

~~ADOPTED: JUNE 1, 2021~~  
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~~EFFECTIVE: JUNE 14, 2021~~

~~NEW~~ **ORDINANCE #36** *entitled*

**SANITARY SEWAGE DISPOSAL**

**ORDINANCE FOR THE TOWN OF**

**BOLTON**

**§ 36-1 Purpose.**

The purpose of this ~~revised~~ **Ordinance** #36 is to preserve and protect the quality of the waters of Lake George, Trout Lake, Edgecomb Pond, the Schroon River and other bodies of water as well as surface and groundwater in the Town of Bolton and potable water sources by establishing standards to ensure adequate performance of private wastewater septic treatment systems, to protect public health and to optimize the effectiveness of the systems in removing nutrients from wastewater.

**§ 36-2 Applicability.**

The provisions of this Ordinance shall be in effect throughout the Town of Bolton and apply to all wastewater septic treatment systems or holding tanks that are not otherwise exclusively regulated by continuous licensing or permits issued by the New York State Department of Environmental Conservation, hereafter referred to as NYSDEC, or New York State Department of Health, hereafter referred to as NYSDOH. To the fullest extent, all wastewater septic treatment systems situated in the Town of Bolton that are licensed, permitted or regulated by NYSDE and NYSDOH shall be installed and maintained in accordance with New York State regulations and requirements pertaining thereto.

**§ 36-3 Disposal of Wastewater.**

- A. Wastewater from any new construction or development shall be discharged directly into the Town of Bolton municipal wastewater disposal system wherever feasible and in all areas where municipal sewers are reasonably

accessible within 100 feet of the premises' property line unless site conditions render connection costs prohibitive as documented by substantial evidence, or under circumstances as where to require such connection is environmentally ill advised.

- B. Where there is no municipal septic wastewater disposal system available, all residential, commercial or institutional wastewater must be treated by a wastewater septic treatment system approved by the Town of Bolton Town [Engineer-Planning and Zoning Office](#) or by a New York State licensed professional engineer acting as a consultant to the Town of Bolton who is specifically authorized with approval authority and only in accordance with a Town of Bolton Septic Permit issued therefore.

**§ 36-4 Water Quality Protection Area.**

The wastewater quality protection geographical area governed by this Ordinance shall include all real properties located wholly or partially within the municipality.

**§ 36-5 Definitions.**

All definitions specified in the "DOCUMENTS" shall apply to this Ordinance and in addition, the following definitions shall also apply:

**DISTANCES**

The shortest horizontal linear distance from the nearest point of a structure, building, or object to the mean high watermark of the nearest watercourse or the edge, margin or top of precipitous bank forming the mean high watermark of a watercourse, or the shortest horizontal linear distance measured between objects. Distances of separation between any septic ' wastewater septic treatment system and any potable water well; distances pertaining to "setbacks," from adjacent property lines or shorelines shall be determined in accordance with the requirements and specifications of the "DOCUMENTS" and in accordance with the requirements of the Town of Bolton Zoning code.

**DOCUMENTS**

Current or hereafter amended or supplemented: New York State Department of Health (NYSDOH) Administrative Codes, Rules and the Regulations Appendix 75-A with all subsequent revisions and amendments thereto; New York State Department of Health Residential On-Site Wastewater Treatment Systems

Handbook and New York State Department of Environmental Conservation Design Standards for Wastewater Treatment Works in the Lake George Basin.

**ENHANCED TREATMENT UNIT (ETU)**

An advanced septic treatment unit that further treats domestic wastewater before it is discharged to the soil absorption field for final treatment and usually designed to reduce total suspended solids (TSS), biochemical oxygen demand (BOD), and stabilize the wastewater; and some are designed to reduce nutrients. For the purposes of this Ordinance such ETU must substantially satisfy the requirements specified in the "DOCUMENTS". ETU's that are certified as meeting the standards set forth in NSF 40 and 245 may be considered to meet the requirements set forth in the "DOCUMENTS", as approved by the Town of Bolton ~~engineer or his/her designee~~[Planning and Zoning Office](#).

**NEW CONSTRUCTION**

Any building or structure to be constructed or placed on a site that generates wastewater and requiring a new wastewater septic treatment system.

**NSF**

Now or formerly known as the National Sanitation Foundation founded in 1944 and is accredited by the American National Standards institute (ANSI) and by the Standards Council of Canada (SCC) in Canada.

