

**Torch Lake Township**

**Antrim County, Michigan**

Police Power Ordinance 2023-3 .

**SEPTIC INSPECTION AND PROPERTY TRANSFER ORDINANCE**

An Ordinance pursuant to Act 246 of the Public Acts of 1945, as amended (being MCL 41.181) to require the evaluation of sewage treatment and disposal systems (STDS) and the testing of private water supply systems upon the transfer of property served by the STDS; to repeal any Ordinance or portion thereof in conflict herewith; and to provide for the administration of this Ordinance.

THE TOWNSHIP OF TORCH LAKE ORDAINS:

**Section 1. TITLE**

This Ordinance shall be known as the Torch Lake Township Septic Inspection and Property Transfer Ordinance. This Ordinance may also be called the TOT (Time of Transfer) Ordinance.

**Section 2. PURPOSE**

- A. The Township is empowered to adopt Ordinances regulating the health, safety, and welfare of persons and property, and to provide penalties for violations of such Ordinances.
- B. The purpose of this Ordinance is to protect public health and to prevent or minimize the degradation of groundwater and surface water quality by malfunctioning sewage treatment and disposal systems (STDS) and to assure safe water supplies by the evaluation of the STDS and private water supply systems at the time of transfer of the property served by the STDS.
- C. This Ordinance contains minimum standards that are in addition to the rules and regulations enacted by the Michigan Department of Community Health (MDCH), the Health Department of Northwest Michigan (HDNW), Michigan Department of Environment, Great Lakes, and Energy, and any Michigan or federal law or regulation regarding the subject matter of this Ordinance. The intent of this Ordinance is to impose standards that supplement HDNW regulations and which are more restrictive than current federal or State law or HDNW regulations. In addition, the Township will execute an Intergovernmental Agreement with HDNW pursuant to which the HDNW will conduct the evaluations that are required by this Ordinance. The Intergovernmental Agreement shall be reviewed on an annual basis by both parties to determine if changes should be considered.
- D. This Ordinance requires an evaluation of a sewage treatment and disposal system (STDS) and private water supply system at the time the property is transferred to determine the operational status of the STDS and private water supply system. This ordinance further requires the evaluation to identify any non-compliance with current health code(s). The Township has an intergovernmental agreement with the HDNW in which the HDNW has agreed to conduct all evaluations required by this Ordinance. Only evaluations conducted by the HDNW or its evaluators comply with this Ordinance. If an evaluation discovers a defective STDS or private water supply system, or noncompliance with current code(s), the HDNW may take such action, pursuant to its own rules and regulations, to protect the environment and/or public health.

### **Section 3. DEFINITIONS**

**Absorption System (Field):** The collective term for trench or bed excavations used to uniformly distribute septic tank effluent to subsurface soil by means of a network of distribution piping in washed aggregate with covering soil and vegetation. A trench contains one pipe. A bed contains two or more pipes.

**Advanced Treatment System:** An advanced treatment system (ATS) is an on-site wastewater system that provides for the collection, treatment and uniform disposal of wastewater using advanced technologies to pre-treat wastewater effluent prior to a soil absorption system.

**Approved/Approval:** A decision that denotes a condition, facility, thing, premise, action or use, is in satisfactory compliance with the intent, purpose, and applicable standards of Health Department Environmental Health regulations.

**Authorized Agent:** A person that is authorized in writing by (a) the owner, or (b) the transferee, to act as legal representative in all matters authorized on behalf of the owner or transferee.

**Evaluator:** A person who is authorized by the HDNW, to conduct evaluations of STDS and private water supply systems for the purpose of this Ordinance.

**Effluent:** The partially treated sanitary sewage outflow discharge of a septic tank or similar device.

**Environmental Health Regulations:** The District Sanitary Code of the Health Department of Northwest Michigan (HDNW) for Antrim, Emmet Charlevoix and Otsego Counties, January 30, 2017, and the Michigan Well Construction and Pump Installation Code (Part 127, Act 368, PA 1978 and Administrative Rules).

**Failed STDS:** A sewage treatment and disposal system that violates section 4.1 of the Environmental Health Regulations. Where the drainfield aggregate of a sewage treatment and disposal system has hydraulically saturated or effluent from a sewage treatment and disposal system is exposed to the surface of the ground, backing up into a structure or is permitted to drain onto the surface of the ground or into any lake, river, storm sewer or stream, or where the seepage of effluent is endangering a public or private water supply or where a public health nuisance is created by a system improperly constructed or maintained.

