent" means any Person, who is authorized in writing by the Owner, or the purchaser or Transferee, to act as legal representative on behalf of such Person regarding the sale, transfer or conveyance of real property that is served by an OSDS.

"Enforcement Agent" means the Person (or duly authorized representative thereof) whom the Long Lake Township Board authorizes and appoints as responsible for ensuring compliance with the provisions of this Ordinance.

"Environmental Health Regulations" means the Environmental Health Regulations of the Grand Traverse County Health Department, as amended.

"Failure" includes the following:

- the backup of sewage into a structure;
- the discharge of effluent onto the ground surface;
- the connection of an OSDS to a storm drain;
- liquid level in the septic tank is above the top of the outlet pipe
- the structural defect of a septic tank which is likely to impair its proper operation;
- the discharge of sewage from an OSDS into any body of water.

"Health Department" means the Grand Traverse County Health Department.

"On-site Sewage Disposal System" means Sewage Disposal Facilities as that term is defined by the Health Department in its Environmental Health Regulations and as those regulations may be amended in the future; but shall not mean any community wastewater treatment system serving more than one parcel which is subject to regulation pursuant to Part 31 of Act 451 of the Public Acts of 1994, as amended, and the rules promulgated thereunder, being Part 22, Groundwater Quality, of the Michigan Administrative Code; nor systems issued a National Pollution Discharge Elimination System (NPDES) permit pursuant to the federal Clean Water Act.

"OSDS" means an On-site Sewage Disposal System.

"Owner" means any Person who has legal or equitable title to any Premises.

"Person" means any individual, firm, partnership, party, corporation, company, society, association, or other legal entity.

"Premises" means any tract of land, or portion thereof, or combination of tracts of land under single or common ownership, operation or control, which contains (a) any type of structure that is, was, or will be occupied or inhabited either permanently or transiently, and (b) which is served by an OSDS.

"Record Review" means all documents that are relevant to an evaluation of an OSDS and shall include, but are not limited to: prior inspection reports on file with the Township or Health Department for the same Premises; inspection reports on file with the Township or Health Department for adjoining Premises; and all records of the Health Department related to wells and septic systems for the same Premises such as well logs, permits, well depth verification information and complaint records.

"Sale" or "Sell" means all conveyances of Premises where a Person other than the Owner voluntarily succeeds to the interest of the Owner regardless of whether such succession of interest occurs during the Owner's life or as a result of the Owner's death and regardless of whether the Owner retains an interest in the Premises by means of a reversionary interest, land contract, mortgage or any type of security arrangement. By way of example and not limitation, "Sale" or "Sell" includes land contracts, conveyances to a family-owned limited liability company, inheritances and the conveyance of Premises to a new owner from a party that obtained title by means of foreclosure or forfeiture. However, terms "Sale" or "Sell" excludes (a) involuntary transfers such as by foreclosure and contract forfeiture, (b) a conveyance to create or end joint ownership of the Premises if at least one Person after the conveyance was an Owner of the Premises before the conveyance, or where an Owner before the conveyance retains a life estate in the Premises after the conveyance, (c) a conveyance where the Owner as part of the conveyance retains the right to use and benefit from the Premises during the Owner's life, such as a conveyance to a trust, (d) conveyances between commonly controlled entities as described in MCL 211.27a(7)(l), or (e) a situation where the Owner has a guardian, conservator or other fiduciary appointed by a court.

"Substantial Conformance" means the degree of operational effectiveness of an OSDS which results in a minimal likelihood of risk to public health or the environment caused by improper construction, location, or operation of an OSDS, or by the malfunctioning of an OSDS.

"Township" means Long Lake Township.

"Transferee" means a Person to whom title or exclusive beneficial use of the Premises is being conveyed by means of a Sale.

Section 5. Notification of Ordinance Required.

- A. In the Sale or expectation of a Sale of a Premises in the Township, any Person who acts for a fee as an Authorized Agent of the Owner or Transferee, provides

an abstract of title or title insurance for a Premises or provides escrow services shall advise the Owner and Transferee in writing of (i) the requirements of this Ordinance and the requirements of Township ordinance Number 23 pertaining to supplemental real estate disclosure regarding an OSDS.

- B. If the Owner or Transferee is provided with written information prepared by the Township regarding this Ordinance, then the notification requirement of this section shall be deemed satisfied.
- C. If the Authorized Agent of the Owner or Transferee is provided written information prepared by the Township regarding the requirements of this Ordinance, then the notification requirement of this section shall be deemed satisfied as to the principle of the Authorized Agent.

Section 6. Inspection Required.