**REPLACEMENT WASTEWATER SEPTIC TREATMENT SYSTEM**

Addition to or substantial modification of an existing wastewater septic treatment system or relocation of a major component which services an existing structure or building or is intended to service a replacement structure or replacement building with or without expansion of the current use of the structure or building(s) shall constitute a replacement system unless it is determined in the sound discretion of the Town ~~Engineer-Zoning Administrator,~~ [in consultation with a New York State licensed professional engineer](#), that such addition or modification constitutes an "in kind" replacement or minor repair. A minor repair or "in kind" replacement of a system component in its original location and in its original configuration and size on an existing wastewater septic treatment system shall not ordinarily be considered a replacement of an

existing wastewater septic treatment system for which a permit would be required. A final determination as to whether a replacement or "internal" repair shall require a permit will be determined in the sound discretion of the Town ~~Engineer~~Zoning Administrator.

~~TOWN ENGINEER~~

~~Refers to the Town of Bolton Zoning Administrator qualified as a New York State licensed professional engineer or a New York State licensed professional engineer acting as a consultant to the Town of Bolton.~~

**TOWN OF BOLTON CERTIFIED INSPECTOR**

An inspector that has fulfilled the requirements of the New York Onsite Wastewater Treatment Training Network, Inc. (OTN) or the equivalent, in the opinion of the Town ~~Engineer~~Planning and Zoning Office as qualified for inspection of wastewater septic treatment systems and such person or entity has been approved by the Town of Bolton where the inspection to be performed.

**WASTEWATER (DOMESTIC ONLY)**

Liquids containing human excreta, sewage or other contaminated liquids of any kind in or from a drainage system or sewer from a residential dwelling or any other building or structure utilized for commercial or, recreational purposes, however, excluding agricultural, institutional, or industrial wastewater which is exclusively regulated by N.Y.S. Department of Environmental Conservation State Pollutant Discharge Elimination System Permit Program. (SPDES)

**WASTEWATER SEPTIC TREATMENT SYSTEM (ONSITE WASTEWATER TREATMENT SYSTEM DESIGNED TO TREAT DOMESTIC WASTEWATER)**

Underground structures or devices designed and installed as an on-site wastewater septic proven technology to treat wastewater produced in residential, commercial, institutional or industrial settings. Predominately a system designed to treat or hold by-products of human habitation activities produced in bathrooms, kitchens, laundries, etc. For the purposes of this Ordinance to generally include all forms of design and installation of septic tanks, septic systems, leach fields and in those instances where treatment cannot be provided, all forms of holding tanks for the temporary storage of wastewater and septic

material.

### **WATERCOURSES/ WETLANDS**

Natural or man-made bodies of water including Lake George, Trout Lake, Edgecombe Pond, the Schroon River, lakes, ponds, year round or intermittent streams and wetlands identified as such by the NYSDEC, the Adirondack Park Agency or the Lake George Park Commission.

### **§ 36-6 Rules and Regulations for Disposal of Human Excreta.**

- A. In conformity with New York State Environmental Conservation Law §17-1709, no treated or untreated wastewater from a wastewater septic treatment system shall be discharged nor be permitted to escape into any water body, watercourse or wetland, nor allowed to surface or accumulate over ground surfaces.
- B. No human excreta, either raw or partially decomposed, may be dipped, pumped or shoveled from a storage container, septic system, aerobic system, or holding tank and placed in or on the ground without prior specific approval of the site and authorization of such practice by issuance of a permit or license from NYSDEC. This provision shall not be construed to prohibit the installation and use of a composting toilet system or incineration toilet system where such system is authorized by N.Y.S.D.E.C. regulations and further upon issuance of a permit, if required by local, state or federal law to do so. The operation and maintenance of such system shall conform to the manufacturer's design requirements and specifications.
- C. Any septic tank or holding tank that demonstrates evidence of leaking or other system failure must be replaced or repaired within the time period specified in § 36-13. A determination of a system or tank leak or failure and the requirements of repair or replacement shall be made by direction of the Town ~~Engineer~~ Zoning Administrator, in consultation with a New York State licensed professional engineer of the ~~Town of Bolton or by a New York State licensed professional engineer~~ acting as a consultant to the Town of Bolton.

### **§ 36-7 Standards for the Design of New Wastewater Septic Treatment Systems.**

- A. Wastewater septic treatment systems for residential construction shall be

designed in accordance with the current NYSDOH Administrative Codes, Rules and the Regulations Appendix 75-A with all subsequent revisions and amendments thereto, the New York State Department of Health Residential On-Site Wastewater Treatment Systems Handbook and the New York State Department of Environmental Conservation Design Standards for Wastewater Treatment Works in the Lake George Basin (hereinafter collectively referred to as "DOCUMENTS"). The definitions contained in the "DOCUMENTS" shall also apply to this Ordinance. Wherever any provision or part of this Ordinance shall be construed in conflict with the provisions specified in the "DOCUMENTS" the "DOCUMENTS" shall prevail, however, where any provision or part of this Ordinance or any provisions of the Town of Bolton Zoning Ordinance (Chapter 200), Town of Bolton Stormwater & Erosion Control Regulations (Chapter 125) shall impose a stricter requirement than a provision in the "DOCUMENTS", it is intended that the stricter requirements enacted by the Town of Bolton shall prevail.

