

**EMPIRE TOWNSHIP**

**ORDINANCE NO. 01-2019**

**AN ORDINANCE REQUIRING WELL AND SEPTIC INSPECTIONS  
AT TIME OF SALE OR TITLE TRANSFER**

**AN ORDINANCE TO REQUIRE AN INSPECTION OF WATER SUPPLY AND SANITARY SEWAGE DISPOSAL SYSTEMS AT TIME OF SALE OR TITLE TRANSFER OF PROPERTY; TO PROMOTE THE HEALTH AND SAFETY OF THE RESIDENTS, VISITORS, AND OTHER COMMUNITY MEMBERS BY PREVENTING THE SPREAD OF DISEASES ASSOCIATED WITH FAILING ONSITE SEWAGE DISPOSAL SYSTEMS (OSDS) OR SEPTIC SYSTEMS; TO EDUCATE THE PUBLIC ABOUT PROPER SEPTIC SYSTEM OPERATION AND MAINTENANCE; AND TO PROMOTE A QUALITY ENVIRONMENT IN THE MARSHES, WETLANDS, STREAMS AND BEACHES BY REDUCING CONTAMINATED RUNOFF FROM FAILED OR POORLY MAINTAINED SEPTIC SYSTEMS; AND TO ENSURE THAT OSDS ARE PROPERLY OPERATED, INSPECTED AND ROUTINELY MAINTAINED; AND TO PROVIDE FOR SANCTIONS FOR VIOLATION OF THIS ORDINANCE.**

**STATEMENT OF INTENT**

It is the goal of Empire Township:

1. To promote the health and safety of the residents, visitors, and other community members by preventing the spread of diseases associated with contaminated onsite water supply and failing onsite sewage disposal systems (OSDS) or septic systems; and
2. To promote a quality environment in the marshes, wetlands, streams and beaches by reducing contaminated runoff from failed or poorly maintained septic systems; and
3. To ensure that onsite water supply systems and OSDS are properly operated, inspected and routinely maintained; and
4. To require that all inspections are conducted exclusively by the Benzie /Leelanau District Health Department (BLDHD). (Amendment 10-13-2020)

To accomplish this goal, Empire Township wants to require an inspection of a water supply and sanitary sewage or septic system at the time a property is sold or title to that property is transferred to another owner.

**EMPIRE TOWNSHIP HEREBY ORDAINS:**

**Section 1. New Construction.**

All water supply and sanitary sewage disposal systems either public or private, for any building hereafter erected, altered, or relocated upon any premises shall be in compliance with the requirements of the BLDHD in effect at the time of such erection, alteration, or relocation. The written approval of such facilities by BLDHD shall be filed with the application for a Land Use Permit.

## **Section 2. Existing Well or Onsite Septic Systems.**

An owner of any premises, regardless of use or location, on which there is a habitable building, or the owner of such building, shall not sell, convey, assign or transfer ownership of, or exclusive rights in, said premises or said habitable building until the owner or the agent of the owner has done all of the following:

- A. Requested the BLDHD to evaluate any existing on-site water well and any existing on-site sewage disposal system or to provide a written waiver of such evaluation. Such request shall be made of the BLDHD and the applicable fees established by the BLDHD paid for at least thirty (30) days before the anticipated closing date for the property sale or transfer.
- B. Furnished the results of such evaluation by the BLDHD in writing to any prospective purchaser or transferee of the premises or the building on the premises.
- C. If it is determined by the BLDHD that the water well and/or the onsite septic system is not in conformance with the standards established in Section 3, below, the owner of the premise or the building on the premises shall provide to the BLDHD and the purchaser or transferee of the premises or the building the following:
  - 1.) A written contract providing for the noncompliant water well and/or on-site sewage system or septic system to be brought into conformance by a date acceptable to the BLDHD, but not more than one hundred and fifty (150) days from the date title to the premises or the building is transferred; and
  - 2.) Any surety bond, performance bond, or cash bond guaranteeing performance of such contract, if required by the BLDHD, which bond shall be in such amount as determined by the BLDHD.