**Failed Private Water Supply System:** A private water supply system that does not comply with any of the following: the Safe Drinking Water Act (Act 399 of 1976; MCL 325.1001 et seq.) or the Michigan Groundwater Quality Control Rules or other State of Michigan rules that were applicable at the time of construction of the private water supply system.

**Groundwater Quality Control Rules:** The Michigan Well Construction and Pump Installation Code (Part 127, Act 368, PA 1978 and Administrative Rules).

**HDNW:** The Health Department of Northwest Michigan is mandated by the Michigan Public Health Code to promote wellness, prevent disease, provide quality healthcare, address health problems of vulnerable populations, and protect the environment for the residents and visitors of Antrim, Charlevoix, Emmet, and Otsego counties.

**Owner:** A person who has legal or equitable title of a premises.

**Person:** An individual, firm, limited liability company, partnership, party, corporation, company, society, association, or other legal entity.

**Premises:** Any house, building, structure, facility or improvement that is served by a STDS.

**Private Water Supply System:** A system of privately-owned pipes and structures through which water is obtained, including but not limited to: the source of the water such as wells, or hauled water storage tanks, pumping and treatment equipment, storage tanks, pipes and appurtenances used or intended to furnish water for potable use. It does not include a municipally-owned water supply system.

**Real Estate Service Provider:** A person, who for a fee and in connection with the transfer of a premises, provides one or more of the following services: provides escrow services, provides title insurance, or acts as a real estate agent for an owner or a transferee or both.

**Septic Tank:** A watertight receptacle used to receive all sewage and designed to collect solids from such wastes for decomposition therein.

**Sewage Treatment and Disposal System (STDS):** The method of disposing of sewage by means of a sewer line connected to a septic tank or aerobic tank and one or more of the following: dry well, seepage pit, block trench, absorption field, trench or bed or any similar device or devices approved by the Health Officer.

**Township:** Torch Lake Township.

**TOT Notification:** A written document prepared by the Township that contains a summary of the requirements of this Ordinance.

**Transfer:** A conveyance of the entire legal or equitable title to a premises to a person who at the time of the conveyance did not have an ownership interest in the premises. The conveyance may be by any legal means, including but not limited to, a deed, land contract, or inheritance (testate or intestate). In addition, a transfer includes a change in more than 50% of the ownership interest of a legal entity when that legal entity owns a premises.

**Transferee:** A person to whom a premises is transferred.

**Transferor:** A person who makes a transfer of a premises.

#### **Section 4. ADVISING OWNERS OF ORDINANCE**

When providing services in connection with a transfer of a premises, a real estate service provider shall provide the owner and transferee with a TOT Notification. TOT Notification documents may be obtained from a Township officer or employee, as designated by the Township Board, or from the HDNW.

#### **Section 5. STDS EVALUATION REQUIRED and EXEMPTIONS**

- 1) Except as provided in subsection B, an owner of any premises in the Township shall not transfer a premises until the following conditions are met:
  - a) The existing STDS has been evaluated as required by this Ordinance and the HDNW has determined that the STDS complies with the HDNW's Environmental Health Regulations and, if applicable, the private water supply system complies with the requirements of Section 7 of the Ordinance; and
  - b) A written copy of the evaluation report has been provided to the transferee or an authorized agent of the transferee by the owner or an authorized agent of the owner.
- 2) The transfer of a premises is exempt from the STDS and private water supply system evaluation requirements of this Ordinance under any of the following circumstances:
  - a) Based on information provided by the owner or the records of the HDNW a determination is made by the HDNW that, pursuant to a permit issued by the HDNW under applicable Environmental Health Regulations, a new or replacement STDS was installed on the premises within ten years prior to the proposed date of transfer.
  - b) Based on information provided by the owner or the records of the HDNW, a determination is made by the HDNW that the STDS, which serves the premises, has been evaluated and found by the HDNW to meet the requirements of this Ordinance within five years prior to the date of the proposed transfer.
  - c) Based on information provided by the owner or the records of the HDNW, a determination is made by the HDNW that any structure on the premises, which is served by a STDS, will be demolished and not replaced.
  - d) When a mortgage or other payment obligation for which the premises is pledged as security is refinanced.
  - e) A transfer to establish, release or foreclose on a secured interest (such as a mortgage).

- f) An involuntary transfer pursuant to foreclosure or court order.
- i) Upon voluntary purchase of the property, the well and septic system must be inspected pursuant to Section 5 part 1.