- B. Wastewater septic treatment systems for commercial, institutional or industrial uses shall be designed, installed and maintained in accordance with the current NYSDEC guidelines ("Standards for Waste Treatment Works- Institutional and Commercial Sewage Facilities"); the NYSDEC Design Standards for Wastewater Treatment Works in the Lake George Basin and all subsequent revisions, supplements or amendments thereto and shall also be required to satisfy all requirements imposed by state law, rule or regulation.

**§ 36-8 Standards for Design of New or Replacement Wastewater Septic Treatment Systems Including Major Repairs or Major Modifications.**

- A. Wastewater septic treatment systems shall be designed by a New York State licensed professional engineer and shall be installed under the direction of the New York State licensed professional engineer preferably who designed the wastewater septic treatment system. Residential systems shall be designed and installed in accordance with the provisions of the "DOCUMENTS". The completed wastewater septic treatment system shall be certified to the Town via an "as-built" drawing signed and sealed by the New York State licensed professional engineer. The "as built" certified drawing shall be filed and

maintained as a "public document" in the Town of Bolton Planning Office.

- B. Where strict compliance with any design or installation requirements specified in the "DOCUMENTS" are not practical, a septic variance shall be required from the Town of Bolton Town Board serving as a Local Board of Health. The grant of such septic variance shall require a satisfactory showing that strict compliance with the requirements of this Ordinance or the specifications of the "DOCUMENTS" are not practical and any variance from such requirement, if granted is in the best interest of water quality and is appropriate to protect the general health, safety or welfare of the public. Any septic variance granted shall be limited to the minimum relief necessary to alleviate the practical difficulty demonstrated by the applicant for such variance.
- C. In instances where limiting site conditions may exist, and those limiting site conditions do not involve a requirement for setback relief from any waterbody, shoreline, watercourse, wetland, stream, stormwater device or a NYSDOH mandated separation distance between a septic system and a nearby potable well, a New York State licensed professional engineer shall be permitted to utilize up-to- date practical wastewater septic treatment system technology or Enhanced Treatment Unit (ETU) technology and such system may be installed under the direction of a New York State licensed professional engineer and finally approved by the Town [Engineer Planning and Zoning Office](#). When approved by the Town [Engineer Planning and Zoning Office](#) no septic variance shall be required.
- D. In instances where limiting site conditions may exist and those limiting site conditions involve a requirement for setback relief from any waterbody, shoreline, water course, wetland, stream, storm water device or a NYSDOH mandated separate distance between a septic system and a nearby potable well, a New York State licensed professional engineer shall be required to design and utilize an Enhanced Treatment Unit (ETU) and such system shall be installed under the direction of a New York State licensed professional engineer and finally approved by the Town [Engineer of Bolton Planning and Zoning Office](#). Variance relief shall be required from the Local Board of Health and the Zoning Board of Appeals where mandated setbacks cannot be achieved.

- E. In all instances where a new or replacement wastewater septic treatment system shall be proposed for installation and residential use on an island situated in a lake or pond only an Enhanced Treatment Unit shall be permitted.
- F. Where circumstances of practical difficulty can be demonstrated that site conditions require a holding tank installation, such holding tank may only be installed under the supervision of the New York State licensed professional engineer (as described in § 36-15), and further, only upon first obtaining a septic variance from the Local Board of Health. The grant of a septic variance for installation of a holding tank shall require a satisfactory showing that a wastewater septic treatment system or an ETU cannot feasibly be utilized based upon a proven practical difficulty and by demonstrating an inability to meet the requirements specified in the "Documents" or this Ordinance. In any instance where variance relief is granted by the Local Board of Health for installation of a holding tank, the Local Board of Health shall have authority to impose conditions which may include (by way of example and without intending any limitation): ultraviolet light disinfection, electrical alarms, water supply shutoffs, a pump-out schedule, etc. which are reasonable designed to protect water quality and public health and safety.
- G. Where the proposed installation of a wastewater septic treatment system or a proposed holding tank cannot meet any setback requirement specified in the Town of Bolton Zoning Ordinance (Chapter 200) or the Town of Bolton Stormwater & Erosion Control Regulations (Chapter 125) in addition to requiring a septic variance from the Local Board of Health such circumstance shall also require an area variance to be considered and approved by the Town of Bolton Zoning Board of Appeals (ZBA). In any instance where such an area variance is sought, the grant of the area variance shall require satisfactory proof that the area variance from the requirements is the minimum relief necessary to alleviate a demonstrated practical difficulty and that there are no other feasible alternatives. Upon approval of such area variance, reasonable conditions may be imposed by the Zoning Board of Appeals.
- H. Residences served by a new or replacement wastewater septic treatment system, a holding tank or any variety of ETU shall be designed to include low flow



water conservation toilets and fixtures. (1993 or later standard) The owner of the premises shall be required to install and maintain low flow water conservation toilets and fixtures at the premises.