## **Section 3. Evaluation Standards.**

It is not the intent of this ordinance to require that all water and sewage disposal systems be brought up to the same standards that would apply to a new system being installed, but rather to insure that such systems are working properly. In that regard, the evaluation shall consist of a determination that the sewage disposal system and the water well system are in substantial conformance with the standards of the Public Health Code and its regulations. The term “substantial conformance” shall mean that there shall not be more than a minimal likelihood of degradation of ground water or surface water by improper or malfunctioning sewage disposal systems or water supply systems. In making this determination, the following criteria may be considered:

- A. The vertical isolation distance between the high ground water table and the point of sewage discharge;
- B. The isolation distance from surface waters or wetlands, as defined by federal or state law or regulations;
- C. The isolation distance between a water well and the sewage disposal system;
- D. The on-site conditions of the property, including, but not limited to, soil types, ground water elevation, flow and direction; and

E. The operational condition of the existing water supply and/or sewage disposal system.

#### **Section 4. Inspection Records.**

The owner of the premises or the building on the premises shall provide the BLDHD whatever information the BLDHD requires so that the BLDHD will be able to maintain a record of each water supply and septic system or OSDS installed, inspected, repaired, and altered.

#### **Section 5. Exemptions.**

Nothing in this Ordinance or in Section 2, above, in the event of a sale, conveyance, assignment or transfer of ownership of, or exclusive rights in, a premises or a habitable dwelling on the premises, any OSDS or septic system on said premises is not subject to a required inspection at the time of sale or title transfer in the following instances:

- 1) The purchaser provides a notarized letter of intent to remove the structure and related OSDS entirely and bear full responsibility for meeting all code requirements in the future;
- 2) The title is changing due to the addition or deletion of a spouse; or
- 3) The title is changing but the existing ownership remains unchanged; such as a husband and wife transferring title to a trust in which they are the trustees; or such as a transfer of title to an LLC, partnership, or other legal entity in which the membership is a mirror image of the existing owners; or
- 4) The system was constructed within the past three (3) years in a manner fully conforming to code; or
- 5) The system has passed an inspection by the BLDHD within the previous 36 months (Amendment 10-13-2020); or
- 6) The system is a community/commercial system that has been satisfactorily evaluated within the last 36 months by the BLDHD; and (Amendment 10-13-2020)
- 7) That any portion of a community/commercial system that is located on an individual parcel, lot, or unit has been satisfactorily evaluated within the last 36 months by the BLDHD. (Amendment 10-13-2020)

#### **Section 6. Sanctions.**

Any person who violates any provision of this ordinance shall be responsible for a municipal civil infraction and shall be subject to the penalties and sanctions provided for in the Empire Township Municipal Civil Infraction Ordinance.

**Section 7. Authorized Local Officials.**

The Township Zoning Administrator or the Township Code Enforcement Officer, if there is one, and a member of the County Sheriff’s Department are hereby authorized to enforce this ordinance and to issue municipal civil infraction citations or municipal civil infraction violation notices for violations of this ordinance.

**Section 8. Severability.**

Each provision of this Ordinance is declared to be separable and severable, and a judicial determination that any such provision is invalid or unenforceable, shall not affect the enforceability of any other article, section, subsection or provision hereof.

**Section 9. Effective Date.**

This Ordinance, as amended on October 13, 2020, shall become effective 30 days after publication in accordance with law.

At a regular meeting of the Board of Trustees of Empire Township held on October 13, 2020, adoption of the foregoing ordinance with amendments was moved by Deegan and supported by Casey Noonan.

Voting for: Casey Noonan, Neiswonger, Carl Noonan, Price, and Deegan.

Voting against: None.

The Township Supervisor declared the ordinance adopted.

**CERTIFICATION**

I hereby certify that the foregoing is a true and correct copy of Ordinance No. 01-2019, which was enacted by the Board of Trustees of Empire Township at a regular meeting held on October 13, 2020.

Christine M. Neiswonger  
Empire Township Clerk