- A. Except as provided in subsection B below and commencing one hundred eighty (180) days following the effective date of this ordinance, an Owner of any Premises in the Township shall not Sell a Premises until the following conditions are met:
 - 1. An inspection report of the OSDS for the Premises has been filed with the Township; and
 - 2. A written copy of the inspection report has been provided to the Transferee as part of the Sale of the Premises.
- B. The following are exempt from the requirement of an OSDS inspection report:
 - 1. A Sale of Premises that has had an OSDS installed within the last thirty-six (36) months pursuant to a permit issued by the Health Department for the OSDS.
 - 2. A Sale of Premises where written evidence exists that the OSDS on the Premises has been inspected as required by this Ordinance within thirty-six (36) months of the proposed Sale and has been found to be in compliance with the Environmental Health Regulations of the Health Department.

Section 7. OSDS Inspectors.

- A. All Persons who desire to perform OSDS inspections under this Ordinance shall register with the Enforcement Agent and shall provide all of the following information and shall comply with all of the following requirements: (a) he or she shall file and maintain with the Enforcement Agent his or her current mailing address, (b) he or she shall not be disqualified by the Township from performing inspections pursuant to subsection B below, (c) he or she shall demonstrate

familiarity with the proper operation of OSDS, and (d) he or she shall hold at least one of the following credentials in good standing:

1. A certificate of training from a course for inspectors offered by NSF International or an equivalent agency or organization.
 2. A Michigan license as a registered sanitarian or a registered environmental health specialist.
 3. A Michigan professional civil engineer's license.
 4. A Class A, B, C, D or SC certification for wastewater operators issued by the State of Michigan.
- B. Disqualification of an Inspector. The Township Board may disqualify a Person from making OSDS inspections under this Ordinance for any of the following reasons:
1. The inspector fails to comply with this Ordinance.
 2. The inspector was negligent in an inspection or the preparation of an inspection report.
 3. The inspector submits false or misleading information on an application for registration under subsection A above or on an inspection report.
 4. The inspector submits a report under this Ordinance that lacks information, without reasonable justification, required by this Ordinance and the inspector thereafter fails to submit the omitted information within five business days from the date the Enforcement Agent requests that he or she provide such information.
 5. The inspector does not maintain the credentials required by this Ordinance.
- C. Procedure to Remove an Inspector from the Registered List. Before the Township Board removes an inspector from the registered list under this Ordinance, the Enforcement Agent shall prepare a written notice specifying all reasons the Township Board will consider as a basis for disqualification and shall serve a copy of this written notice, either personally or by first class mail, on that inspector. An inspector shall be deemed served with the notice if the notice is sent to the inspector's mailing address on file with the Enforcement Agent. Service shall be deemed complete upon mailing. The inspector shall be entitled to a hearing before the Township Board concerning his or her disqualification, if within 14 days of the date the written notice was served he or she files with the Enforcement Agent a written request for such a hearing. At this hearing the inspector shall be given an opportunity to demonstrate why he or she should not be disqualified from performing further OSDS inspections pursuant to this Ordinance. To remove an

inspector from the registered list under this Ordinance, the Township Board must find based on substantial, material and competent evidence that the inspector should be disqualified as provided in this Ordinance. The Township Board's decision shall be in writing and shall specify the reasons for its decision.

Section 8. Inspection Report.

- A. An inspection report must be in written form and must be on the NSF International report form entitled Wastewater Treatment System Inspection Checklist, May 2007 version, or on a substantially similar form if that form has been approved in advance by the Enforcement Agent. In addition, an inspection report shall:
1. Contain all information that is relevant to the condition of the OSDS as derived from the Site Inspection, as described in Section 9, and from the Record Review concerning the Premises;
 2. Describe the basis for any conclusions concerning the OSDS and whether such conclusions are based on observations made during the site inspection, on the Record Review, on water quality testing or on other information or documents. If a conclusion is based on other information or documents, then the inspection report shall describe and identify the source of that information or those other documents;
 3. Provide a description of the current operational or functional status of the OSDS, including an evaluation of the criteria in section B below as applied to the OSDS, and a conclusion regarding whether the OSDS is failing or if such a Failure is imminent;
 4. Provide a conclusion by the inspector regarding whether the OSDS is in Substantial Conformance with the Health Department's Environmental Health Regulations;
 5. Identify any necessary repairs to or replacement of any or all portions of the OSDS;
 6. Describe other observations which would lead a reasonably prudent inspector to conclude that the OSDS is (a) not in compliance with the Environmental Health Regulations in terms of location, construction or other non-operational requirement, (b) not operating or functioning in Substantial Conformance with the Environmental Health Regulations of the Health Department or (c) in Failure or imminent likelihood of Failure;