- I. Non-residential wastewater septic treatment systems that are new or a replacement of existing commercial, institutional or industrial systems shall be designed according to the NYSDEC "Standards for Wastewater Treatment Works in the Lake George Basin" and as those standards may be amended. Such systems shall be maintained and operated within the specifications of NYSDEC standards, guidelines, and any state, county or municipal licenses and permits pertaining thereto.
- J. No new privy (outhouse) or receptacle designed for storage or deposit of human excreta in the ground shall be constructed, placed, maintained or allowed in the Town of Bolton. No existing privy (outhouse) or existing receptacle designed for the inground storage or deposit of human excreta shall hereinafter be maintained or allowed beyond a period of five (5) years after the effective date of this Ordinance. No variance or exception from this requirement shall be permitted unless the Town Board in its capacity as a Local Board of Health determines that a variance to allow such privy (outhouse) or receptacle is necessary, based upon a demonstrated practical difficulty, and the grant of any such variance shall be limited to the minimum relief necessary to alleviate a proven practical difficulty. This provision shall not be construed to limit, prohibit nor regulate the installation of temporary "porta potties" used in conjunction with any public or private event or when used in conjunction with a permitted construction or demolition project and so long as such installation and use shall be in conformity with all other local, county, state and federal ordinances, rules, regulations or statutes.

**§ 36-9 Wastewater Septic Treatment System Inspections.**

- A. Upon reasonable notification to any wastewater septic treatment system owner or user or to a holding tank owner or user, the Town [Engineer-Planning and Zoning Office](#) shall be authorized to conduct, or cause an inspection upon reasonable notice of any wastewater septic treatment system or holding tank within the municipality for purposes of observation, testing and regulatory

compliance with the requirements of this Ordinance. Whenever it is determined by the Town [Engineer-Zoning Administrator, in consultation with a New York State licensed professional engineer](#) that a wastewater septic treatment system or holding tank is not satisfactorily functioning as designed, a written Notice of Violation and Order to Remedy shall be provided to the property owner, and in the case of rental property provided to an occupant, specifying the circumstances of an alleged violation and the required corrective action(s). The owner and/or user of any failing wastewater septic treatment system or failing holding tank shall be required to remedy the violation within the time periods specified in Section 36-13 herein.

- B. The Town [Engineer-Planning and Zoning Office](#) shall investigate all complaints received in accordance with the provisions of this Ordinance and the Planning and Zoning Office shall maintain records of all follow-up complaint investigations. Where appropriate and by direction of the Town Board, the Town [Engineer-Zoning Administrator, in consultation with a New York State licensed professional engineer](#) shall have enforcement powers to proceed to compel ordinance compliance by court order, or in any lawful manner that shall achieve substantial compliance with the requirements of this Ordinance.
- C. It shall be the duty and obligation of every wastewater septic treatment system owner or holding tank owner, upon reasonable request made by the Town [Engineer-Planning and Zoning Office](#), to provide all available information regarding a wastewater septic treatment system type, or holding tank type, capacity, location, usage, age, maintenance, etc., in order to determine such system's or tank's effectiveness and compliance with the requirements of this Ordinance.

**§ 36-10 Property Transfer and Inspections.**

- A. Prior to any real property transfer of ownership by deed or other instrument, all septic systems, wastewater septic treatment system, wastewater septic treatment system components or holding tanks situate on the subject real property intended to be transferred, shall first require an inspection and the property owner and all participants in the transfer of real property ownership shall comply with the requirements specified in the Bolton Septic Inspection Program

(Local Law #4 of 2019).

- B. In the event any wastewater septic treatment system or holding tank or any component thereof shall be determined to be failing or inadequate and cannot meet the performance standards or inspection requirements of the Bolton Septic Inspection Program, a written Notice of Violation and Order to Remedy may be issued by the Town ~~Engineer~~Zoning Administrator. In any event the circumstances of such violation shall be corrected prior to the completion of the real property ownership transfer or in the alternative, a written deferral of the time for correction of the violation shall be obtained from the Town of Bolton in accordance with the requirements of the Bolton Septic Inspection Program (Local Law #4 of 2019). Where the provisions of this Ordinance shall be construed in conflict with the Bolton Septic Program (Local Law #4 of 2019) is intended that this Ordinance shall prevail.

