

LOCAL LAW NO. _____ OF THE YEAR 2007

A Local Law entitled "Local Law No. _____ of the Year 2007, entitled "Mandatory Private Well Testing" in the Town of East Fishkill.

BE IT ENACTED by the Town Board of the Town of East Fishkill as follows:

Section I: Title.

This Local Law shall be known and cited as Town of East Fishkill "Local Law No. _____ of the Year 2007, entitled "Mandatory Private Well Testing" in the Town of East Fishkill.

Section II: Legislative Intent.

The Town Board of the Town of East Fishkill enacts this Local Law to establish water quality standards for residential and non-residential private water sources not otherwise regulated by Part 5 of the New York State Sanitary Code for the protection of and for the health, safety and welfare of the residents of the Town of East Fishkill.

Section III: Mandatory Private Well Testing.

§ ____ . Legislative Background and Statement of Purpose.

1. This Local Law is enacted pursuant to the powers vested in the Town of East Fishkill by Municipal Home Rule Law §10, Town Law §130(5) and Public Health Law §§302, 308 and 347.1.c.
2. The Town Board of the Town of East Fishkill enacts this Local Law for purposes of requiring mandatory private well testing for all properties in the Town of East Fishkill that rely on a private water supply which is utilized for purposes of human consumption. It is also the purpose of this law to establish minimum water quality standards for private water sources servicing residential and non-residential properties, and to mandate water testing standards to assure purchasers and tenants of residential and non residential properties

serviced by private wells that the water supplied to these properties will be potable and free from harmful contaminants. These water quality standards will also apply to multi-family residential properties and commercial properties not otherwise subject to regulation and testing pursuant to Part 5 of the New York State Sanitary Code. The water test results shall be filed with the Town of East Fishkill Building Department and the Dutchess County Health Department and will also serve as a data base for identifying potential problem areas of contamination within the Town.

§ ____ . Definitions.

The following words and terms when used in this Local Law shall have the following meanings unless the context clearly indicates otherwise:

1. General Definitions:

- A. Community Water System -- A public water system which serves at least five (5) service connections used by year round residents or regularly serves at least twenty (25) year round residents, as defined in §5-1.1 of the New York State Sanitary Code.
- B. Multi-Family Residential Rental Property -- Residential property containing three (3) or more rental units.
- C. Non-Community Water System -- A public water system that is not a community water system, as defined in §5-1.1 of the New York State Sanitary Code.
- D. Non-Residential Building -- Any structure which is wholly or partially used or intended to be used and occupied for commercial purposes, including, but not limited to, office buildings, stores, markets, shops and malls engaged in retail sales, marinas, restaurants, clubs, gas stations, or car dealerships, etc. which establishments have a water system intended for human consumption.
- E. Non-Transient Non-Community Water System -- A public water system that is not a community water system but is a subset of a non-community water system that regularly serves at least twenty-five (25) of the same people, four (4) hours or more per day, for four (4) or more days per week, for twenty-six (26) or more weeks per year, as defined in §5-1.1 of the New York State Sanitary Code.

- F. Potable Water -- Water suitable for drinking and fit for human consumption in accordance with standards established by the Dutchess County Department of Health and the New York State Department of Health.
- G. Private Water Supply -- Any water supply utilized for the purposes of human consumption not identified as a public water supply by Article 5 of this Code or by Part 5 of the New York State Sanitary Code.
- H. Public Water System -- A community or non-community or non-transient non-community water system which provides water to the public for human consumption through pipes or other constructed conveyances if such system has at least five (5) service connections or regularly serves an average of least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes:
 - (i) collection, treatment, storage and distribution facilities under control of the supplier of water of such system and used with such system; and
 - (ii) collection or pre-treatment storage facilities not under such control which are used with such system.
- I. Purchaser -- Purchaser and Buyer shall have the same meaning and shall mean a Purchaser or Buyer of real estate pursuant to a written contract.
- J. Residential Property -- Any owner occupied one or two family dwelling unit(s).
- K. Residential Rental Property -- Any “dwelling” or “dwelling unit” [as those terms are defined in Article 21 of the Dutchess County Sanitary Code at Section 21.1(G) and 21.1 (H)] which is non-owner occupied and for which rent or consideration is periodically paid to the owner and otherwise does not constitute a multi-family residential real property.
- L. Seller and Purchaser -- Shall include both male and female and be considered single or plural depending on the context. The Terms shall also mean include legal entities and organizations.
- M. Tenant -- Any person or entity who leases property for either residential or commercial purposes.
- N. East Fishkill Well Testing Protocol -- Standards, procedures, test parameters and maximum contaminant levels for all well water used for human consumption in the Town of East Fishkill.
- O. Well -- Privately owned well used to supply potable drinking water to residential premises or non-residential establishments; it does not include wells that supply water pursuant to §5-1.1 of New York State Sanitary Code as a Community Water System or a Non-Community Water System.

