

ARTICLE V – 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.

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Sec. 11-91. Title.

- A. This Ordinance shall be known as the Village of Elk Rapids Septic Inspection and Property Transfer Ordinance. This Ordinance may also be called the TOT (Time of Transfer) Ordinance.
(Ord. #484, passed 02-20-18)

Sec. 11-92. Purpose.

- A. The Village 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 Natural Resources and Environment (MDNRE), 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 Village has executed an Intergovernmental Agreement with HDNW pursuant to which the HDNW will conduct the evaluations that are required by

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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. The Village 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 contractors comply with this Ordinance. If an evaluation discovers a defective STDS or private water supply system, the HDNW may take such action, pursuant to its own rules and regulations, to protect the environment and/or public health.

(Ord. #484, passed 02-20-18)

Sec. 11-93. 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.

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, Charlevoix and Otsego Counties, February 25, 2007, and the Michigan Well Construction and Pump Installation Code (TAct 368T of T1978T. TPart 127T, and Administrative Rules.)

Failed STDS. A sewage treatment and disposal system that violates Section 4.1 of the Environmental Health Regulations.

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 (TAct 368T of T1978T. TPart 127T and Administrative Rules.)

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HDNW. The Health Department of Northwest Michigan, which is also known as the Northwest Michigan Community Health Agency.

Notification. A written document prepared by the Village that contains a summary of the requirements of this Ordinance.

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.

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.

Village. The Village of Elk Rapids, Michigan

(Ord. #484, passed 02-20-18)

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Sec. 11-94. Advising Owners of Ordinance.

- A. 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 Village officer or employee, as designated by the Village Council, or from the HDNW.

(Ord. #484, passed 02-20-18)

Sec. 11-95. STDS Evaluation Required and Exemptions.

- A. Except as provided in subsection B, an owner of any premises in the Village shall not transfer a premises until the following conditions are met:
1. 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;
 2. 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.
- B. 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:
1. 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.
 2. 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 5 years prior to the date of the proposed transfer.
 3. 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.
 4. When a mortgage or other payment obligation for which the premises is pledged as security is refinanced.
 5. A transfer from one spouse to the other spouse and which does not involve any other person obtaining or conveying a legal or equitable interest in the premises.
 6. A change in ownership solely to include a spouse.

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7. A transfer to establish, release or foreclose on a secured interest (such as a mortgage).

8. An involuntary transfer pursuant to foreclosure or court order.

(Ord. #484, passed 02-20-18)

Sec. 11-96. Evaluation Application and Fee.

A. Applications for an evaluation that is required by this Ordinance may be obtained from the office of the Village Clerk, 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.

(Ord. #484, passed 02-20-18)

Sec. 11-97. STDS Evaluation and Report.

A. An STDS evaluation shall consist of visual and olfactory observations of the sewage system, use conditions, information gathering, evaluation 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 is in compliance 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 Village of Elk Rapids.

B. Except as provided in subsection C., below, prior to evaluation, the septic tank(s) must be pumped and serviced by a licensed Michigan hauler. The licensed hauler shall provide written documentation of service to the homeowner and to the evaluator. 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.

C. 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.

D. Evaluation Reports must be in written or electronic form and include, at a minimum:

1. The address of the site;
2. The parcel identification number;
3. The name of the owner or the owner's authorized agent;
4. The location of the STDS and private water supply system to be inspected;
5. A description of the current operational status of the STDS, including documentation as to whether the STDS has failed;
6. Other relevant or unusual observations related to the STDS and/or private water supply system;
7. Recommendations to extend the life of the STDS and/or to make improvements in compliance with environmental health regulations;

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8. A determination that the STDS and private water supply system is or is not in compliance with the HDNW's Environmental Health Regulations;
 9. The results of water quality testing that were performed.
- E. The evaluator shall provide complete documentation of each STDS evaluation to the owner, Township and HDNW within 5 business days of the evaluation.
- F. 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.
- G. Once the HDNW gives final approval to the corrected STDS, the system shall be considered in compliance with this Ordinance.

(Ord. #484, passed 02-20-18)

Sec. 11-98. Evaluations.

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

(Ord. #484, passed 02-20-18)

Sec. 11-99. Private Water Supply System Evaluation.

- A. 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. 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.).
- B. 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. The evaluator will identify the existence and disposition of any abandoned wells and describe any abandoned wells in the evaluation report. The foregoing information shall be contained in the evaluation report.
- C. All determinations required by this Section shall be made by the HDNW after reviewing all relevant information.

(Ord. #484, passed 02-20-18)

Sec. 11-100. Failed STDS or Failed Private Water Supply System.

- A. 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

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and/or the failed private water supply system complies with the requirements of Section 7 this Ordinance.

(Ord. #484, passed 02-20-18)

Sec. 11-101. Enforcement & Private Cause of Action.

- A. 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.
- B. 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 \$500. All owners, regardless of their interest in the property, may be responsible for the civil infraction. The Village Planning and Zoning Administrator and other officials designated by the Village Council 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 in effect shall be considered a separate offense.
 - 2. Civil Action: A violation of this Ordinance shall be a nuisance per se. The Village shall have the right to commence a civil action to enforce compliance with this Ordinance.
 - 3. Village requested Evaluation and Costs: If an owner does not have the owner's premises evaluated as required by this Ordinance, the Village Planning and Zoning Administrator may cause an evaluation to be completed. All costs incurred by the Village 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 Village 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.

(Ord. #484, passed 02-20-18)

Sec. 11-102. Severability.

- A. 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.

(Ord. #484, passed 02-20-18)

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Sec. 11-103. Repeal.

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

(Ord. #484, passed 02-20-18)

Sec. 11-104. Effective Date.

- A. This Ordinance shall become effective 180 days after approval.

(Ord. #484, passed 02-20-18)

Sec. 11-105_Sec. 110 Reserved

(Ord. #484, passed 02-20-18)