#### **§ 36-11 Maintenance Requirements.**

- A. Ownership and use of a wastewater septic treatment system or holding tank system requires regular maintenance. Each owner or occupant of a premises serviced by a wastewater septic treatment system or holding tank shall have an affirmative duty to ensure strict compliance with the requirements of this Ordinance; that all conditions imposed by any variance or permit are observed and maintained and that system maintenance records shall be provided in accordance with the requirements of this Ordinance and made available to the Town ~~Engineer~~Planning and Zoning Office upon reasonable request.
- B. Due to their more technical nature ETU systems generally require more intensive monitoring and maintenance to ensure proper functioning. Use of an ETU system shall be in accordance with all of the manufacturer's design and maintenance requirements. The property owner where an ETU is installed shall be required to continuously maintain a service contract with a manufacturer's approved professional and if required as part of any inspection or inquiry by the Town of Bolton provide documentation and certification of maintenance and system monitoring records that the ETU satisfactorily functions in accordance with all design criteria and within the requirements of any conditions imposed by the specifications of variance, permit or authorization issued by the Town of

Bolton. A current copy of the ETU service contract shall be filed annually by the property owner with the Town of Bolton Planning Office and such document(s) shall constitute a public record.

**§ 36-12 Wastewater Septic Treatment System Construction Permit.**

- A. No construction, installation or major repair on a wastewater septic treatment system or installation of a holding tank shall be commenced until an application for a wastewater septic treatment system construction permit or an application for installation of a holding tank is reviewed, approved and a permit authorizing installation is issued by the Town ~~Engineer~~Planning and Zoning Office. In the case of any installation of a holding tank, a variance from the Local Board of Health shall be required before any permit shall be issued. The Town ~~Engineer~~Zoning Administrator, in consultation with a New York State licensed professional engineer shall have the authority and expertise to make a written determination that a wastewater septic treatment system construction permit is not required when the circumstances involve a minor repair or adjustment to an existing system or existing holding tank.
- B. No person shall build, erect, construct, expand or enlarge premises served by a wastewater septic treatment system or holding tank, nor add bedrooms, kitchen facilities, toilets or bathing/showering facilities, nor convert to use an accessory building or structure where such project involves an increase in wastewater or creates an additional wastewater discharge without first obtaining a wastewater septic treatment system construction permit, or where circumstances require an amendment to any existing Local Board of Health variance that permitted the installation and operation of a holding tank. Building expansions, or renovations which do not increase property wastewater discharge, such as the addition of a deck or construction of an accessory building or structure without additional wastewater generation, shall be considered exempt from the requirements of this Ordinance.
- C. Construction of a wastewater septic treatment system or installation and operation of a holding tank shall be in accordance with the specifications approved in the wastewater septic treatment system construction permit and in any case where any variance has been granted conditioned upon the

requirements of the approved variance(s).

- D. During installation no element of a wastewater septic treatment system or holding tank shall be covered until physically inspected by a New York State licensed professional engineer; such engineer shall provide photographs to the Town of Bolton Planning Office demonstrating that the system's installation has been completed in accordance with approved plans and such engineer shall certify in writing to the Town of Bolton that the "as built" system or holding tank has been installed in accordance with the original approved wastewater septic treatment system plans upon which the wastewater septic treatment system construction permit was issued. No installation of a holding tank shall be covered until physically inspected by a New York State licensed professional engineer and approved by the Town [Engineer-Planning and Zoning Office](#) in accordance with the requirements of any variance granted by the Local Board of Health. Where necessary to facilitate an actual inspection, covered work shall be uncovered to permit inspection considered necessary by the Town [Engineer Zoning Administrator](#) ~~or by~~ [in consultation with](#) a New York licensed professional engineer ~~when directed by the Town Engineer~~.
- E. Final inspection and certification of a new or replacement system or of a new or replacement holding tank shall meet the requirements of § 36-8 herein, shall be certified in writing by a New York State licensed professional engineer as being completed in substantial conformity with approved plans and the issued permit and shall be provided to the Town of Bolton Planning Office to be finally approved by the Town [Engineer-Planning and Zoning Office](#) as a completed permit. All such records shall remain on file with the Town of Bolton Planning Office and shall constitute a public record.
- F. A wastewater septic treatment system construction permit shall be valid for one year from the date of issuance. In such instances where the wastewater septic treatment system construction permit shall require an extension, upon a showing of good cause, the Town [Engineer-Zoning Administrator](#) shall be permitted to extend the permit for an additional one year period. Any additional extension of an issued permit shall require approval of the Local Board of Health.