P. This Law hereby adopts the definitions contained in the New York State Sanitary Code Part 5 and contained in the Town of East Fishkill Code as the same may be amended hereafter from time to time.

§ _____. **Well Testing.**

1. Residential Properties:

A. Well Testing is hereby required for all one and two family residential properties which are provided with water from a private water source, said testing to occur prior to a sale or exchange of the property. The parties shall be free to contractually allocate the cost of such testing.

B. A copy of the certified test results shall be sent to the parties and shall be filed with the Town of East Fishkill Building Department which Department will file a copy with the Dutchess County Health Department and shall be valid for thirty-six (36) months and may be used for subsequent sale/purchases or exchanges within said thirty-six (36) month period.

2. Multi-Family and Non-Residential Properties:

A. Multi-family and non-residential properties not otherwise exempted under this Local Law shall be required to test their private wells within twelve (12) months of the effective date of this Local Law. A copy of the certified test results shall be sent to the parties, tenants or occupants and shall be filed with the Town of East Fishkill Building Department and said Department will file a copy with the Dutchess County Health Department and shall be valid for a three (3) year period. At the end of the three (3) year period, a new well test shall be required.

§ _____. **Required Tests.**

1. Each water sample shall be analyzed in accordance with the East Fishkill Well Testing Protocol (the Protocol) made a part of this Local Law, copies of which shall be kept on file with the Town Clerk. The Town Board reserves the right to amend the East Fishkill Well Testing Protocol by Resolution.
2. Analytic testing and collection with proper chain of custody shall be performed by a New York State certified laboratory and shall conform to the rules and regulations of the New York State Department of Health.
3. The required test parameters will have the same maximum contaminant levels as set forth in Part 5 of the New York State Sanitary Code for public water supplies.
4. Copies of the test results shall be sent to the parties, tenants or occupants and shall be filed with the Town of East Fishkill Building Department and a copy forwarded to the Dutchess County Department of Health. Tests results shall also be available for public inspection and reproduction in the same manner as other public documents.

§ ____. **Exemption.**

Any property which is serviced by a community and/or non-community water system as defined herein and in §5-1.1 of the New York State Sanitary Code which is already regulated and subject to testing shall be exempt from the requirements of this Chapter.

§ ____. **Enforcement.**

1. The Town of East Fishkill Building Inspector, Code Enforcement Officers, Zoning Administrator, Deputy Zoning Administrator and the Fire Inspector shall enforce the provisions of this Chapter.
2. The Town of East Fishkill Building Department shall be prohibited from releasing the results of any Building Department or Certificate of Occupancy search to either

Buyer/Seller, title company or their agent, until the required certified test results have been filed with the Town Building Department.

3. Any property required pursuant to this Chapter to have well test results on file with the Town Building Department shall be ineligible for a Building Permit, Certificate of Occupancy/Certificate of Compliance, Site Plan review, subdivision review and/or ZBA variance review or interpretation until the required certified test results have been filed in accordance with the provisions of this Chapter.

§ ____ . Penalties.

1. For each violation of a provision of this chapter the person violating the same shall be guilty of a violation and shall be subject to a fine in the amount set forth in the Code.
2. Any person violating this chapter shall be subject to a civil penalty enforceable and collectible by the Town in the amount set forth in the Code for each offense.
3. In addition to the above penalties, the Town Board may also maintain an action or proceeding in the name of the Town in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of this chapter, and to recover the appropriate fines and penalties together with administrative fees and costs including attorney's fees and disbursements.