7. Make recommendations to extend the life of the OSDS and to prevent the premature Failure of the OSDS in the future.
- B. The evaluation by the inspector regarding whether the OSDS is in Substantial Conformance with the Health Department's Environmental Health Regulations, as amended, shall use the following criteria:
1. Presence of a septic tank and field or other sewage disposal facility that has been approved by the Health Department;
 2. Age of the system;
 3. Size of the system in relation to the dwelling size and demands upon it;
 4. Vertical isolation distance between the high groundwater table and the point of sewage discharge;
 5. Isolation distance from surface waters or wetlands;
 6. Isolation distance between any water wells and the sewage system;
 7. Lot size and useable area for on-site sewage disposal;
 8. Operational condition of the existing sewage system;
 9. Potential area for replacement or reserve system; and
 10. A list of all documents contained in the Record Review.
- C. When documents or information from a Record Review is missing, incomplete or conflicts with other records or applicant information, a note shall be made in the "Comments" section of the inspection report.

Section 9. Site Inspection.

- A. When conducting an OSDS inspection, the inspector shall conduct an on-site visit and inspection of the Premises and the OSDS (the Site Inspection). During the Site Inspection, the inspector shall at a minimum take the following actions, the results of which shall be included in the inspection report with an attached sketch plan:
1. Physically measure all isolation distances as described in section 8.0 .B.,
 2. Visually inspect the OSDS location and the surrounding area;
 3. Open and probe the OSDS tank to determine thickness of scum, the liquid level and depth of sludge or, alternatively, determine that the septic tank

has been pumped by a licensed septage pumping service within six (6) months prior to the inspection date and obtain a written statement from the pumping contractor as to the capacity and condition of the septic tank and its baffles and whether there was evidence of any effluent flowing back from the absorption field;

4. Auger borings into the absorption area of the OSDS when there is evidence that any portion of the absorption field may be failing or when documents or information from a Record Review are missing. Evidence of absorption field Failure shall include, but is not limited to, saturated soil over any portion of the drainfield, liquid breakout on the surface above or downgradient from the drainfield, sewage odors in the vicinity of the drainfield or wastewater back-up in any structure served by the OSDS. The auger borings shall be used to determine the thickness of the soil cover over the absorption field, the presence of high groundwater or the presence of other factors indicating improper OSDS operation;
5. With the Owner's permission, visually inspect the building plumbing which shall include but is not limited to plumbing fixtures that are not routed through the primary plumbing system, the water softener and footing drains that are connected to the OSDS. If the Owner does not allow visual interior inspection, the inspection report shall note that no interior inspection was made due to the lack of consent or, alternatively, the inspector may rely on the report of a third-party home inspector, if any, to establish the types and number of fixtures connected to the OSDS; and
6. Determine by ground probing the location and extent of the septic tank unless the location and extent of the tank can be determined in the Record Review.

Section 10. Referral to Health Department.

If an inspection report contains an evaluation that the OSDS is not in Substantial Conformance with the Health Department's Environmental Health Regulations, then the Township shall forward a copy of the inspection report to the Health Department. The Township shall be under no obligation to take enforcement action if an inspection report contains information that an OSDS is not in Substantial Conformance with the Environmental Health Regulations.

Section 11. Contract with Health Department.

The Health Department may administer all or any portion of this Ordinance as the Township and Health Department may agree. Any such agreement shall be in the form of a written interlocal agreement and shall be approved by the Township Board and the governing body of the Health Department. Nothing in this Ordinance or in the interlocal agreement shall be deemed to prohibit the Health Department from charging a fee for

its services or from taking any action it is authorized to take under its Environmental Health Regulations or under state law.

Section 12. Severability.

The provisions of this Ordinance are hereby declared to be severable and if any clause, sentence, work, section, or provision is declared void or unenforceable for any reason by any court of competent jurisdiction, such declaration shall not affect any portion of the Ordinance other than said part or portion thereof.

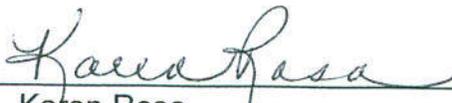
Section 13. Repeal.

All Ordinances and parts of Ordinances that are in conflict with this Ordinance are hereby repealed.

Section 14. Effective Date.

This Ordinance shall be effective the day following its publication in a newspaper of general circulation within the Township.

TOWNSHIP OF LONG LAKE

By: 
Karen Rosa

Its: Supervisor

By: 
Carol Hoffman

Its: Clerk

Date Published: November 24, 2008

Effective Date: November 25, 2008