**§ 36-13 Non-Compliant Wastewater Septic Treatment System or Non- Compliant**

## **Holding Tank Remediation.**

- A. Where a written Notice of Violation and Order to Remedy has been issued alleging an inadequate or failed wastewater septic treatment system, failed holding tank or failed system or tank component thereof, all corrective action according to an approved wastewater septic treatment system construction permit, and where circumstances require approval by variance for the installation of a system or a holding tank shall be completed within thirty (30) days of the date of issuance of the permit or within any other extended time schedule approved by the Town ~~Engineer~~Zoning Administrator.
- B. Notwithstanding the provision of §36.13 A herein, where a wastewater septic treatment system or holding tank operation is considered by the Town ~~Engineer~~Planning and Zoning Office in consultation with a New York State licensed professional engineer, to constitute a public health hazard, such as raw sewage collecting on the ground surface or raw sewage entering a pond, lake, watercourse or wetland, the Town ~~Engineer—Zoning Administrator, in consultation with a New York State licensed professional engineer~~ shall be authorized to declare a public health and safety emergency situation requiring that the property owner to make an immediate repair, replacement or remediation or if necessary, cause a cessation of the release of wastewater to the wastewater backing system and/or the environment (i.e., use an existing septic tank as a temporary holding tank) but only as an interim remedial measure until such time as a design, review, approval and installation of an approved system can reasonably be completed.
- C. Where required, the property owner shall obtain a wastewater septic treatment system construction permit to replace or repair a failed system. Completion of work detailed in the wastewater septic treatment system construction permit shall be performed within the time period specified in the permit. Minor wastewater septic treatment system repairs shall be permitted if completed in accordance with the recommendations of a Certified Septic System Inspector or a New York State licensed professional engineer. For good cause shown the Town ~~Engineer—Zoning Administrator~~ shall have the discretion to extend any time limitation or deadline specified herein where circumstances so require. The

Town ~~Engineer~~ Planning and Zoning Office, in consultation with a New York State licensed professional engineer shall have the expertise and authority to determine if any system or holding tank repair shall be considered a minor or major remediation project.

**§ 36-14 Permit to Operate.**

No wastewater septic treatment system or holding tank shall be placed in operation, nor shall any building, structure or residence that produces wastewater be occupied, until the system or holding tank installation has been certified to the Town of Bolton by a New York State licensed professional engineer, indicating that such wastewater septic treatment system or holding tank has been constructed in substantial compliance with the wastewater septic treatment system construction permit and in accordance with the terms of any variance that may have been required for the installation of the system or holding tank.

**§ 36-15 Holding Tank Installations.**

- A. Holding tanks for residential use shall only be permitted as an alternative to a wastewater septic treatment system where extraordinary circumstances demonstrate that neither a conventionally designed wastewater septic treatment septic system nor an ETU can be feasibly placed on the real property and utilized in a safe and effective manner. Holding tanks shall only be appropriate for replacement wastewater septic treatment systems and not for new construction. A holding tank system installation shall require prior approval by the Town of Bolton Local Board of Health and only upon the issuance of a septic variance where a practical difficulty has been demonstrated that the strict application of the requirements of the "DOCUMENTS" or the provisions of this Ordinance require such relief, and the septic variance granted shall be the minimum relief necessary to alleviate the proven practical difficulty.
- B. All installed holding tanks shall:
  - (1) Be vehicle-accessible;
  - (2) Have an access port above grade at a minimum of twenty-four (24) inches in diameter;
  - (3) Have a capacity of five (5) days' storage based upon design flow of

one hundred ten (110) gallons per bedroom per day;

- (4) Have an audio and visual float alarm; and
  - (5) Have anchoring devices for areas where seasonal high water table conditions are evident from soil investigations.
  - (6) Conform to all setback requirements of the Town of Bolton Zoning Code (Chapter 200) and the Town of Bolton Stormwater & Erosion Control Regulations (Chapter 125) in the district where the holding tank shall be located or permitted by the Town of Bolton Zoning Board of Appeals by a grant of an area variance authorizing setback relief.
- C. All holding tanks shall be available for inspection by the Town ~~Engineer~~ Planning and Zoning Office on an annual basis and the property owner shall maintain pump-out records for inspection by the Town Engineer.
- D. All existing and newly installed holding tanks shall be equipped with an acceptable alarm device approved by the Town ~~Engineer-Planning and Zoning Office~~ Office to alert the property owner or occupant that the holding tank is filled within twelve (12) inches of the inlet pipe and such alarm device shall be designed to automatically shut off the water supply system.
- E. All holding tanks shall be pumped by a New York State-licensed septic tank pumping contractor when the holding tank is at a minimum of twelve (12) inches to the inlet pipe.
- F. Upon the installation of a holding tank and during all periods of holding tank operation at the premises, the owner and/or occupant shall maintain a current pumping or service contract and upon request provide a copy to the ~~Town Engineer~~ Town Planning and Zoning Office. The owner or occupant of the premises with a pumping or service contract shall notify the Town ~~Engineer~~ Planning and Zoning Office of any termination of the contract with fourteen (14) days of such termination. It shall be an affirmative duty of the owner or occupant of any premises serviced by a holding tank system to maintain an effective pumping and service contract and maintain pump-out records with a qualified New York State- licensed septic tank pumping contractor. Any failure



to do so shall constitute a violation of this Ordinance.