§ ____ . "FEES AND FINES."

1. Each violation will be punishable by a fine not to exceed \$500.00 or a Civil penalty not to exceed \$1000.00.

§ ____ .

Enforcement

Responsibility for enforcement.

This chapter will be enforced by the Building Inspector, the Code Enforcement Officers, the Fire Inspector, the Deputy Fire Inspector and any police agency having jurisdiction within the Town of East Fishkill.

§ _____. **Separability.**

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity, or unconstitutionality, or inapplicability, shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this local law or their application to other persons or circumstances. It is hereby declared to be the legislative intent of the Town Board of the Town of East Fishkill that this Local Law would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Local Law or part thereof is held inapplicable had been specifically exempt therefrom.

§ _____. **Effective Date.**

This Local Law shall become effective immediately upon filing with the Secretary of State as provided by law.

**BY ORDER OF THE TOWN BOARD
OF THE TOWN OF EAST FISHKILL
DOROTHY MEKEEL, TOWN CLERK**

EAST FISHKILL WELL TESTING PROTOCOL

SCHEDULE A

1. Laboratory Requirements

All sample collection with proper chain of custody and analysis shall be performed by a Laboratory approved by the New York State Department of Health, "Environmental Laboratory Approval Program";

2. Testing Procedure

a. New Wells – The well should be pumped clear and disinfected with chlorine. The water sample shall be collected after the disinfectant has been cleared from the system.

b. Existing Wells – Samples should be taken of the raw water after any existing treatment has been bypassed. The sampling location should purge water for a minimum of 10 minutes prior to collection of water samples for wells in active use. For wells not in active use, water shall be purged for a minimum of 60 minutes to insure representative water samples from the well.

c. Additional testing at point of use may be necessary to determine the efficacy of any installed treatment systems.

3. Testing Standards

The following contaminants shall be tested for compliance with the Maximum Contaminant Level established for such contaminants by the New York State Sanitary Code, Part 5 limits:

a. Bacteriological Parameters

Total Coliform, Escherichia coli

b. Principal Organic Compounds Parameters*

Benzene	cis-1, 3-dichloropropene
bromobenzene	trans-1, 3-dichloropropene
bromochloromethane	ethylbenzene
bromomethane	hexachlorobutadiene
n-butylbenzene	isopropylbenzene
sec-butylbenzene	p-isopropyltoluene
tert-butylbenzene	methylene chloride
carbon tetrachloride	n-propylbenzene
chlorobenzene	styrene
chloroethane	1,1,1,2-tetrachloroethane
chloromethane	1,1,2,2-tetrachloroethane

SCHEDULE A (cont'd)

2-chlorotoluene	tetrachloroethene
4-chlorotoluene	toluene
dibromomethane	1,2,3-trichlorobenzene
1,2-dichlorobenzene	1,2,4-trichlorobenzene
1,3-dichlorobenzene	1,1,1-trichloroethane
1,4-dichlorobenzene	1,1,2-trichloroethane
dichlorodifluoromethane	trichloroethylene
1,1-dichloroethane	trichlorofluoromethane
1,2-dichloroethane	1,2,3-trichloropropane
1,1-dichloroethene	1,2,4-trimethylbenzene
cis-1,2-dichloroethene	1,3,5-trimethylbenzene
trans-1,2-dichloroethene	m-xylene
1,2-dichloropropane	o-xylene
1,3-dichloropropane	p-xylene
2,2-dichloropropane	vinyl chloride
1,1-dichloropropene	methyl tertiary-butyl ether

*EPA method 502.2 with a detection limit of 0.5 ug/l or less.

c. Inorganic Compounds Parameters

Alkalinity	Cyanide	Nitrite
Antimony	Hardness	pH
Arsenic	Iron	Selenium
Barium	Lead	Sodium
Beryllium	Manganese	Sulfate
Cadmium	Mercury	Thallium
Chlorides	Nickel	Turbidity
Chromium	Nitrate	