### **Section 6. ONE TIME BASELINE INSPECTIONS**

- 1) A survey of septic permits held by the Health Department of Northwest Michigan will be performed by the Health Department of Northwest Michigan. If no record of a septic permit exists, the septic system must be inspected within three years of notification by the township. The township has the responsibility to notify non-compliant property owners.
- 2) Failed septic systems in waterfront properties are a particular threat to the health, safety, and wellbeing of Torch Lake Township residents, so all properties within 500 feet of the ordinary high-water mark of Traverse bay/Lake Michigan and water's edge of an inland lake/body of water are required to perform a septic inspection within 3 years of notification by the township.
- 3) Exemptions
  - a. If a determination is made by the HDNW that the STDS, which serves the premises, has been evaluated and found by the HDNW to meet the requirements of this Ordinance within five years prior to passage of the ordinance.
  - b. If a determination is made by the HDNW that, pursuant to a permit issued by the HDNW under applicable Environmental Health Regulations, a new or replacement STDS was installed on the premises within ten years prior to the passage of the ordinance.
  - c. Compliance with this section's one-time inspection requirement does not waive the requirement to inspect the STDS prior to the sale or transfer of the premises required by other sections of this ordinance.
- 4) Failure to perform an inspection within the required timeframe will allow penalties specified by Section 11.

### **Section 7. EVALUATION APPLICATION AND FEE**

Applications for an evaluation that is required by this Ordinance may be obtained from a Township officer or employee, as designated by the Township Board, or from the HDNW. The application must be returned to the HDNW and an evaluation fee, as set by the HDNW, shall be paid to the HDNW.

### **Section 8. STDS EVALUATION AND REPORT**

- 1) An STDS evaluation shall consist of visual and olfactory observations of the sewage system, use conditions, information gathering, evaluations at time of prior pumping, evaluation of the condition of the septic tank, absorption system, pumps, filters, and other important features of the sewage system. The evaluation shall provide a determination regarding whether the STDS complies with the HDNW's Environmental Health Regulations. In making this determination, evaluators will adhere to the evaluation checklist established by the HDNW for evaluations to be conducted under this Ordinance and as specified in an attachment to the Intergovernmental Agreement between the HDNW and the Township.
- 2) Except as provided in Section 7, subsection 3 (below), prior to evaluation, the septic tank(s) must be pumped and serviced by a Michigan licensed septage hauler. The licensed hauler shall provide written documentation of service to the homeowner and to the evaluator.
- 3) Pumping exemptions:
  - a) If a STDS has been pumped within 5 years prior to the evaluation and documentation concerning this prior pumping has been provided to the evaluator prior to the TOT evaluation, the STDS will not need to be pumped as a part of the STDS evaluation under this Ordinance; or
  - b) An owner or owner's agent may provide documentation from a licensed septic hauler that indicates there is insufficient sludge to warrant pumping prior to inspection.

- c) A finding that pumping is not required does not waive any requirement for septic tank inspection imposed by this ordinance.
- 4) An STDS with design features that met the design standards at the time of construction will not be considered a failed system unless its performance is deemed failed.
- 5) Evaluation Reports must be in written or electronic form and include, at a minimum:
  - a) The address of the site;
  - b) The parcel identification number;
  - c) The name of the owner or the owner's authorized agent;
  - d) The location of the STDS and private water supply system to be inspected;
  - e) A description of the current operational status of the STDS, including documentation as to whether the STDS has failed;
  - f) Other relevant or unusual observations related to the STDS and/or private water supply system;
  - g) Recommendations to extend the life of the STDS and/or to make improvements in compliance with environmental health regulations;
  - h) A determination that the STDS and private water supply system is or is not in compliance with the HDNW's Environmental Health Regulations;
  - i) The results of water quality testing that were performed.
- 6) The evaluator shall provide complete documentation of each STDS evaluation to the owner, Township and HDNW within 14 business days of the evaluation.
- 7) Any owner or authorized agent of a failed STDS shall request a permit from the HDNW for corrective action(s). This request shall be made within 10 business days of the receipt of the evaluation report or notification from the HDNW.
- 8) An owner or authorized agent shall remedy the failed STDS within six (6) months or in a timeframe agreed upon by the HDNW.
- 9) Once the HDNW gives final approval to the corrected STDS, the system shall be considered in compliance with this Ordinance.