**§ 36-16 Enhanced Treatment Units. (ETU)**

- A. Where installation of an Enhanced Treatment Unit (ETU) is required or proposed to constitute substantial compliance with the requirements of this Ordinance, only a National Sanitation Foundation, (referred to as NSF, Standard 40 Class I) system shall be acceptable for installation, or as approved in the "DOCUMENTS". Installation of an Enhanced Treatment Unit (ETU) must be approved by the Town ~~Engineer~~[Planning and Zoning Office](#). For both new and replacement systems ETU's must be utilized in conjunction with a properly sited and designed filtration and/or absorption area approved by the Town ~~Engineer~~[Planning and Zoning Office](#). No installation or operation of an Enhanced Treatment Unit (ETU) which is designed to operate in violation of N.Y.S. Environmental Conservation Law § 17-1709 shall be approved by the Town of Bolton.
- B. An Enhanced Treatment Unit (ETU) installation shall include a visual and audio warning device installed in a conspicuous location so that activation of such warning device will alert property occupants of ETU malfunction or failure. All warning devices shall be wired separately from the ETU so that disconnecting the aerobic unit from electricity shall activate the warning device.
- C. All Enhanced Treatment Units {ETU's) shall be wired and constructed so that electrical disconnection of the ETU will result in shutting off the available water supply.
- D. All ETU's shall have a continuous maintenance service contract with a manufacturer's authorized service contractor or a qualified independent service contractor. An ETU shall be inspected at least once a year by an authorized service contractor. All service contracts and maintenance records shall be provided annually to the ~~Town Engineer at the~~ Town of Bolton [Planning and Zoning](#) Office to verify that a continuous maintenance contract exists for an ETU installation. The service contractor shall have ETU effluent tested by a certified laboratory and supply the data to the Town of Bolton Planning Office an annual maintenance report containing other relevant information as specified by

the Town ~~Engineer~~ [Planning and Zoning Office](#) to determine that the ETU performs within manufacturer's treatment specifications.

- E. It is recognized that "state of the art" technology may develop wastewater/septic treatment units other than the standard aerobic treatment units (NSF Standard 40 Class 1). "State of the art technology" units may also include, but are not limited to, media treatment units, inoculators and membrane bioreactors. Installation and the use of any "state of the art" wastewater/septic treatment unit which in the professional opinion of the Town's [Planning and Zoning Office or a New York State licensed professional engineer](#), ~~Engineer~~ meets or exceeds the standards and requirements of this Ordinance and meets or exceeds the specifications in the "DOCUMENTS" shall be considered an approved wastewater septic treatment system in the Town of Bolton. Prior to the issuance of a wastewater septic treatment system construction permit for a proposed "state of the art" system, the design and technology must first be approved in writing by the Town ~~Engineer~~ [Planning and Zoning Office](#) as a wastewater septic treatment system that is "substantially meets or exceeds" the requirements of this Ordinance and the "DOCUMENTS". The Town ~~Engineer~~ [Planning and Zoning Office](#) shall approve the installation and any maintenance requirements based upon the manufacturer's recommendations for such wastewater septic treatment systems and all approved installations shall require, at a minimum, that the owner of such system shall be required to obtain a N.Y.S. certified laboratory test on an annual basis that the "state of the art technology" system is performing in accordance with the manufacturer's specifications. Such certified laboratory test report shall be filed by the owner on an annual basis with the Town of Bolton Planning Office and such document when filed shall constitute a public record.
- F. The installation of any ETU wastewater/septic treatment system or any "state of the art" wastewater/septic treatment system (as described in Section 36- 16 E) shall be installed within all required Town of Bolton Zoning Code (Chapter 200) and all required Town of Bolton Stormwater & Erosion Control Regulations (Chapter 125) and as required and specified in the "DOCUMENTS" setbacks and in conformity with regulations that require

proper separation from potable water sources. Where such installation cannot meet the aforementioned setbacks, separations or specifications such placement and installation shall require that an applicant for such wastewater/septic treatment system construction permit demonstrate a practical difficulty in the ability to meet the strict application of such requirements and that a variance from the Local Board of Health shall be required to approve such installation but only upon such circumstances where there are no other feasible alternatives and that the variance granted shall be the minimum relief necessary to alleviate the practical difficulty.