## **Section 9. EVALUATIONS**

Evaluations required by this Ordinance may only be conducted by the HDNW or evaluators contracted by the HDNW.

## **Section 10. PRIVATE WATER SUPPLY SYSTEM EVALUATION**

- 1) If a STDS must be evaluated as required by this Ordinance and the premises being served by the STDS also has a private water supply system, then the private water supply system shall be evaluated in addition to the STDS. A private water supply system that draws drinking water from surface water bodies (e.g. lake draw) shall also be subject to this section. Water sample(s) will be obtained by the evaluator and analyzed at a State of Michigan certified drinking water laboratory to determine the presence or absence of coliform bacteria, nitrate concentrations, and to determine whether the water quality complies with Safe Drinking Water Act (399 PA1976; MCL 325.1001 et seq.).
- 2) The evaluator shall also perform a visual evaluation of the private water supply system for compliance with Michigan Groundwater Quality Control Rules or other regulations in force at the time of construction.
- 3) The evaluator will identify the existence and disposition of any wells on the property, including any abandoned or nonoperational wells, in the evaluation report. The foregoing information shall be contained in the evaluation report.
- 4) All determinations required by this Section shall be made by the HDNW after reviewing all relevant information.

## **Section 11. FAILED STDS OR FAILED PRIVATE WATER SUPPLY SYSTEM**

After reviewing the evaluation report or based on its own investigation, if the HDNW determines that the STDS or private water supply system fails to comply with the requirements of this Ordinance, then the transfer of the premises shall not take place until the failed STDS complies with the HDNW's Environmental Health Regulations and/or the failed private water supply system complies with the requirements of Section 7 this Ordinance.

## **Section 12. ENFORCEMENT & PRIVATE CAUSE OF ACTION**

Nothing in this Ordinance shall be deemed to prohibit the HDNW from enforcing its Environmental Health Regulations regarding a failed STDS or failed private water supply system in its discretion. The remedies provided by this Ordinance are in addition to remedies and penalties that are authorized by law for violations of those Environmental Health Regulations.

The following provisions apply to a failure to have an STDS or private water supply system evaluated as required by this Ordinance:

- 1) **Penalties:** Any seller/transferor who violates this Ordinance shall be subject to a municipal civil infraction punishable by a fine of not more than \$5000. All owners, regardless of their interest in the property, may be responsible for the civil infraction. The Township Zoning Administrator and other officials designated by the Township Board are hereby designated as the authorized officials to issue municipal civil infraction citations directing alleged violators of this Ordinance to appear in court. Each day the violation remains may be a separate offense.
- 2) **Civil Action:** A violation of this Ordinance shall be a nuisance per se. The Township shall have the right to commence a civil action to enforce compliance with this Ordinance.
- 3) **Township-requested Evaluation and Costs:** If an owner does not have the owner's premises evaluated as required by this Ordinance, the Township Zoning Administrator may cause an evaluation to be completed. All costs incurred by the Township and HDNW related to (a) the investigation of failing to have the required evaluation, and (b) in completing the evaluation, may be charged to the owner of the premises. These costs shall include, but are not limited to, the wages and fringe benefit costs of all personnel involved in the matter, including the charges of professionals. If the owner refuses on demand to pay all such costs, the Township may commence a civil action on its behalf and on behalf of the HDNW to obtain a judgment for such sums and for its attorney fees and court costs.

## **Section 13. 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 14. APPEALS**

- 1) If an owner or interested party is adversely affected by any decision under this ordinance, they may request in writing a hearing before the Torch Lake Township Board or its designated committee within thirty (30) days of the date of notification of the need for an inspection by the township.
- 2) A hearing shall then be held at the next regular meeting of the Torch Lake Township Board (or its designated committee) that allows sufficient time for the meeting notice; provided, however, that a hearing shall be conducted no later than ninety (90) days after the receipt of the request for a hearing.
- 3) The Torch Lake Township Board shall post a meeting notice fifteen (15) days prior to the public hearing.
- 4) The Torch Lake Township Board (or its designated committee) shall affirm, reverse or modify the contested decision by a majority vote. The decision by the Torch Lake Township Board (or its designated committee) shall be in writing and state the reasons and grounds for such decision. A copy shall be furnished to the owner, any interested person, and the Health Department of Northwest Michigan within thirty (30) days of the decision.

**Section 15. REPEAL**

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

**Section 16. EFFECTIVE DATE**

This Ordinance shall become effective upon thirty (30) days after this resolution is published according to township policies.