**§36-17 Appeal of the Town Engineer's—Planning and Zoning Office's Determinations**

Any person or entity aggrieved by a determination of the Town Engineer—Planning and Zoning Office concerning the application of the requirements of this Ordinance shall be entitled to appeal such determination to the Town Board in its capacity as a Local Board of Health. Such appeal shall be perfected on a written notification of appeal delivered to the office of the Town Clerk within thirty (30) days of the determination appealed from. The Town Board as a Local Board of Health shall convene to consider such appeal at a regularly scheduled meeting of the Town of Bolton held no sooner than ten (10) days from receipt of each appeal and no later than forty-five (45) days from such appeal notification. The Local Board of Health shall consider all relevant evidence, documents and testimony on the issue and render a decision (a) upholding the Town Engineer's—Planning and Zoning Office's determination, OR (b) modifying the Town Engineer's—Planning and Zoning Office's determination with conditions OR (c) overruling the Town Engineer's—Planning and Zoning Office's determination. Further, appeal from a Local Board of Health decision, if any, shall be in accordance with the requirements of a Civil Practice Laws and Rules, Article 78 Proceeding.

**§ 36-18 Penalties for Violations of this Ordinance.**

- A. In the event of any circumstance that may occur in violation of this Ordinance, a written Notice of Violation and Order to Remedy shall be issued to the property owner and in the case of a rental residence to an occupant specifying that the property serviced by a wastewater septic treatment system or holding tank system is alleged to be in violation of this Ordinance. The Notice of

Violation and Order to Remedy shall identify the violation(s) and state a deadline date(s) by which all corrective action shall be completed. Any continuing violation beyond a designated deadline date, where the deadline has not been extended in writing by the Town ~~Engineer~~ Zoning Administrator for "good cause" shown, shall subject the violator to a monetary penalty not to exceed ONE THOUSAND DOLLARS \$1,000.00 per violation for each day that such violation continues.

- B. Each day of a violation, or any portion thereof, shall constitute a separate offense.
- C. In the event of a continuing violation, the Town of Bolton may obtain an injunction or other judicial relief available in law or equity, including property condemnation by appropriate court order. Where the Town of Bolton institutes proceedings, either in local court or in New York State Supreme Court to enforce the provisions of this Ordinance, in addition to monetary penalties or other sanctions herein provided, the offending parties shall be liable for additional penalties as may be available under New York State Town Law, as fines and penalties imposed by NYSDEC or NYSDOH and may also be obligated to reimburse the municipality for all reasonable attorney fees; costs and disbursements incurred by the Town of Bolton in proceeding on enforcement necessitated by judicial intervention.
- D. The penalties, and sanctions specified herein are non-exclusive and in any appropriate case the Town of Bolton shall be authorized to seek and recover actual damages, consequential damages and exemplary damages.

#### **§ 36-19 Fees.**

A fee shall be established by resolution of the Town of Bolton for the issuance of a wastewater septic system construction permit or for an application to the Local Board of Health for a variance from the requirements of this Ordinance.

#### **§36-20 Savings Clause**

The enactment and application of this ~~new~~ Ordinance #36 shall not be construed to impair, limit, restrict or prohibit existing rights or privileges that permit continuing use of an existing wastewater septic treatment system or existing holding tank installation where such system or

holding tank shall substantially comply with the requirements of this Ordinance and the system or holding tank constitutes a substantially satisfactory performing wastewater septic treatment system or holding tank in its present condition, without substantial system failure or tank malfunction and further without any requirement of a need for substantial modification or substantial update repair. Where the Town ~~Engineer~~ Planning and Zoning Office, in consultation with a New York State licensed professional engineer shall determine that any existing wastewater septic treatment system or existing holding tank can no longer perform in substantial compliance with its original design requirements or as other circumstances may reasonably demonstrate, in the opinion of the Town ~~Engineer~~ Planning and Zoning Office in consultation with a New York State licensed professional engineer, that a pre-existing wastewater septic treatment system or holding tank constitutes a hazard to public health or a threat to public safety or the general well-being of the community, then the provisions of this savings clause shall not be available to the property owner and all requirements of this Ordinance # 36 shall be applied.

**§ 36-21 Exemptions.**

Any real property owned or exclusively occupied by the state or federal government, or any agency or entity of such government shall be considered exempt from the application of this Ordinance.

**§ 36-22 Severability.**

If any section, paragraph, subdivision or provision of this Ordinance shall be judged invalid, unenforceable or declared unconstitutional, such a determination shall not affect the validity of all remaining portions of this Ordinance as a whole or any other part or other provision thereof other than the part so decided to be invalid, unenforceable or unconstitutional.

**§36-22 Effective Date**

This ~~new~~ Ordinance #36 is intended to replace and supersede all requirements and provisions of ~~the current~~ previous versions of Ordinance #36 ~~and this new Ordinance #36 shall upon enactment take effect pursuant to the requirements of law thereby simultaneously repealing the provisions and application of the previously existing Ordinance #36 and the new Ordinance #36 shall thereupon be considered in full force and effect~~ This Ordinance shall be effective upon filing with the New York State Secretary of State.